

SECOND AMENDED SETTLEMENT AGREEMENT AND RELEASE

This Second Amended Settlement Agreement and Release is entered into by and between plaintiff Monah Stahl, for herself and on behalf of the members of the Class as defined herein, on the one hand, and defendant Bank of the West, on the other hand (referred to collectively as “the Parties”). This Second Amended Settlement Agreement and Release supersedes and replaces all previously-executed settlement agreements and releases in the Action.

I. RECITALS

1.01. On August 23, 2017, Plaintiff Monah Stahl filed a class action complaint against Bank of the West (“BOTW” or “the Bank”) in the Superior Court of the State of California in and for the County of Los Angeles, Case No. BC673397 (the “Action”). The complaint in the Action alleges that BOTW improperly assessed overdraft fees arising from non-recurring transactions for Uber/Lyft rides by customers who did not opt into the Bank’s Debit Card Overdraft Service. The causes of action asserted in the complaint are for breach of contract, violation of the California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 et seq.), and violation of the Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750 et seq.).

1.02. BOTW denies the allegations asserted in the Action. Specifically, BOTW denies any wrongdoing or liability because, among other reasons, BOTW is entitled to rely on the merchant’s coding of a transaction as being recurring or non-recurring. BOTW further contends that Stahl and other customers have agreed to individually arbitrate any dispute with BOTW, and have specifically agreed not to pursue their claims against BOTW as part of a class action. Nevertheless, given the risks, uncertainties, burden and expense of continued litigation, BOTW has agreed to settle this litigation on the terms set forth in this Agreement, subject to Court approval.

1.03. Class Counsel have fully analyzed and evaluated the merits of all Parties' contentions and this settlement as it impacts all Parties, including the individual members of the Class. After taking into account the substantial risks of continued litigation, the Parties' dispute over arbitrability of these claims, and the likelihood that the Action, if not settled now, will be protracted and expensive, Class Counsel are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and equitable, and that a settlement of the Action is in the best interests of the Class.

1.04. The Parties agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any federal or state statute, rule or regulation, or principle of common law or equity, or of any liability or wrongdoing whatsoever, or of the truth of any of the claims asserted in the Action, or of the infirmity of any of the defenses that have been or could be raised by BOTW.

1.05. The Settlement contemplated by this Settlement Agreement resulted from good faith, arm's-length settlement negotiations and is subject to preliminary approval and final approval by the Court, as set forth herein. This Settlement Agreement is intended by the Parties to fully, finally and forever resolve, discharge and settle the Released Claims, as defined herein, upon the Court's approval of the terms and conditions of the Settlement.

II. DEFINED TERMS

As used in this Settlement Agreement, the following terms having the meanings set forth below:

2.01. **"Action"** means the putative class action lawsuit entitled *Stahl v. Bank of the West*, Case No. BC673397, pending in the Superior Court of the State of California in and for the County of Los Angeles.

2.02. **“Administration Expenses”** means any and all fees, costs, and charges incurred, charged, or invoiced by the Settlement Administrator relating to the administration of the Settlement, including the costs of notice to Class Members.

2.03. **“Agreement,” “Settlement,” or “Settlement Agreement”** mean this Second Amended Settlement Agreement and Release and the settlement embodied in this Second Amended Settlement Agreement and Release, including all attached Exhibits.

2.04. The **“Class”** or **“Class Members”** means all present and former holders of Consumer Deposit Accounts with BOTW who were not opted into BOTW’s Debit Card Overdraft Service at the time they were charged an overdraft fee by BOTW for a transaction with Uber or Lyft during the Class Period. Excluded from the Class are the Judge presiding over this Action and the Court staff.

2.05. **“Class Counsel”** or **“Plaintiff’s Counsel”** means the laws firms of Kaliel PLLC; Tycko & Zavareei, LLP; Kopelowitz, Ostrow, Ferguson, Weiselberg Gilbert; McCune Wright Arevalo, LLP; and The Kick Law Firm, APC.

2.06. **“Class Member List”** means a list of persons who, according to Bank of the West’s business records, fall within the definition of the Class.

2.07. **“Class Notice”** means the postcard notice to be sent to Class Members by the Settlement Administrator and the detailed notice to be posted on the Settlement Website and sent upon request that discloses the terms of this settlement substantially in the form attached hereto as Exhibits A and B.

2.08. **“Class Period”** means August 23, 2013 to April 30, 2018.

2.09. **“Class Representative”** or **“Plaintiff”** means Monah Stahl.

2.10. **“Closed Consumer Deposit Account”** means a Bank of the West Consumer Deposit Account that is not open as of April 30, 2018, according to the Bank’s records.

2.11. **“Consumer Deposit Account”** means a personal deposit account with BOTW that is intended for personal, family or household purposes rather than business or commercial purposes.

2.12. **“Court”** means the Superior Court of the State of California in and for the County of Los Angeles.

2.13. **“Debit Card Overdraft Service”** means the service by which BOTW, at its sole discretion, may authorize and pay debit card transactions when the account holder has an insufficient available balance and, if the account holder has opted in to the service BOTW may charge an overdraft fee.

2.14. **“Defense Counsel”** means Severson & Werson, P.C.

2.15. **“Effective Date”** means five business days after the following have occurred: (i) the Court has entered a Final Approval Order and judgment approving the Settlement of the Action in a manner consistent with the terms of this Agreement, and (ii) either the time period to appeal the Final Approval Order and judgment has expired without any appeal having been filed, or an appeal that has been filed has been finally resolved in the appellate court of last resort without any right to appeal or seek further review from another appellate court.

2.16. **“Escrow Account”** means the escrow account created and administered by the Settlement Administrator for the purpose of holding the Settlement Funds.

2.17. **“Fee and Expense Award”** means such funds as may be approved and awarded by the Court to Class Counsel for the attorneys’ fees and costs incurred in connection with the Action and Settlement.

2.18. **“Fee Application”** means Class Counsel’s application for the Fee and Expense Award.

2.19. **“Final Approval Hearing”** means the hearing at or after which the Court will determine whether to finally approve the Settlement.

2.20. **“Final Approval Order”** means the proposed final order and final judgment to be submitted to and entered by the Court in connection with the Final Approval Hearing, the proposed form of which is attached hereto as Exhibit C.

2.21. **“Lyft”** refers to Lyft, Inc. and all of its present and former parents, predecessors, successors, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, attorneys, vendors, accountants, agents, representatives and employees.

2.22. **“Net Settlement Fund”** means the Settlement Fund minus any Fee and Expense Award; any Service Award; and all Administration Expenses.

2.23. **“Open Consumer Deposit Account”** means a Bank of the West Consumer Deposit Account that is open as of April 30, 2018, according to the Bank’s records.

2.24. **“Opt-Out and Objection Deadline”** means the date that is ninety-five (95) days after entry of the Preliminary Approval Order, or any other date set by the Court by which a Class Member must opt-out of the Settlement or make any objection to the proposed Settlement, the Fee Application, and/or the Service Award Application, in accordance with the procedures set forth herein and/or in any order of the Court.

2.25. **“Parties”** means Bank of the West, the Plaintiff/Class Representative, and the members of the Class.

2.26. **“Preliminary Approval Hearing”** means the hearing at or after which the Court will determine whether to preliminarily approve the Settlement and authorize the mailing of the Class Notice.

2.27. **“Preliminary Approval Order”** means the order to be submitted to and entered by the Court in connection with the Preliminary Approval Hearing, the proposed form of which is attached hereto as Exhibit D.

2.28. **“Released Claims”** means the claims released in Paragraph 6.01 of this Settlement Agreement.

2.29. **“Released Parties”** means the individuals and entities released in Paragraph 6.01 of this Settlement Agreement.

2.30. **“Service Award”** means such funds as may be awarded by the Court to the Plaintiff in recognition of her time and effort expended in pursuing the Action and in fulfilling her obligations and responsibilities as the Class Representative.

2.31. **“Service Award Application”** means Class Counsel’s application for a service award to the Class Representative.

2.32. **“Settlement Administrator”** means Epiq Class Action & Claim Solutions, Inc. or such other third-party administrator as may be agreed to by the Parties and approved by the Court to administer the Settlement, including providing the Class Notice pursuant to the terms and conditions of this Agreement.

2.33. **“Settlement Amount”** means the sum of Two Hundred Twenty-Two Thousand Dollars and No Cents (\$222,000.00) which shall be used to make payments to Settlement Class Members; any Fee and Expense Award; any Service Award; and, Administration Expenses.

Under no circumstances shall the Settlement Amount be greater than \$222,000 nor shall BOTW be obligated to pay more than \$222,000 in connection with this Settlement.

2.34. The **“Settlement Class”** or **“Settlement Class Members”** means persons who are members of the Class defined in Section 2.04 above who do not opt out and are not excluded from the Settlement pursuant to the procedures set forth in this Agreement.

2.35. **“Settlement Fund”** means the Settlement Amount (\$222,000.00) and any interest that accrues on that amount while it is held in the Escrow Account.

2.36. **“Settlement Share”** means the payment to a Settlement Class Member from the Net Settlement Fund. Each Settlement Class Member’s Settlement Share will be calculated consistent with Paragraph 5.03(c) below.

2.37. **“Settlement Website”** means DebitCardOverdraftSettlement.com to be established and maintained by the Settlement Administrator where copies of the complaint, Settlement Agreement, Preliminary Approval Order, detailed notice, Fee Application, and Final Approval Order and Judgment will be posted. Aside from the Class Notice, Agreement and complaint filed in the Action being made available on the Settlement Website, the Settlement Website and URL shall not bear the name or include BOTW’s name, logos or trademarks, or those belonging to any company affiliated with BOTW. The Settlement Website shall be taken down or removed by the Settlement Administrator within 30 days after the Settlement Administrator has completed its obligations under this Agreement.

2.38. **“Uber”** refers to Uber Technologies, Inc. and all of its present and former parents, predecessors, successors, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, attorneys, vendors, accountants, agents, representatives and employees.

III. Preliminary Approval

3.01. **Class Certification.** Solely for the purposes of settlement and the proceedings contemplated herein, the Parties stipulate and agree that a class shall be certified in the Action in accordance with the definition of the “Class” set forth above, and that Class Counsel shall be appointed as counsel for the Class. The certification of the Class shall be binding only with respect to the settlement set forth in this Agreement. In the event this Agreement shall terminate pursuant to its terms for any reason, the Order certifying the Class shall be vacated by its terms, and this Action shall revert to its status as existed prior to the execution of this Agreement. In that event, this Agreement shall not be admissible to establish any fact relevant to class certification or any alleged liability, or for any other purpose, and the Parties’ agreement to resolve the Action shall be inadmissible pursuant to Evidence Code §1152.

3.02. **Preliminary Approval.** The Class Representative, through Class Counsel, shall file a motion for Preliminary Approval. The motion shall request entry of the Preliminary Approval Order (substantially in the form of Exhibit D attached hereto) for the purposes of, among other things: (a) conditionally certifying the Class in the Action for settlement purposes only; (b) appointing Plaintiff as Class Representative of the Class; (c) appointing Kaliel PLLC; Tycko & Zavareei, LLP; Kopelowitz, Ostrow, Ferguson, Weiselberg Gilbert; McCune Wright Arevalo, LLP; and, The Kick Law Firm, APC as Class Counsel; (d) appointing Epiq Systems, Inc. as the Settlement Administrator; (e) scheduling a Final Approval Hearing; (f) approving Class Notice (substantially in the form of Exhibits A and B attached hereto); and, (g) approving the objection and exclusion procedures for Class Members. BOTW and Defense Counsel shall not oppose the motion and may file a joinder in the request for preliminary approval.

3.03. **Confirmatory Discovery.** BOTW has provided Class Counsel with a declaration affirming that it has conducted a diligent investigation of its records and confirming the number of Consumer Deposit Account holders included within the Class and the total overdraft fees assessed Class Members for Uber/Lyft transactions during the Class Period.

3.04. **Identifying Class Members.** Within fourteen (14) days of entry of the Preliminary Approval Order, BOTW shall provide to the Settlement Administrator the Class Member List in an electronic format. The Class Member List shall include: the names of all persons who, according to Bank of the West's business records, fall within the definition of the Class; their last known mailing address; the last four digits of their account number; and, an indication whether, according to Bank of the West's business records, the person's account is an Open Consumer Deposit Account or a Closed Consumer Deposit Account. In preparing the Class Member List, BOTW may rely on its reasonably available electronic records and is only obligated to provide the last known mailing addresses as they presently exist in its business records.

3.05. **Obligation of Settlement Administrator.** Plaintiff and Class Counsel shall request that the Court appoint Epiq Class Action & Claims Solution, Inc. as the Settlement Administrator to administer the Settlement. All Administration Expenses shall be paid from the Settlement Fund. The Settlement Administrator shall be responsible for all of the following:

- (a) preparing, printing, and disseminating Class Notice to the Class;
- (b) promptly furnishing to Class Counsel and Defense Counsel copies of any requests for exclusion, objections, or other written or electronic communications from the Class;
- (c) keeping track of requests for exclusion and objections to the settlement, including maintaining the original envelope in which they were mailed, and within five (5)

business days after the close of the opt-out or objection period, informing Class Counsel and Defense Counsel in writing of the total number of such requests and objections received in response to the Class Notice;

(d) preparing and mailing settlement checks to holders of Closed Consumer Deposit Accounts, and providing BOTW with a report of the amounts to be credited to Open Consumer Deposit Accounts, in accordance with this Agreement;

(e) performing any tax reporting duties required by this Agreement and federal, state, or local law;

(f) referring to Class Counsel all inquiries by the Class Members regarding matters not specified herein;

(g) maintaining adequate records of all its activities, including the dates of each mailing of Class Notices, returned mail, and other communications and attempted written or electronic communications with the Class;

(h) confirming in writing its completion of the administration of the settlement;

(i) preparing a final report summarizing the amounts paid to Settlement Class Members, requests for exclusion, and objections submitted;

(j) providing a declaration to Class Counsel to be filed with the Court identifying Class Members who requested exclusion, objected to the Settlement and/or plan on attending the final approval hearing, along with a copy of the requested exclusion, objection to the settlement, and/or plan to attend;

(k) resolving disputes during the administration process in the manner provided below;

(l) maintaining the Settlement Website, and,

(m) such other tasks as the Class Counsel and Defense Counsel mutually agree.

3.06. **Preserving Confidentiality of Customer Information.** The Settlement Administrator has executed the Bank of the West Data Management Agreement. The Settlement Administrator, Class Counsel and Defense Counsel understand and agree that they will be provided with certain personal identifying information relating to BOTW customers who are Class Members, they agree to keep this information secure and not to disclose or disseminate this information to any third parties, and they agree such information will be used solely for the purpose of effecting this Settlement.

3.07. **Class Notice.** Attached as Exhibits A and B to this Settlement Agreement are the Class Notices to be sent to Class Members by the Settlement Administrator that disclose the material terms of this Settlement. Within thirty (30) days of entry of the Preliminary Approval Order, the Settlement Administrator shall send Exhibit A, the postcard notice, by mail to all Class Members, after running all addresses through the National Change of Address Database. If this notice is returned as undeliverable, the Settlement Administrator shall perform a skip trace search and shall make one attempt to re-mail the postcard notice no later than 60 days before the Final Approval Hearing. The detailed Class Notice, substantially in the form of Exhibit B, shall be posted on the Settlement Website and also sent to any Class Member who requests one.

3.08. **Exclusion / “Opt-Out” Rights.**

(a) In the event a Class Member wishes to be excluded from the Settlement and not to be bound by this Agreement, that person must, prior to the Opt-Out and Objection Deadline, sign and mail a notice of intention to opt-out of the Settlement to the Settlement Administrator. The notice must be postmarked on or before the Opt-Out and Objection deadline and must include the account holder’s name, address, and telephone number, and the last four

digits of the account number of the BOTW Consumer Deposit Account, and a clear request that the individual would like to “opt-out” or be “excluded,” by use of those or other words clearly indicating a desire to no longer participate in the Settlement. Any Class Member who timely and properly requests exclusion in compliance with these requirements will not be included in the Settlement Class, will not have any rights under this Settlement, will not be entitled to receive a settlement payment, and will not be bound by this Settlement Agreement or the Final Approval Order.

(b) If a Consumer Deposit Account has more than one account holder, and if one account holder excludes himself or herself from the Settlement Class, then all account holders on that account shall be deemed to have opted out of the Settlement with respect to that account and no account holder shall be entitled to a payment under this Settlement.

(c) The Class Notice shall provide that written requests to opt-out of the settlement must be mailed to the Settlement Administrator by the Opt-Out and Objection Deadline.

(d) Within five (5) business days after the Opt-Out and Objection Deadline, the Settlement Administrator shall provide Class Counsel and Defense Counsel with the information regarding requests for exclusion that is required under Section 3.05, confirming which opt-outs are timely and untimely. Class Counsel shall provide the information required in Section 3.05(j) to the Court at least five (5) court days before the Final Approval Hearing.

3.09. **Option to Declare Settlement Void.** In the event that 50 or more Class Members are excluded from the Settlement pursuant to the procedures set forth in Section 3.08 above, BOTW shall have the right, at its sole discretion, to declare this Settlement Agreement void. Should BOTW elect to void the Settlement Agreement on the basis of this provision, it

must notify Class Counsel in writing of its intent to void the Settlement Agreement within five (5) business days of receiving written notice from the Settlement Administrator of the total number of exclusion requests from Class Members.

3.10. **Objections to the Settlement.**

(a) Any Settlement Class Member (other than the Class Representative) may object to this Agreement, the Fee Application, or the Service Award Application. Settlement Class Members may object to the settlement in writing and/or by appearing at the Fairness Hearing. To object to the settlement in writing, Settlement Class Members must sign and mail a letter, prior to the Opt-Out and Objection Deadline, that states their intention to object to the Settlement to the Settlement Administrator. For a written objection to be considered, it must be postmarked on or before the Opt-Out and Objection deadline and must include the account holder's name, address, and telephone number, the last four digits of the account number of the BOTW Consumer Deposit Account, and a clear statement that the Settlement Class Member would like to "object," or other words clearly indicating that the Settlement Class Member does not think the Settlement as a whole, Class Counsel's requests for fees and expenses and/or Class Counsel's request for a Service Award should be approved. Even if a Settlement Class Member does not timely send in a written objection, a Settlement Class Member may attend the Fairness Hearing and ask to be heard regarding any objection.

(b) Any Settlement Class Member who does not provide a timely and written objection or who does not make a record of his or her objection at the Fairness Hearing shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement, the Fee Application, the Fee and Expense Award, Service Award Application or the Service Award.

(c) Class Representative, Class Counsel and/or BOTW may file responses to any written objections no later than seven (7) days prior to the Final Approval Hearing.

IV. Final Approval

4.01. **Motion for Final Approval**. At the Final Approval Hearing, the Class Representative and Class Counsel will request that the Court enter a Final Approval Order substantially in the form of Exhibit C hereto that does all of the following: (a) finds that the Court has personal and subject matter jurisdiction over the Action; (b) certifies a class action for settlement purposes; (c) approves the Settlement; (d) finds that the Class Notice given in the manner herein described constitutes the best notice practicable and in full compliance with the requirements of California Rules of Court and due process of law; (e) confirms that the Class Representative and the Settlement Class Members have released all Released Claims and are permanently barred and enjoined from asserting, commencing, prosecuting, or continuing any of the Released Claims against the Released Parties; (f) identifies those who have timely opted-out of the Settlement; (g) requires the Parties to report the amounts paid to Settlement Class Members; (h) retains the Court's jurisdiction relating to the administration, consummation, validity, enforcement, and interpretation of this Agreement, the Final Approval Order, any final order approving the Fee and Expense Award and Service Award, and for any other necessary purpose; and, (i) enters a Final Approval Order and Judgment substantially in the form attached hereto as Exhibit C, which will be posted on the Settlement Website.

4.02. If this Settlement is not approved or does not become final for any reason, this Agreement and the certification of the Class shall be void and anything said or done pursuant to this Agreement, or as part of negotiations leading hereto, shall not be used in any other proceeding for any purpose.

V. **Relief to Settlement Class Members**

5.01. **Monetary Consideration.** In exchange for the releases described below and a final judgment in the Action pursuant to the terms of this Settlement Agreement, BOTW agrees to pay the Settlement Amount. The Parties agree that this sum represents the total amount that BOTW must pay to settle the claims of Settlement Class Members, and that in no event shall BOTW be responsible for any payments, costs, expenses, or claims beyond this Settlement Amount.

5.02. **Deposit of Settlement Amount.**

(a) Within ten (10) days after the entry of the Preliminary Approval Order, BOTW shall deposit the Settlement Amount into the Escrow Account. The Escrow Account shall be held in an interest-bearing bank account with a commercial bank with excess capital exceeding One Hundred Million Dollars and No Cents (\$1,000,000,000.00), with a rating of “A” or higher by S&P and in an account fully insured by the United States Government or FDIC.

(b) All interest in the Escrow Account shall accrue to the benefit of the Settlement Class. The funds in the Escrow Account shall be deemed a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1 at all times after the creation of the Escrow Account. The Settlement Administrator shall be the “administrator” of the escrow fund and responsible for timely and properly filing all informational and other tax returns necessary or advisable with respect to the Escrow Account and Settlement Fund. All taxes owed by the qualified settlement fund shall be paid out of the Escrow Account. Neither BOTW, the Class Representative, Class Counsel or Defense Counsel shall have any liability or responsibility for any of the taxes. The Escrow Account shall indemnify and hold BOTW, Defense Counsel, Class

Representative and Class Counsel harmless for all taxes (including, without limitation, taxes payable by reason of any such indemnification).

(c) In the event that the Settlement is not approved, or is terminated, canceled, or fails to become effective for any reason, the remaining Settlement Funds (including accrued interest), less any Administration Expenses incurred and any taxes incurred or due and owing pursuant to this Agreement, shall be refunded to BOTW.

5.03. **Distribution of the Settlement Fund.**

(a) The Settlement Fund shall be used for the payment of Administration Expenses; a Settlement Share to each of the Settlement Class Members; any Service Award to the Plaintiff as approved by the Court; any Fee and Expense Award as approved by the Court; and, any taxes owed by the qualified settlement fund (but not any taxes owed by individual Settlement Class Members). The Parties must approve any payment of costs or expenses under this paragraph, and such approval shall not be unreasonably withheld.

(b) Distribution Prior to the Effective Date. The Settlement Administrator may apply to Class Counsel and Defense Counsel for the payment from the Settlement Fund of Administration Expenses incurred prior to the Effective Date.

(c) Upon the Effective Date, the Settlement Administrator shall determine each Settlement Class Member's Settlement Share by dividing the Net Settlement Fund by the number of Settlement Class Members, such that Settlement Class Members will share pro rata in the Net Settlement Fund.

(d) Distribution After the Effective Date.

1. Within five (5) business days after the Effective Date, any Service Award and Fee and Expense Award shall be paid out of the Escrow Account.

2. Within five (5) business days after the Effective Date, the Settlement Administrator shall wire to BOTW, from the Escrow Account, an amount equal to the aggregate Settlement Share of all Settlement Class Members with Open Consumer Deposit Accounts. At the same time, the Settlement Administrator shall provide BOTW with a list of the amounts to be paid to Settlement Class Members with Open Consumer Deposit Accounts, in an electronic format, including each Settlement Class Member's name, address, last four digits of their account number and his or her Settlement Share. BOTW shall directly deposit the applicable Settlement Share into such Settlement Class Members' Open Consumer Deposit Accounts, within sixty (60) days of the Effective Date. If any such Settlement Class Member closes their deposit account before BOTW can deposit the Settlement Share, then BOTW shall deposit those Settlement Shares back in to the Escrow Account, and those Settlement Class Members shall be paid by check by the Settlement Administrator in accordance with the procedures for making payments to Settlement Class Members with Closed Consumer Deposit Accounts. BOTW shall receive no compensation for performing these actions.

3. For Settlement Class Members with Closed Consumer Deposit Accounts, the Settlement Administrator shall mail each such Settlement Class Member a check in the amount of each applicable Settlement Share within sixty (60) days of the Effective Date. Payments to Settlement Class Members whose accounts were originally identified as an Open Consumer Deposit Account but closed, or who are receiving a secondary distribution pursuant to Section 5.03(d)(5) shall not be subject to this 60 day limitation, but shall be made as soon as practicable. The checks shall indicate that they expire one hundred eighty (180) days after the date of issuance.

4. If a Settlement Class Member is deceased and a death certificate is provided to the Settlement Administrator prior to the Effective Date, that deceased Settlement Class Member will be entitled to a Settlement Share as follows. If the account is a Closed Consumer Deposit Account, the Settlement Administrator will pay the Settlement Share to the deceased Settlement Class Member's estate. If the account is an Open Consumer Deposit Account with one or more joint accountholders, BOTW will deposit the Settlement Share into that account, otherwise the deceased Settlement Class Member shall not be entitled to a Settlement Share.

5. Any funds remaining in the Escrow Account after all payments are made to satisfy Service Awards, Fee and Expense Awards and Administration Expenses, and after the first distribution of Settlement Shares as described in paragraphs 5.03(d)(2) through (d)(4) shall, within sixty (60) days, be distributed evenly to (a) Settlement Class Members with Open Consumer Deposit Accounts and (b) those Settlement Class Members with Closed Consumer Deposit Accounts who cashed the first check sent to them. Payments shall be made by credit to Open Consumer Deposit Accounts and by check to Closed Consumer Deposit Accounts. If there are any funds remaining in the Escrow Account after this second distribution those funds will be paid evenly to Settlement Class Members with Open Consumer Deposit Accounts.

6. BOTW shall have no responsibility or liability for any taxes owed by Settlement Class Members as a result of the amounts paid to such Settlement Class Members under this Agreement.

5.04. **Resolution of Disputes Over Claims.** Any disputes regarding payments to Settlement Class Members, such as a dispute about a payment amount or the proper recipient of

a payment, will be resolved in the following manner. Class Counsel and Defense Counsel will first meet and confer in a good faith attempt to resolve that dispute. In the event the dispute cannot be resolved informally between Class Counsel and Defense Counsel, the Court will resolve the dispute and such resolution shall be final and binding on the Settlement Class Member. In resolving such disputes, BOTW's records shall be presumed to be accurate and correct, and shall be final and binding, unless the information provided by the Settlement Class Member proves otherwise.

5.05. **Service Award.** On or before twenty-one (21) days prior to the Opt-Out and Objection Deadline, Class Counsel may apply to the Court for a Service Award from the Settlement Fund for the Class Representative not to exceed Five Thousand Dollars (\$5,000) for her service to the Class in addition to any other relief to which she is entitled as a Settlement Class Member. BOTW shall not oppose such application.

5.06. **Class Counsel's Attorneys' Fees And Costs.**

(a) On or before twenty-one (21) days prior to the Opt-Out and Objection Deadline, Class Counsel may apply to the Court for a Fee and Expense Award from the Settlement Fund, not to exceed 30 percent (30%) of the Settlement Amount, to reimburse Class Counsel for attorneys' fees incurred in researching, preparing for, prosecuting and litigating this Action. In addition, Class Counsel may also apply for reimbursement for reasonable costs and expenses incurred in the Action. BOTW agrees not to oppose such applications provided that Class Counsel comply with the terms of this Agreement. Any Fee and Expense Award shall be paid from the Settlement Fund by the Settlement Administrator within five (5) business days from the Effective Date.

(b) Class Counsel and Class Representative expressly disclaim any right to recover attorneys' fees and costs in excess of the amount awarded by the Court from any person or entity. Class Counsel and Class Representative also agree that the amounts of such attorneys' fees and costs awarded shall compensate them for all legal work in the Action up to and including the Effective Date, as well as for all legal work and costs that may be incurred in the Action after the Effective Date. Class Counsel is responsible for distributing any award of attorneys' fees and costs amongst Plaintiff's Counsel. BOTW shall not be liable for any claims ensuing from distribution of attorneys' fees and costs.

(c) This Settlement is not conditioned upon the Court awarding the amounts sought by the Class Representative as a Service Award and Class Counsel as a Fee and Expense Award. If the amounts awarded by the Court are less than what was sought by the Class Representative and Class Counsel, the remaining provisions of this Settlement shall be binding and effective.

5.07. **Court Retains Jurisdiction After Entry of Final Approval Order.** Without affecting the finality of the Final Approval Order in any way, the Court shall retain jurisdiction over the administration, consummation, validity, enforcement, and interpretation of this Agreement, the Final Approval Order, and any final order approving the Fee and Expense Award and Service Award.

VI. RELEASES AND JUDGMENT

6.01. **Class Representative and the Settlement Class Members Provide the Following Releases:** Upon the Effective Date, and in consideration of the promises and covenants set forth in this Settlement Agreement, the Class Representative and each Settlement Class Member, and each of their respective spouses, children, executors, representatives,

guardians, wards, heirs, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf, will be deemed to have completely released and forever discharged BOTW, Uber and Lyft and each of those entities' past and present parents, subsidiaries, affiliates, officers, directors, employees, attorneys, shareholders, agents, assigns, and third party suppliers and vendors (collectively, the "Released Parties"), from any actions, causes of action (in law, in equity or administratively), suits, debts, liens, or claims, known or unknown, suspected or unsuspected, fixed or contingent, which they may have or claim to have, that directly or indirectly arise out of, relate to, or derive in any way from BOTW's assessment of overdraft fees for Uber and/or Lyft transactions during the Class Period, but excluding any tort or other claims that do not directly or indirectly arise out of, relate to, or derive in any way from BOTW's assessment of overdraft fees for Uber and/or Lyft transactions during the Class Period; or arise out of, relate to, or derive in any way from the administration of the Settlement (the "Released Claims"). For avoidance of doubt, the Parties agree that this is not a general release by the Settlement Class Members in favor of BOTW, Uber and/or Lyft or any other entity.

6.02. **Covenant Not To Sue.** Class Representative agrees and covenants, and each Settlement Class Member will be deemed to have agreed and covenanted, not to sue any of the Released Parties with respect to any of the Released Claims, and agree to be forever barred from doing so in any court of law or equity, arbitration proceeding, or any other forum.

VII. MISCELLANEOUS PROVISIONS

7.01. **Termination Of Discovery And Motion Practice.** By signing this Settlement Agreement, the Parties agree not to serve any discovery or proceed with any motion after the date of this Settlement Agreement, except for motions related to the approval of the Settlement,

unless the Parties are ordered to do so by the Court or the Final Approval Order is not entered and this Settlement becomes void.

7.02. **No Admission of Liability.** Neither this Agreement nor the Final Approval Order to be entered pursuant to this Agreement is an admission or concession by any person or entity of any fault, omission, liability, or wrongdoing.

7.03. **Each Party Is Represented by Counsel.** Plaintiff Stahl on the one hand, and defendant Bank of the West on the other, acknowledge to each other that each has been advised and is represented by legal counsel of her or its own choice throughout all of the negotiations which preceded the execution of this Settlement Agreement and that they have executed this Settlement Agreement after being so advised and without reliance upon any promise or representation of any person or persons acting for or on behalf of the other, except as expressly set forth in this Agreement. Plaintiff Stahl on the one hand, and defendant Bank of the West on the other, further acknowledge that they and their counsel have had an adequate opportunity to make whatever investigation or inquiry they may deem necessary or desirable in connection with the subject matter of this Agreement prior to the execution of this Agreement. Plaintiff Stahl has read and approved the language of this Agreement, with the assistance of counsel. Defendant Bank of the West has also read and approved the language of this Agreement, with the assistance of counsel. This Agreement is a product of negotiation and preparation by plaintiff Stahl on the one hand with her attorneys, and by defendant Bank of the West and its attorneys on the other. Therefore, Plaintiff Stahl on the one hand, and defendant Bank of the West on the other, expressly waive the provisions of Civil Code §1654 and acknowledge and agree that this Agreement should not be deemed prepared or drafted by one party or the other and shall be construed accordingly.

7.04. **Entire Agreement/Construction And Interpretation.** This Agreement embodies the entire agreement and understanding between the Parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof. No course of prior dealing between the Parties, no usage of the trade, and no extrinsic evidence of any nature shall be used or be relevant to supplement, explain, or modify any term used herein. The parties represent and warrant to the other party that they are not relying on any other party for advice.

7.05. **Counterpart Originals and Electronic Signatures.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement. It is further agreed that scanned and emailed and/or facsimile copies of executed signature pages may be assembled and that each and every one of the same shall be given the force and effect of an original signature.

7.06. **Modification Only In Writing.** Neither this Agreement nor any provision hereof may be changed, waived, discharged, or terminated, save and except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

7.07. **Headings.** Captions, section headings and numbers have been set forth in this Agreement for convenience only and are not to be used in construing this Agreement.

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7.08. **Governing Law.** This Agreement shall be governed and interpreted under California law.

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

9/7/2018 7:30:34 PM PDT

DATED: _____

Plaintiff Monah Stahl

DocuSigned by:

0CB7220C0D9A437

DATED: _____

Defendant Bank of the West

Name: _____

Title: _____

APPROVED AS TO FORM AND CONTENT:

DATED: _____

SEVERSON & WERSON

By: _____

Mark D. Lonergan
Loren W. Coe
Attorneys for Defendant Bank of the West

DATED: _____

KALIEL PLLC

By: _____

Jeffrey Kaliel
Attorneys for Plaintiff Monah Stahl

7.08. Governing Law. This Agreement shall be governed and interpreted under California law.

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

DATED: _____

Plaintiff Monah Stahl

DATED: 9/11/2018

Defendant Bank of the West

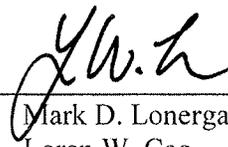
Name: Elizabeth A. Hale

Title: EVP, Retail Banking Group

APPROVED AS TO FORM AND CONTENT:

DATED: 9/11/18

SEVERSON & WERSON

By: 

Mark D. Lonergan
Loren W. Coe
Attorneys for Defendant Bank of the West

DATED: _____

KALIEL PLLC

By: _____

Jeffrey Kaliel
Attorneys for Plaintiff Monah Stahl

7.08. **Governing Law.** This Agreement shall be governed and interpreted under California law.

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

DATED: _____

Plaintiff Monah Stahl

DATED: _____

Defendant Bank of the West

Name: _____

Title: _____

APPROVED AS TO FORM AND CONTENT:

DATED: _____

SEVERSON & WERSON

By: _____

Mark D. Lonergan
Loren W. Coe
Attorneys for Defendant Bank of the West

9/10/2018 11:43:25 AM PDT

DATED: _____

KALIEL PLLC

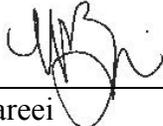
By: _____

Jeffrey Kaliel
Attorneys for Plaintiff Monah Stahl

DocuSigned by:
Jeff Kaliel
CDE00BE50DEA489

DATED: 09/11/2018

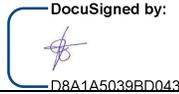
TYCKO & ZAVAREEI, LLP

By: 
Hassan Zavareei
Attorneys for Plaintiff Monah Stahl

9/9/2018 3:39:20 PM PDT

DATED: _____

KOPELOWITZ OSTROW
FERGUSON WEISELBERG GILBERT

By: 
Jeff Ostrow
Attorneys for Plaintiff Monah Stahl

DATED: _____

MCCUNE WRIGHT AREVALO, LLP

By: _____
Richard D. McCune
Jae K. Kim
Attorneys for Plaintiff Monah Stahl

DATED: _____

THE KICK LAW FIRM, APC.

By: _____
Taras Kick
Robert Dart
Attorneys for Plaintiff Monah Stahl

DATED: _____

TYCKO & ZAVAREEI, LLP

By: _____

Hassan Zavareei
Attorneys for Plaintiff Monah Stahl

DATED: _____

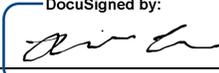
KOPELOWITZ OSTROW
FERGUSON WEISELBERG GILBERT

By: _____

Jeff Ostrow
Attorneys for Plaintiff Monah Stahl

DATED: 9/10/2018 11:03:49 AM PDT

MCCUNE WRIGHT AREVALO, LLP

By: _____
DocuSigned by:


20D23CB564D428
Richard D. McCune
Jae K. Kim
Attorneys for Plaintiff Monah Stahl

DATED: _____

THE KICK LAW FIRM, APC.

By: _____

Taras Kick
Robert Dart
Attorneys for Plaintiff Monah Stahl

DATED: _____

TYCKO & ZAVAREEI, LLP

By: _____

Hassan Zavareei
Attorneys for Plaintiff Monah Stahl

DATED: _____

KOPELOWITZ OSTROW
FERGUSON WEISELBERG GILBERT

By: _____

Jeff Ostrow
Attorneys for Plaintiff Monah Stahl

DATED: _____

MCCUNE WRIGHT AREVALO, LLP

By: _____

Richard D. McCune
Jae K. Kim
Attorneys for Plaintiff Monah Stahl

DATED: 9/10/18

THE KICK LAW FIRM, APC.

By: _____

Taras Kick
Robert Dart
Attorneys for Plaintiff Monah Stahl