Exhibit A2

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KRISTEN SCHERTZER, MEAGAN HICKS, BRITTANY COVELL, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

BANK OF AMERICA, N.A, CARDTRONICS, INC., ATM NATIONAL, LLC, FCTI, INC., CASH DEPOT LTD, and DOES 1-50, inclusive,

Defendants.

Case No: 3:19-cv-00264-JM-MSB

SECOND AMENDED CLASS ACTION COMPLAINT

[DEMAND FOR JURY TRIAL]

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs KRISTEN SCHERTZER, BRITTANY COVELL, and MEAGAN HICKS ("Plaintiffs") bring this action on behalf of themselves and all others similarly situated against Defendants Cardtronics, Inc. ("Cardtronics"), ATM National, LLC ("ATM National")[1], FCTI, Inc. ("FCTI"), Cash Depot, Ltd, Bank of America, N.A. ("BofA"), and state:

I. INTRODUCTION

1. This Second Amended Complaint challenges a) a multifaceted scheme by BofA to charge unwarranted fees to their accountholders for supposedly undertaking checking account "balance inquiries" during out-of-network[2] ATM transactions; b) deceptive and misleading representations regarding balance inquiries and fees for balance inquiries made by the independent ATM operators Cardtronics, Cash Depot and FCTI (collectively, the "ATM Defendants") on screens and signs at the ATMs they operate; and c) BofA's practice of charging International Transaction fees in excess of its permissible contract rate of 3.00% per foreign transaction.

2. American consumers are being pummeled with three to four discrete fees of $2-$4 each for cash withdrawals from so-called "out of network" ATM machines in lightning-fast transactions that occur in under a minute. The few consumers who have learned of this gouging are shocked, since they were never informed by the ATM owners or their own banks that three or four fees would be assessed during a **single** ATM visit.

3. Plaintiffs' ATM claims result from a scheme wherein Bank of America knowingly exploits deceptive representations and processes at ATMs they do not operate in order to increase their own ATM fee revenue resulting from out-of-network ATM usage

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[1] ATM National, LLC is a wholly owned subsidiary of Cardtronics, Inc., and for all intents and purposes relating to the allegations set forth in this [Proposed] Second Amended Class Action Complaint, is considered to be the same entity as Cardtronics.

[2] ATM transactions that occur at independent, third-party ATMs that are not owned or branded by Bank of America.

by their accountholders. The ATM Defendants, in turn, design deceptive on-screen and on-ATM disclosures to trick consumers into engaging into supposed "balance inquiries" they never intended or agreed to pay for; and BofA drafts and enforces accountholder agreements that never alert consumers, or authorizes it, to charge multiple Out of Network ("OON") ATM fees (sometimes two or three on the same ATM use) on the same cash withdrawal transaction.

4. A simple example reveals the extent of the scheme. Plaintiff Brittany Covell, a BofA customer, walked into a 7-Eleven store to withdraw $20 in cash at an ATM operated by FCTI. Shockingly, Plaintiff Covell was charged **$10.50 in ATM transaction fees** for the privilege of walking out of 7-Eleven with a $20 dollar bill in her pocket: the ATM owner charged her a usage fee of $2.00 and BofA charged her **three** out-of-network ATM Fees ("OON Fees") of $3.00 each—one for the cash withdrawal; a second one for a supposed balance inquiry that Plaintiff Covell **never** consented to; and a third "phantom" balance inquiry fee for printing her receipt. Plaintiffs' lawsuit challenges abhorrent and deceptive practices like these.

5. Because, in short, no reasonable consumer would agree to pay over $10.00 in ATM Fees to make a small cash withdrawal, BofA and the ATM Operators have built deception into every step of the process—from ATM screens to Bank account disclosures—in order to protect and expand what has become a multi-billion dollar source of revenue.

6. The ATM Defendants, Cardtronics, Inc., FCTI, Inc., and Cash Depot Ltd are independent deployers of ATM machines. Cardtronics, the self-described "World's Largest ATM Operator," deploys over 200,000 ATM machines worldwide and domestically provides thousands of stand-alone ATMs (unaffiliated with any bank or financial institution) to some of the nation's largest retailers, including CVS, Walgreens, Safeway, Costco, Kroger, Target and Circle K. Defendant FCTI has deployed over 30,000 independent ATM machines to its retail clients, including: 7-11, Albertson's, Flying J

convenience stores and Kroger's grocery stores. And Cash Depot has over 30,000 ATMs, including at most Wal-Mart stores throughout the country.

7. The ATM Defendants earn revenue primarily from three sources: 1) charging consumers "surcharges" for use of their machines when they make cash withdrawals—usually between $3-$5; 2) collecting an "interchange fee" from those consumers' financial institutions, including BofA, for the cash withdrawal transactions themselves, which is a small percentage of each cash withdrawal amount; and, most relevant for this litigation, 3) collecting payments from their customers' financial institutions, including BofA, for each balance inquiry[3] that one of their accountholders undertakes on one of their machines, usually in the amount of $.50. In sum, the ATM Defendants have a direct financial incentive to ensure—by whatever means possible—that consumers undertake balance inquiries, because they get paid for each one.

8. BofA also earns significant revenue when its accountholders use of Out-of-Network ATMs. ATM Fee revenue for BofA has risen dramatically in recent years and has become one of the primary drivers of all bank fee income overall. BofA charges OON Fees of $2.50 when an accountholder makes a cash withdrawal at an Out of Network ATM, including at the ATMs owned by the ATM Defendants, plus—without disclosing this fact to their customers—*also* charges a separate fee when they determine a customer has performed a balance inquiry as part of a cash withdrawal. In sum, BofA, like all financial institutions, collects OON Fees (including for balance inquiries) from their own customers and then they are contractually bound to pay a portion of these fees back to the ATM Defendants.

[3] A balance inquiry occurs when a retail bank or credit union customer utilizes their debit card at an ATM machine to check the available balance in their checking or savings account.

9. The major problem with these practices is that consumers are deceived and lured into undertaking and paying OON Fees for balance inquiries ("Balance Inquiry Fees") that are not disclosed, deceptive, and in many cases redundant:

a) First, the BofA account agreement fails to authorize both an Out of Network Fee **and** a Balance Inquiry Fees on the same ATM **use**; and it grants the bank total discretion to determine when a Balance Inquiry Fee will apply—discretion they use unfairly. BofA relies solely on information and confirmation from the ATM Defendants as to when an Out of Network ATM Transaction has occurred, even where they know full well the accountholder has failed to ask for a balance inquiry, failed to authorize a fee for one, or been tricked into doing so. And in the case of FCTI, the customers are being double billed – assessed phantom charges for inquiries that were **never** made. Because the financial incentive is so great, BofA issues deceptive account disclosures, and turns a blind eye to the trickery used by the ATM Defendants.

b) Second, the *ATM Defendants* intentionally design deceptive, entrapping on-screen prompts and disclosures that lure consumers into undertaking balance inquires and never once disclose that such balance inquiries may cause an Out of Network Balance Inquiry Fee from their bank.

10. BofA misled its customers as to what it means to engage in an "Out of Network" ATM transaction—and never told their accountholders the truth, that they can and will be charged multiple OON Fees on a single out of network ATM use. BofA reserved sole discretion as to how an Out of Network ATM transaction will be defined and the circumstances under which their customers will be deemed to have engaged in an Out of Network ATM Transaction that causes them to incur an OON Fee. Most retail banks, including BofA, uniformly charge "Out of Network" ATM transaction fees, but they also mislead their customers as to what circumstances will give rise to such fees or how many fees the customer will be charged at one ATM "use" or a single ATM visit.

11. Plaintiffs' lawsuit challenges BofA's right to collect multiple "Out of Network" ATM fees on a single ATM visit, given its misrepresentations regarding the aggregate number of fees their customers will be charged during a single ATM visit, for blindly permitting the ATM Defendants to determine for them when and how an Out of Network ATM transaction has occurred, and their failure to adequately explain to their customers how their discretion in assessing the fees will be exercised.

12. Plaintiffs' class action also challenges the ATM Defendants' fraudulent scheme of misleading Plaintiffs and other unsuspecting customers into engaging in checking account balance-inquiry transactions at the ATM Defendants' independent, non-bank affiliated ATM machines. Defendants' ATM machines utilize deceptive screen prompts to trick customers into engaging in balance inquiries that the consumers would not otherwise undertake.

13. For example, in the case of Ms. Covell and FCTI; she made a **single** supposed balance inquiry, but was charged **two** Out of Network ATM Balance Inquiry Fees by her own bank. Upon information and belief, Plaintiff alleges that FCTI communicates to BofA that a request for a receipt, at the end of the cash withdrawal transaction, is an additional "balance inquiry". This is the height of deceptive conduct; no consumer, after checking their account balance, and then withdrawing $20.00, would reasonably pay to check their account balance AGAIN. Yet, FCTI has been routinely **double-billing** retail bank customers, including Plaintiff Covell for one-time balance inquiries (and even the first balance inquiries are deceptively represented). Retail banks, including BofA, are collecting **double** the amount of Out-Of-Network Balance Inquiry Fees that they would otherwise be entitled to and FTCI profits from this scheme by receiving kickbacks from every retail bank engaged in this practice, in the form of interchange payments for the phantom balance inquiries.

14. In the case of Cardtronics, Plaintiff Schertzer was unwittingly lured into making an balance inquiry through the use of deceptive screen prompts. Rather than providing consumers with a standard menu from which they would affirmatively "opt-in"

to make a balance inquiry, Cardtronics forces consumers to "opt out" of a benign screen prompt asking if the customer would like their balance **printed** on a receipt. The request doesn't adequately notify consumers that they are engaging in a transaction that will cost them money; and the screen prompt doesn't permit customers to explicitly decline the transaction. Simply stated, it very purposefully creates confusion. This confusion causes consumers to pay for a balance inquiry they do not require and would have never agreed to pay for absent Cardtronics' misleading screen prompts. These types of "Out of Network" events are well known to BofA and other banks,, yet completely undisclosed. BofA profits from this confusion and returns the kickbacks to the ATM Defendants.

15. In the case of Cash Depot, it is prominently advertising and encouraging its customers to make balance inquiries at Cash Depot ATM machines, representing, "**CHECK YOUR BALANCE FOR FREE**," despite knowing customers, including Plaintiff Hicks, would be charged a Balance Inquiry Fee by her Bank for doing so, and despite receiving enormous kickbacks from retail banks, including BofA for their share of the Balance Inquiry Fees.

16. Lastly, this consumer class action also challenges BofA's systematic practice of charging more than its promised rate of 3.00% when it assesses International Transaction Fees on its customers' international payment card transactions. International Transaction Fees are assessed by certain retail banks, including BofA, when a customer makes a purchase with his or her payment card at an international retailer or when a withdrawal is made at an international ATM. Retail banks, including BofA, charge a flat percentage of the transaction amount.

17. BofA's standard account agreement, the "Deposit Agreement and Disclosures" (*See* Exhibit No. 1, BofA "Account Agreement") and its accompanying fee disclosures, the "Personal Schedule of Fees," (*See* Exhibit No. 2, BofA "Fee Schedule") govern all of their consumer deposit accounts in the United States, including Plaintiff Schertzer's checking account.

18. As set forth in the Fee Schedule, BofA charges accountholders International Transaction Fees of exactly 3.00% of the purchase amount on: 1) payment card purchases made at international vendors; 2) ATM withdrawals made at International ATM machines; and 3) internet purchases using a payment card made on websites of international merchants. *See* Exhibit No. 2, BofA Fee Schedule, P.9, November, 2018.

19. BofA's Account Agreement and Fee Schedule do not permit BofA to charge International Transaction Fees in excess of 3.00%. However, BofA engages in a systematic, routine process of "rounding up," to the nearest penny, in the assessment of its International Transaction Fees, which in turn, permits the Bank to assess International Transaction Fees as high as 5.2% of the total value of the transaction.

20. BofA undertakes to maximize International Transaction Fees with a deceptive practice which also violates its contracts. As discussed more fully below, it is a breach of the Bank's contract and of reasonable consumers' expectations for the Bank to charge International Exchange Fees in excess of 3.00%.

21. This rounding up is improper. Other banks refuse to engage in this practice. For example, one of BofA's primary market competitors in California, Union Bank, N.A., has a policy of "rounding down" to stay beneath Union Bank's disclosed International Transaction Fee of 2.00%.

22. Plaintiff, and other BofA customers, have been injured by BofA's improper practices. On behalf of herself and the Class, Plaintiff seeks damages, restitution and injunctive relief for BofA's breach of contract and violation of California consumer protection laws.

I. JURISDICTION AND VENUE

23. This Court has original jurisdiction of this action under the Class Action Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original jurisdiction because the aggregate claims of the putative class members exceed $5 million,

exclusive of interest and costs, and at least one of the members of the proposed classes is a citizen of a different state than Defendants.

24. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because each of the Defendants is subject to personal jurisdiction here and regularly conducts business in this District, and because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this district.

25. Plaintiffs are citizens and residents of San Diego, California.

26. Cardtronics, Inc. regularly operates ATM machines throughout the State of California, including in this judicial district, and provides all ATM related services to its customers, including members of the putative Class. As such, it is subject to the personal jurisdiction of this Court.

27. Cash Depot, Ltd. regularly operates ATM machines throughout the State of California, including in this judicial district, and provides all ATM related services to its customers, including members of the putative Class. As such, it is subject to the personal jurisdiction of this Court.

28. ATM National, LLC is a wholly owned subsidiary of Cardtronics and regularly operates ATMs throughout the State of California, including in this judicial district, and provides all ATM related services to its customers, including members of the putative Class. As such, it is subject to the personal jurisdiction of this Court.

29. FCTI, Inc. is a California corporation with its principle place of business in Los Angeles, California. FCTI regularly and systematically operates ATM machines throughout the State of California and the country, including in this judicial district, and provides all ATM related services to its customers, including members of the putative Class. As such, it is subject to the personal jurisdiction of this Court.

30. BofA regularly and systematically operates retail banking branch locations throughout the State of California, including in this judicial district, and provide banking services to its customers, including members of the putative Class.

II. FACTUAL BACKGROUND AS TO THE ATM DEFENDANTS

31. In recent years, there has been significant consumer and political outcry over the business practices of the ATM industry. Consumer advocates, commentators and politicians have railed against "usurious" fees charged by ATM operators. Almost all of the focus has concerned the high cost of surcharge fees, or the fees that an ATM operator charges directly to consumers for engaging in cash withdrawal transactions, which range from $3-$5 per transaction. This litigation does not concern those fees.

32. There is also a second fee that consumers using out-of-network ATMs are hit with—the OON Fee, which is charged by their own bank for using an ATM not owned by their bank. This fee, ranging from $2-$3 is charged to the consumer in addition to the surcharges assessed by the ATM owners, which means that Americans are now paying between $5-$8 for every out of network ATM withdrawal they undertake. This litigation does not concern this second type of fee either.

33. Rather, there is a third fee that has gone unnoticed, and it involves so-called "balance inquiries" undertaken at out-of-network ATMs. In addition to collecting surcharges on ATM cash withdrawals, the ATM Defendants profit by receiving kickbacks, in the form of "interchange fees," from their customers' banks for providing so-called "balance inquiries" at their ATMs. Unbeknownst to consumers, they can be charged one or two fees by their banks for supposedly performing balance inquiries in addition to the surcharge from the ATM owner and the first OON Fee from their own bank for the cash withdrawal.

34. An accountholder who unsuspectingly checks his available balance as part of a cash withdrawal transaction at a Cardtronics, FCTI or Cash Depot ATM machine can expect to pay the following fees: 1) the customer will pay the ATM defendants a surcharge for the withdrawal; 2) the customer also pays his/her own bank a OON Fee for making an out of network cash withdrawal; 3) the customer will also pay his/her bank another OON Fee for supposedly undertaking one or more balance inquiries during the cash withdrawal (and in the case of a withdrawal at a FCTI ATM machine, the customer will pay an

additional, "phantom" fee for yet another balance inquiry). A single $20.00 withdrawal can generate between $7.00 and $10.50 in fees, which BofA and the ATM Defendants hungrily divide up.

35. Because the provision of balance inquiries are essentially cost-free to ATM owners, and because they are hugely profitable, ATM owners have placed a great emphasis in recent years on increasing the number of supposed balance inquiries undertaken at their machines—by any means necessary.

36. In the last decade, the revolution of mobile banking applications and increasing legislative scrutiny on the punitive nature of independent ATM machine withdrawal surcharges has forced the ATM Defendants to seek other sources of revenue. The 2015 Independent ATM deployer survey sponsored by Kahuna ATM Solutions and the ATM Industry Association found that declining interchange rates were one of the top concerns for Independent ATM operators[4]. The ATM Defendants shared this concern. For example, Cardtronics repeatedly voiced this concern in its financial disclosures, most recently stating:

> "In addition to the impact of the net interchange rate decrease, we saw certain financial institutions migrate their volume away from some networks to take advantage of the lower pricing offered by other networks, resulting in lower net interchange rates per transaction to us. If financial institutions move to take further advantage of lower interchange rates, or if networks reduce the interchange rates they currently pay to ATM deployers or increase their network fees, our future revenues and gross profits could be negatively impacted." *See* Cardtronics, Inc. SEC Form 10-Q, April 30, 2018. Available at: http://ir.cardtronics.com/node/18341/html (Last Viewed July 11, 2018).

37. Feeling the financial pressure of declining interchange rates, the ATM Defendants sought to increase revenue in other ways.

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[4] *See* 2015 IAD Poll at https://www.atmmarketplace.com/news/2015-iad-poll-reveals-growing-attention-on-emv-shrinking-focus-on-mobile/ Last Viewed June 11, 2018.

38. They turned to balance inquiries to drive revenue. But they had a problem: very few consumers seek them out and are willing to pay for them.

39. Americans, in short, use ATMs for the service of withdrawing cash, not to perform balance inquiries and transfers that are now commonly performed online or on mobile devices for free.

40. The ATM Defendants have known for years that the vast majority of customers who come to use their ATM machines are there to perform **only** a cash withdrawal.

41. This makes perfect sense. Due to the availability of cost-free alternatives, like checking a balance on a mobile app, phone banking, or online access, paying for a balance inquiry at an ATM is not a rational act for the vast majority of consumers. Moreover, the shelf-life of the information obtained through a balance inquiry is extremely short. With checking accounts having numerous transactions that post throughout the day, as well as scheduled withdrawals that occur overnight, the viability of the information received through a balance inquiry at an ATM is only even arguably beneficial for the immediate business at hand, ***i.e. the cash withdrawal***.

42. Moreover, because consumers are entitled to receive, as part of their cash withdrawal, a printed receipt at the conclusion of their transaction, they already have free access to their account balances without having to engage in a separate balance inquiry.

43. Therefore, when a consumer uses an ATM for a balance inquiry, it is almost always ***in conjunction*** with a cash withdrawal transaction.

44. For all these reasons, historically only a tiny percentage of ATM transactions were for balance inquiries. Very few consumers need this information badly enough to pay for it.

45. But the ATM Defendants had a solution: lure consumers into balance inquiries via trickery and deception in order to increase balance inquiries from those customers who otherwise do not need them or would not be willing to pay for them as part

of a cash withdrawal. The ATM Defendants have embraced a number of tactics to increase the number of balance inquiries supposedly performed at their ATM machines.

A. Balance Inquiry At Start

46. The first and most widespread of those tactics is commonly referred to in the independent ATM operator segment as "Balance Inquiry At Start."

47. "Balance Inquiry At Start" refers to the reordering of ATM machine screen prompts so that the first screen a customer encounters, following PIN entry, is an immediate prompt to view their available account balance.

48. Prior to the adoption of "Balance Inquiry at Start" by certain ATM owners, the first screen prompt after PIN entry would show a menu of available options. These options typically include: 1) Fast Cash; 2) Withdrawal; 3) Transfer; and 4) Balance Inquiry – among others. In the typical scenario, a customer who wished to perform a "Balance Inquiry," would have to affirmatively seek out and select that option. But as discussed above, very few consumers did that.

49. The adoption of "Balance Inquiry at Start" resulted in a significant increase in balance inquiries made at the beginning of every transaction, prior to the actual cash withdrawal. Indeed, consumers began to understand such balance inquiries were part and parcel of the cash withdrawal they intended to make when they walked up to the ATM.

50. The new approach was adopted by ATM operators for one reason: to increase revenue. The increase in balance inquiries would mean an increase in their payments from the banks in the form of interchange fees. Several industry forums have touted the financial benefits to Independent ATM deployers (IADs) of utilizing Balance Inquiry at Start. For example:

> "Many IADs do not include balance inquiries as an option during a transaction. Although the ATM doesn't charge the customer, **IADs can derive significant interchange revenue from these transactions. ATMs that are set to suggest balance inquiries at the start of transactions can expect a significant increase in the number of balance inquiries** performed by the machine". *See* ATM Atom, at

> http://www.atmatom.com/5-ways-to-boost-atm-portfolio-profitability/ (last viewed July 11, 2018) (emphasis added).
>
> "Enable "balance inquiry at start" on Every ATM—an easy step to make, **'Balance Inquiry at Start' can increase your balance inquiries 20 to 30 percent**—at minimal cost. By making this slight adjustment in programming, the incremental revenue it produces can make quite a difference. *See* ATM Marketplace at https://www.atmmarketplace.com/blogs/five-ways-to-increase-atm-profitability/ (last viewed July 11, 2018) (emphasis added).
>
> "Once Balance Inquiry At Start is enabled, **deployers can expect between 20-30 percent of their transactions to be balance inquiries**, whereas before such transactions might have been 10 percent or less." *See* Slawsky, Richard, *Five Ways to Boost the Profitability of an ATM Portfolio*, ATM Marketplace White Paper, 2011, at 2 available at: http://www.grantvictor.com/pdfs/Five%20Ways%20to%20Boost%20ATM%20Profitability.pdf (last viewed July 11, 2018) (emphasis added).

B. "Balance Inquiry At Start" is a deceptive business practice designed to increase balance inquiries from customers who would not otherwise purchase or engage in them.

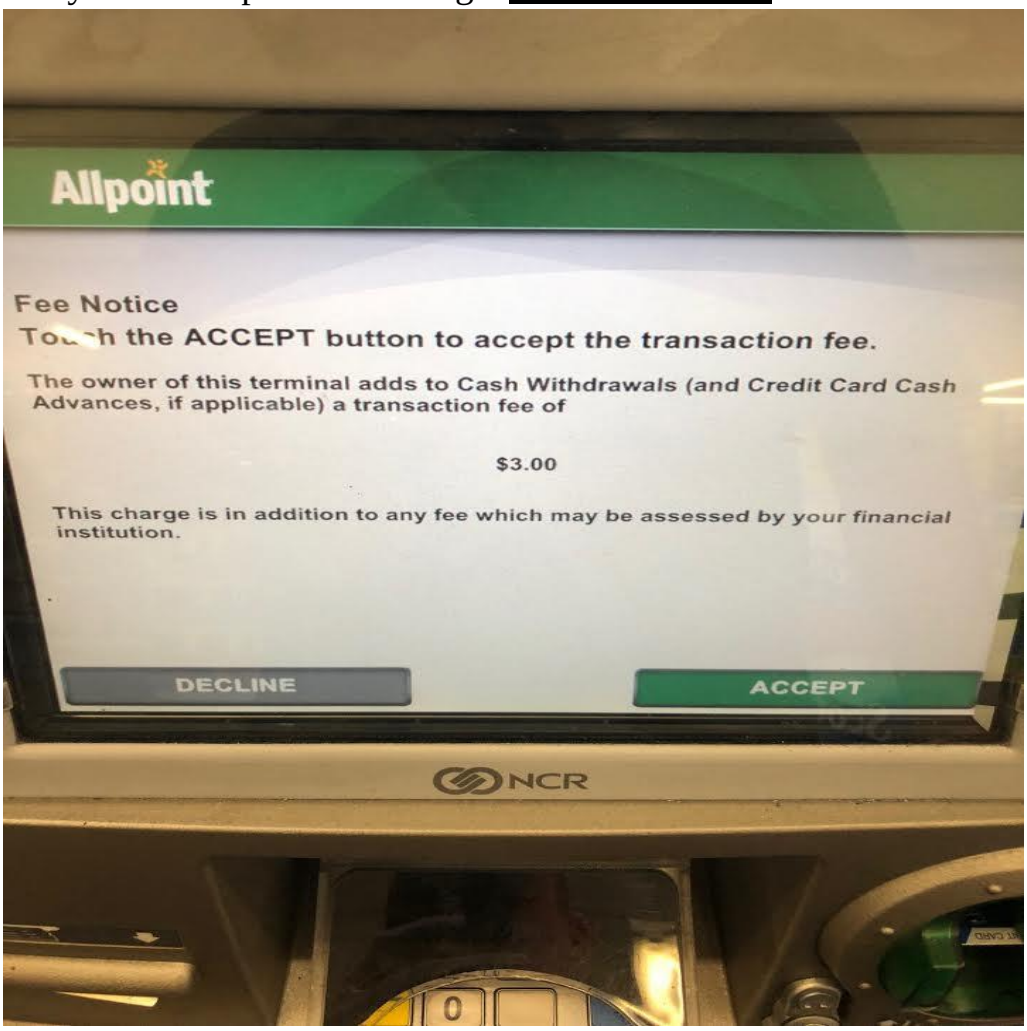
51. "Balance Inquiry at Start" increases supposed balance inquiries by creating consumer confusion. It does so by catching unsuspecting customers off guard and tricking them into believing the service is free and an integral part of a cash withdrawal transaction. This consumer confusion is the product of two factors.

52. First, when consumers use ATMs not owned by their own bank, federal law requires the owners of those Out-of-Network ATMs to inform users of the amount of the usage fees charged by the ATM owner.

53. Thus, it is standard at ATMs in the United States that when a consumer uses an ATM not owned by her home bank, a message is displayed on the screen stating that usage of the ATM will cost a specified amount ("Surcharge") to proceed with a withdrawal of funds, and that such a fee is in addition to a fee that may be assessed by a consumer's financial institution for use of the ATM.

54. That message appears only after a user has decided to perform a cash withdrawal and entered the amount of cash she would like to withdraw.

55. By way of example, set forth below is the Cardtronics fee notice presented to every customer prior to making a **cash withdrawal**:



56. Through repeated exposure to such fee warning messages, consumers are accustomed to being warned of fee assessments at out of network ATMs, and to being provided with the opportunity to decide whether the fees charged are reasonable—before proceeding with their cash withdrawal. But there is no warning whatsoever at an ATM that any form of balance inquiry could be an event worthy of a fee, either from the ATM owner or from the consumer's bank.

57. Without such a notice, a balance inquiry appears to be nothing more than an unremarkable, free lead-in to a cash withdrawal to reasonable, diligent consumers. The ATM defendants capitalize on this known consumer confusion to lure consumers into inadvertently requesting hundreds of thousands of balance inquiries each year that consumers have no desire or intention to pay for.

58. Second, many ATM operators—and each of the ATM Defendants—use intentionally deceptive on-screen prompts to exploit and add to the consumer confusion resulting from a lack of an on-screen fee notice. While varying in certain ways, the intention and effect is the same: to trick American consumers into repeatedly paying more for a single ATM usage by increasing purported balance inquiries. Each is discussed in turn below.

C. Cardtronics

1. Cardtronics' "Balance Inquiry At Start" Screen Prompt is Deceptive.

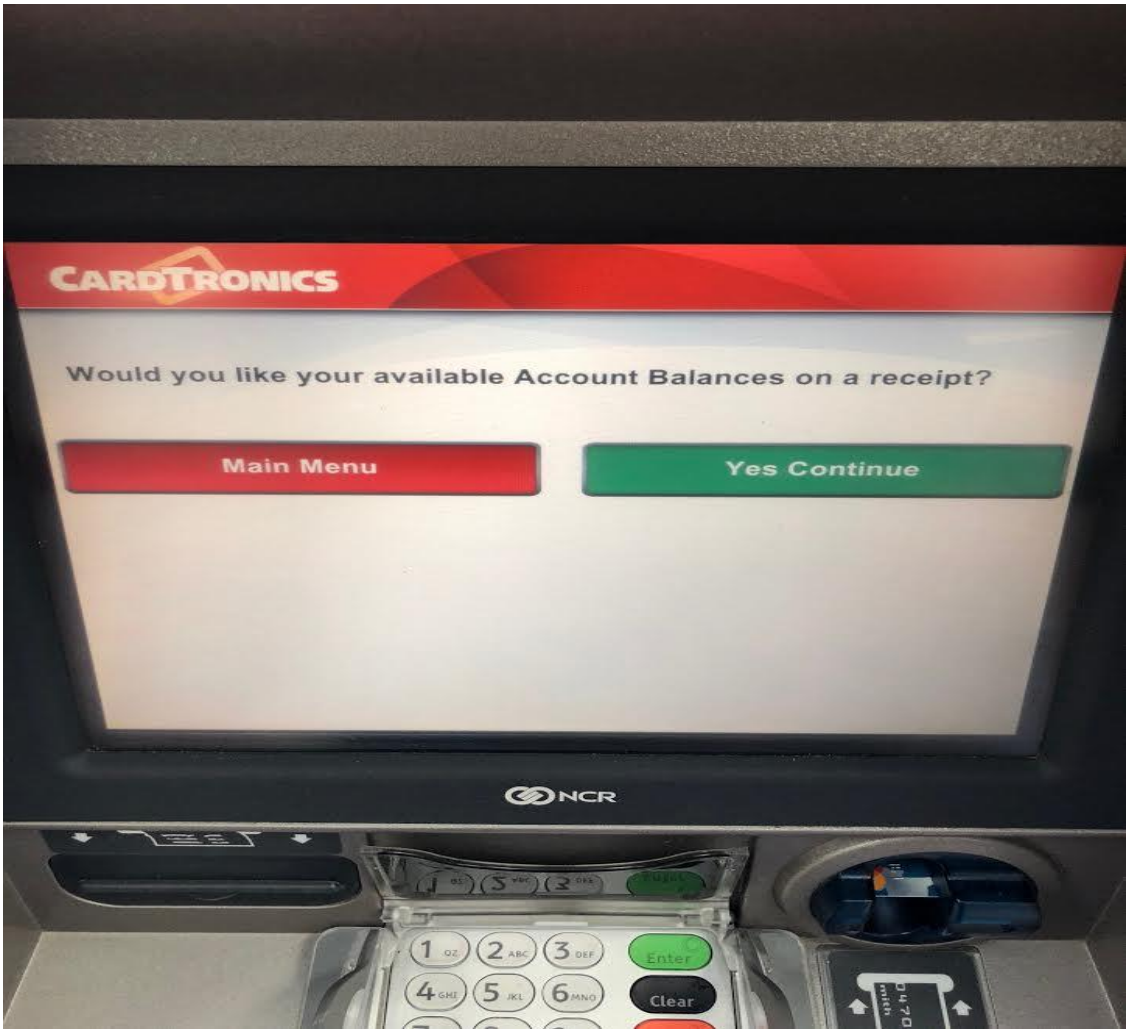
59. Cardtronics sought to increase the revenue its ATM machines were earning. The solution it hit upon was to drive up the number of balance inquiries massively, virtually overnight. How did it do this? By designing a confusing series of on-screen prompts that turned its interactions with ATM users on their head: rather than waiting for a consumer to affirmatively request balance inquiries, Cardtronics defaulted consumers into balance inquires and forced them to jump through hoops to opt-out of them.

60. In short, Cardtronics' Balance Inquiry Screen prompt forces every consumer using an ATM to effectively **opt-out** of a balance inquiry, as opposed to affirmatively selecting to **opt-in.** Cardtronics' on-screen prompts force consumers to successfully navigate numerous balance inquiry screen prompts in order to get to their desired cash withdrawal transaction.

61. By building an opt-out process into a very quick consumer interaction, where transaction time is minimal and the displayed language is confusing, Cardtronics manages systematized, automatic consumer exploitation.

62. Worse, Cardtronics machines never even ask their users whether they would like to check their balances or not. Instead, they use language that no reasonable consumer understands to be a request for a balance inquiry.

63. Upon successfully entering a PIN number, the very first screen presented to a user of a Cardtronics ATM is as follows (*See* Exhibit No. 3; Cardtronics ATM Screen Prompts; Screen Prompt No. 2):



64. Cardtronics' "Balance Inquiry At Start" screen prompt is woefully misleading. The first question posed to the consumer is:

Would you like your Available Balances on a receipt?

65. Reasonable consumers like Plaintiffs simply have no idea that one of the two possible responses to this question—"Main Menu" or "Yes Continue"—will be construed

by Cardtronics and their banks to be a request for a pre-withdrawal balance inquiry. Indeed, reasonable consumers understand this question to be simply asking whether or not a consumer would like a printed receipt at the end of the cash withdrawal transaction—*a receipt that is already required to be provided, free of charge, by federal law. See* Regulation E, § 205.9 *et seq.*

66. But in seconds, with a fateful choice between two opaque and deceptive options, an unsuspecting ATM user may have just committed himself to the first of three or four discrete fees for using the Cardtronics ATM.

67. Receipts are typically given *after* transactions are performed, *i.e.* following a purchase or in the context of an ATM transaction, *after* a cash withdrawal or deposit.

68. The colors and language used in the two on-screen "buttons" further have the effect of defaulting consumers into balance inquiries they never wanted: "Yes Continue" (in a bright green button) or "Main Menu" (in a bright red button).

69. The ATM user is never presented with the option of simply saying "No".

70. The ATM user is, indeed, never asked the simple question "Would you like to perform a balance inquiry?" As discussed below, the term "balance inquiry" is uniformly used by BofA in their account disclosures, but notably not used by the ATM operators.

71. Moreover, the Green Button doesn't just say, "Yes" – it says, "Yes Continue" – communicating to consumers that the only way or at least the most efficient way to get to their desired cash withdrawal and "Continue" on with their intended transaction, is to select the Green Button. As is commonly known, green is associated with continuing, "going," or proceeding. Cardtronics intended to convey to consumers that the Green Button is the only choice to proceed with the desired cash withdrawal transaction.

72. Customers, including Plaintiff Kristen Schertzer, reasonably believed that by selecting the Green Button, her transaction would "Continue" and she would get to the cash withdrawal screen as quickly as possible. In contrast, the Red Button appears to reasonable consumers as though the transaction will start over or end altogether by sending the

customer back to an undisclosed "Main Menu"; seemingly offering to take the customer back to where he/she started to begin with – begging the question to the customer: "if I press Main Menu, won't I just end up where I am right now?

73. Fourth, the confusion at the screen prompt is enhanced by the lack of fee notice. Customers, including Plaintiff, believe that the balance inquiry is being offered to them for free. Customers, including Plaintiff, reasonably believe that the Balance Inquiry at Start screen prompt is simply asking them if they want a printed receipt. Absent any warning that a fee will be imposed by the customers' financial institution for either choice, the customer reasonably believes it is free.

74. Each of these subtle and not-so-subtle tricks has been designed by Cardtronics to exploit consumers, the vast majority of whom are not at the ATM seeking to perform a balance inquiry, but simply to make a cash withdrawal –as fast and conveniently as possible.

75. Plaintiff Schertzer was deceived by these misrepresentations and deceptive prompts, did not intend to perform a balance inquiry, and certainly never intended to pay for one. *See* Exhibit No. 3, Cardtronics Screen Prompts.

2. Cardtronics profits enormously from its deception

76. There is no doubt that Cardtronics' deceptive prompts have achieved their intended effect: the creation of a new, massive stream of balance inquiry revenue almost overnight.

As discussed above, Cardtronics earns revenue on each balance inquiry. In 2012, Cardtronics disclosed that it earned fifty cents on each balance inquiry from the user's home bank.[5]

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[5] This figure appeared in a power point presentation prepared by Cardtronics for its shareholders. Cardtronics, *ATM Interchange Comments*, December 2012, at 3, *available at http://files.shareholder.com/downloads/CATM/0x0x622218/89e3c9a1-cf3e-4f53-bf25-be8d1d11dd95/December-2012-investor-update.pdf.*

77. In turn, for each supposed balance inquiry that Cardtronics is able to wheedle from unsuspecting users, the users' home bank, including BofA, assesses an OON Fee—profiting even more richly than Cardtronics. BofA charges its cardholders a $2.50 OON Fee for a balance inquiry (in addition to another $2.50 OON Fee for the cash withdrawal).

78. Assuming the ATM Marketplace's projections are correct , Cardtronics' adoption of a deceptive "balance inquiry at start" scheme increased the share of its transaction volume resulting from balance inquiries by 10% to 20%. In 2016 alone, Cardtronics processed 1,358,409,000 billion ATM transactions (it counts cash withdrawals and balance inquiries as separate events)—meaning that the amount of *additional* balance inquiries experienced by Cardtronics as a result of the adoption of its Balance Inquiry At Start scheme could be between *150-200 million balance inquiries per year*. The likely cost to consumers is between $70 and $100 million dollars annually.

79. As a publicly traded company, Cardtronics is required to report its operational and financial data to the public in its quarterly and annual reports filed with the SEC. The chart below provides the transactional data for Cardtronics from 2002-2016 as reported in its annual reports.

CARDTRONICS INC (Transactional Data 2002-2016)					
Year	(A) Number of ATMs (excluding Managed Service ATMs)	(B) Total ATM Transactions (exluding Managed Service transactions)	(C) Cash Withdrawal Transactions (excluding Managed Service transactions)	(D) Other ATM Transactions [(B) - (C)]	(E) Other ATM Transactions/Total ATM Transactions [(D)/(B)]
2002	8,298	36,212,000	28,955,000	7,257,000	20.04%
2003	12,021	64,605,000	49,859,000	14,746,000	22.82%
2004	24,581	111,577,000	86,821,000	24,756,000	22.19%
2005	26,208	156,851,000	118,960,000	37,891,000	24.16%
2006	25,259	172,808,000	125,078,000	47,730,000	27.62%
2007	31,515	244,862,000	163,840,000	81,022,000	33.09%
2008	32,050	351,931,000	225,846,000	126,085,000	35.83%
2009	32,413	380,744,000	241,928,000	138,816,000	36.46%
2010	33,116	413,780,000	253,890,000	159,890,000	38.64%
2011	48,105	516,564,000	318,615,000	197,949,000	38.32%
2012	56,395	704,809,000	443,312,000	261,497,000	37.10%
2013	66,984	860,062,000	521,282,000	338,780,000	39.39%
2014	78,217	1,040,241,000	617,419,000	422,822,000	40.65%
2015	77,169	1,251,626,000	759,408,000	492,218,000	39.33%
2016	78,561	1,358,409,000	848,394,000	510,015,000	37.55%

Notes:
(1) The column of Other ATM Transactions was not provided by Cardtronics. It was calculated by subtracting Cash Withdrawal Transactions from Total ATM Transactions.
(2) The ratio of Other ATM Transactions to Total ATM Transactions was not provided by Cardtronics. It was calculated by dividing Other ATM Transactions into Total ATM Transactions.

Sources:
(1) Cardtronics, Inc. (2006). *Annual Report 2006,* p. 22. (Transactional Data for years 2002-2006).
(2) Cardtronics, Inc. (2011). *Annual Report 2011* , p. 29. (Transactional Data for years 2007-2011).
(3) Cardtronics, Inc. (2016). *Annual Report 2016* , p. 40. (Transactional Data for years 2012-2016).

80. Upon information and belief, "Other ATM Transactions" are comprised mainly of balance inquiries. As a percentage of transaction volume, this category grew swiftly during 2002-2014, just as predicted by industry proponents of Balance Inquiry at Start. For Cardtronics, the "Other ATM Tansactions" currently represents 37.55% of "total ATM transactions," and has recently has been as high as 40.65%.

81. This number is staggering when viewed relative to data from other independent ATM operators.

82. In 2013, the U.S. Government Accountability Office did a study examining the issues surrounding ATM fees.[6] As part of the study, two independent ATM operators provided their transactional data for the calendar year 2011.[7] The count for "total ATM transactions" reported by the two independent ATM owners was 146,404,805, with cash withdrawals comprising 140,634,638 of that amount.[8] **In other words, the percentage of "other ATM transactions" to "total ATM transactions" for these two independent ATM operators in 2011 was *3.94%*, as opposed to the *38.32%* experienced by Cardtronics in that same year.**[9] Since the balance inquiry and transfer options offered by independent ATM operators are indistinguishable from those offered by Cardtronics, it would stand to reason that the transactional ratios of these competing companies should be comparable. In this case, they are not: Cardtronics is approximately 1,000% higher than its competitors.

83. Second, the most dramatic spike in the ratio of "other ATM Transactions" to "total ATM transactions" occurred during the 2006 to 2010 time period—the precise time period in which Cardtronics rolled out its own "Balance-Inquiry-At-Start" screen prompts. The sudden growth in balance inquiries during this time period is otherwise counterintuitive. With the proliferation of smart phone use beginning in 2007, the demand on the part of consumers to engage in balance inquiries and/or transfers at ATMs should have been significantly *diminished* since both can be accomplished on a smart phone (or computer) for free. Instead of going down, the percentage of "other ATM transactions" to "total ATM transactions" for Cardtronics rose enormously to approximately 50%.

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[6] *United States Government Accountability Office*; AUTOMATED TELLER MACHINES – Some Consumer Fees Have Increased, GAO-13-266 (April 2013), *available at http://www.gao.gov/assets/660/653723.pdf.* Attached hereto as Appendix D.
[7] *Id*. at p. 43.
[8] *Id*. at p. 43.
[9] *Id*. at p. 43 (Table 10).

84. The increase is directly attributable to Cardtronics adoption of its highly misleading version of "Balance Inquiry At Start." Beginning in 2006, Cardtronics began adopting on a large scale the practice of Balance Inquiry at Start. In late 2006, Cardtronics implemented its own EFT transaction processing operation. This not only gave Cardtronics the ability to monitor transaction activity at ATMs, it gave Cardtronics the ability to control the flow and ***content on the ATM screens*** in its portfolio. This implementation took a few years to complete. Cardtronics elaborated in its 2008 annual report stating:

> *In late 2006, we implemented our own EFT transaction processing operation, which is based in Frisco, Texas. This initiative enables us to monitor transactions on our ATMs and to control the flow and content of information on the ATM screen. As of December 31, 2008, we had converted approximately 26,000 of our ATMs over to our processing platform. We currently expect the remaining ATMs in our portfolio to be transitioned to our platform by December 31, 2009, with the exception of approximately 3,500 traditional ATMs acquired in the 7-Eleven Transaction, which will not be converted until 2010.* [10]

85. Since the transaction processing operation allowed Cardtronics to control the content of information on the ATM screen, Cardtronics was able to implement the Balance Inquiry at Start throughout its ATM portfolio. The time frame in which the EFT transaction processing operation was implemented paralleled the dramatic increase in the ratio of "other ATM Transactions" to "total ATM transactions" experienced by Cardtronics. The broad implementation of Balance Inquiry at Start was the reason for this increase as it profited from the interchange fees it received from its customers' banks, including BofA.

D. FCTI

1. Not Only Has FCTI Adopted a Deceptive Balance Inquiry at Start Scheme, But It Also Systematically Double-Bills Users for the Same Purported Balance Inquiry.

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[10] Cardtronics, Inc. (2008). *Annual Report 2008*, p. 6.

86. FCTI also sought to increase the revenue its ATM machines were earning, and its solution was in many respects the same as Cardtronics: devise a deceptive series of screen prompts to trick consumers into performing balance inquiries they didn't intend, and had no interest in paying for. But it went even further into the depths of deception and unfairness: it decided to systematically double-bill users for the balance inquiries they were duped into engaging in.

87. Put simply, FCTI is causing banks, including BofA to ***double-bill*** customers who use their ATM machines and conduct balance inquiries incidental to a cash withdrawal by systematically communicating a second, additional, "Phantom Balance Inquiry" on every balance inquiry. The customers are deceived into making **one** balance inquiry – and receive **two** OON Fees from their home banks—*in addition* to the ATM operator's surcharge and the bank's OON Fee, for a total of **four** discrete fees for a single, one minute interaction with a FCTI machine.

88. Every time a banking or credit union customer purportedly makes a balance inquiry at an FCTI ATM machine, banks or credit unions, including BofA, charge *two* OON Fees. BofA charges their own customers, including Plaintiff Covell, two OON Fees for each supposed balance inquiry undertaken by them at an FCTI ATM.

89. Defendant FCTI has and continues to double-charge all retail banking and credit union customers by communicating to them that **two balance inquiries** were made during **a single**, cash withdrawal transaction, when in fact, **only one balance inquiry was made** (and even then, as a result of deception).

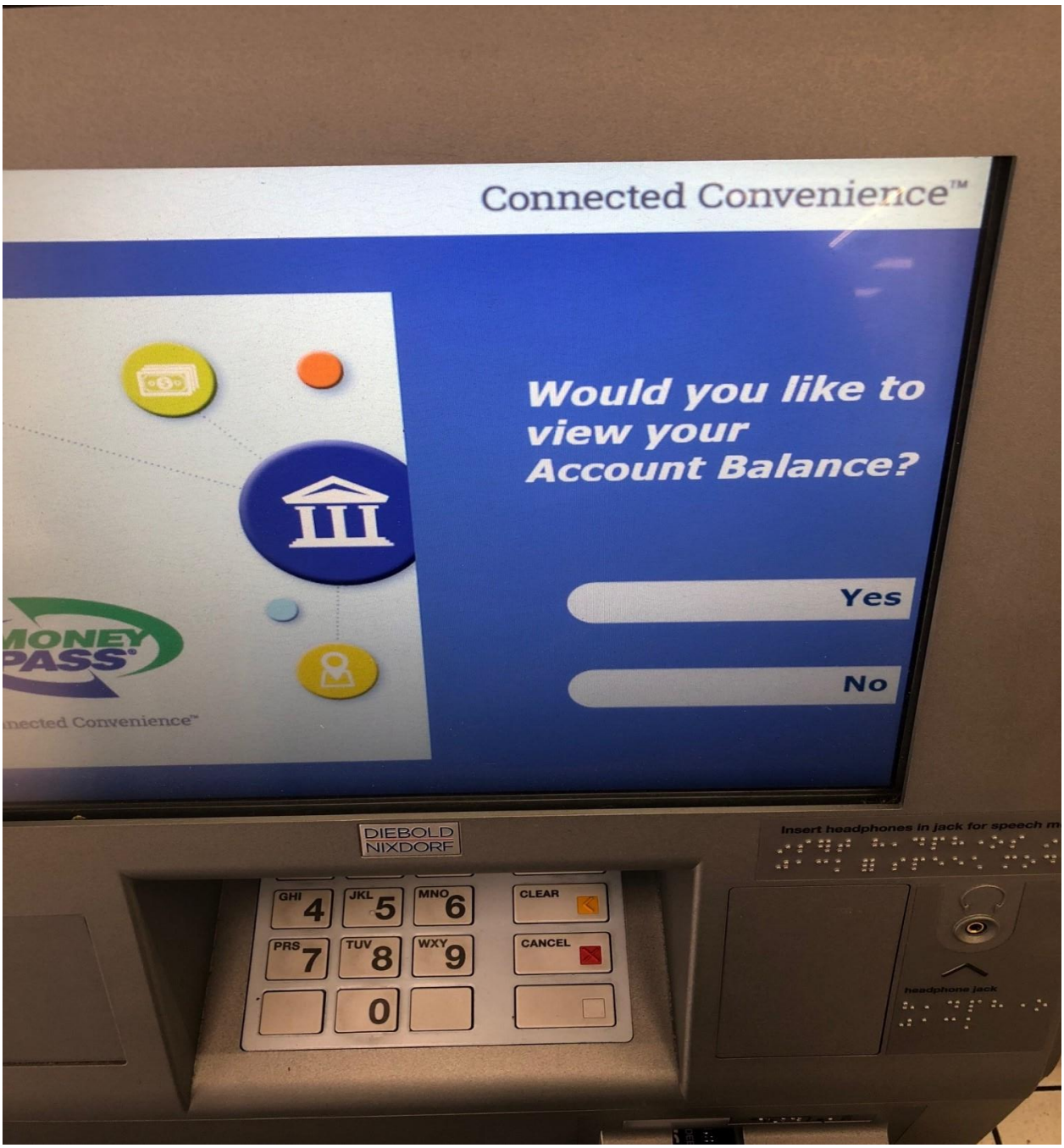
90. Suffice it to say, no reasonable consumer is knowingly or intentionally agreeing to undertake two balance inquiries in a single cash withdrawal transaction—much less pay for two such balance inquiries.

2. FCTI On-Screen Prompts Are Deceptive

91. FCTI ATM machines are pre-programmed ATMs and uniformly present FCTI's pre-set screen prompt to customers. FCTI ATM users, including Covell and

Abdelsalam (the "FCTI Plaintiffs") entered a 7-Eleven convenience store and made what they understood to be a simple cash withdrawal transaction.

92. Upon PIN entry, FCTI ATM users are immediately presented with FCTI's version of a "Balance Inquiry at Start" screen prompt *See* Exhibit, No. 4; FCTI Screen Prompts; **(FCTI Screen No. 3):**



93. As discussed above, "Balance Inquiry at Start" increases supposed balance inquiries by creating consumer confusion. It does so by catching unsuspecting customers off guard and tricking them into believing the service is free and an integral part of a cash withdrawal transaction.

94. Moreover, when consumers use ATMs not owned by their own bank, federal law requires the owners of those Out-of-Network ATMs to inform users of the amount of the usage fees charged by the ATM owner.

95. Thus, it is standard at ATMs in the United States that when a consumer uses an ATM not owned by her home bank, a message is displayed on the screen stating that usage of the ATM will cost a specified amount ("Surcharge") to proceed with a withdrawal of funds, and that such a fee is in addition to a fee that may be assessed by a consumer's financial institution for use of the ATM.

96. That message appears only after a user has decided to perform a cash withdrawal and entered the amount of cash she would like to withdraw.

97. Through repeated exposure to such fee warning messages, consumers are accustomed to being warned of fee assessments at out of network ATMs, and to being provided with the opportunity to decide whether the fees charged are reasonable—before proceeding with their cash withdrawal. But there is no warning whatsoever at an ATM that any form of balance inquiry could be an event worthy of a fee, either from the ATM owner or from the consumer's bank.

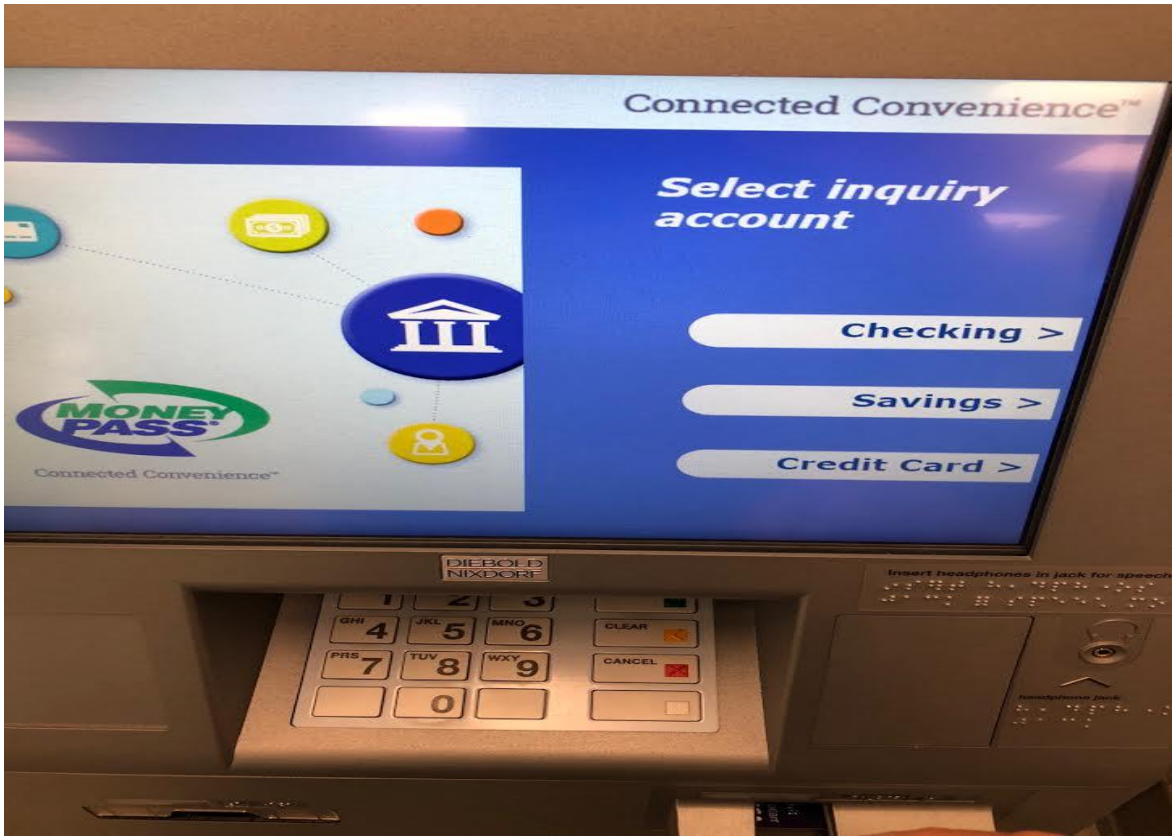
98. Without such a notice, a balance inquiry appears to be nothing more than an unremarkable, free lead-in to a cash withdrawal to reasonable, diligent consumers. Defendants capitalize on this known consumer confusion to lure consumers into inadvertently requesting balance inquiries each year that consumers have no desire or intention to pay for.

99. Unwitting customers, including each of the FCTI Plaintiffs, have no idea that answering "Yes" at the FCTI ATM was an event that would cause a fee, both because they are never expressly warned it will be the basis for a fee, and for several other reasons.

100. First, and as is the fundamental intention of Balance Inquiry at Start, the fact that the very first screen presented is a question regarding a balance inquiry is an indication to reasonable consumers that they must select "Yes" in order to proceed.

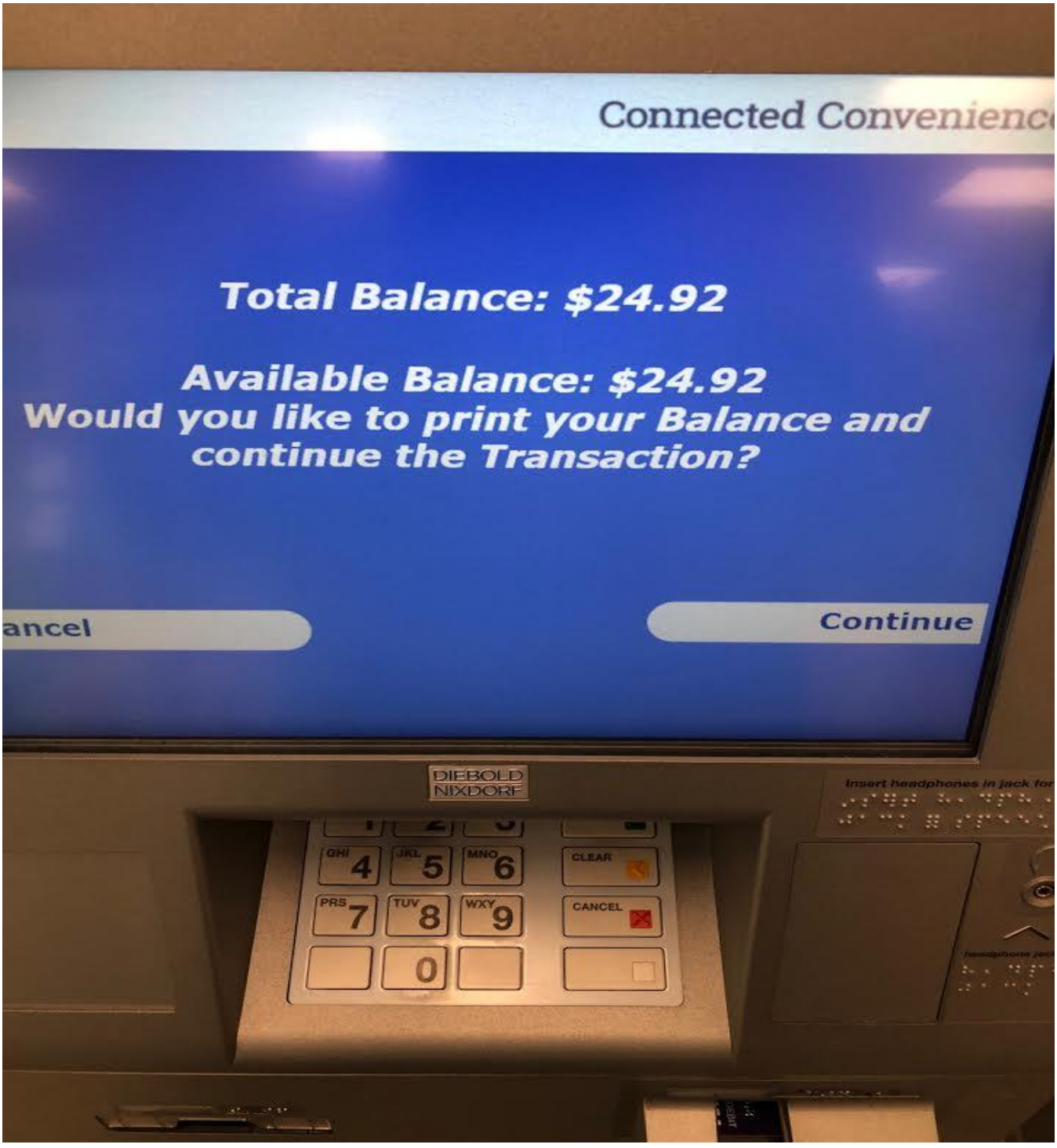
101. Moreover, the ATM user is never asked the simple question "Would you like to perform a balance inquiry?" (As discussed below, the term "balance inquiry" is uniformly used by retail banks, including BofA, in their account disclosures, but notably not used by the ATM operators.) Especially under the quick time constraints of a real world ATM transaction, reasonable consumers do not understand that "viewing your account balance" as a first step to making a cash withdrawals is equivalent to performing a separate "balance inquiry."

102. FCTI ATM users who select "Yes" next receive the following screen prompt, asking them to select an account (*See* Exhibit No. 4; **FCTI Screen No. 4**):



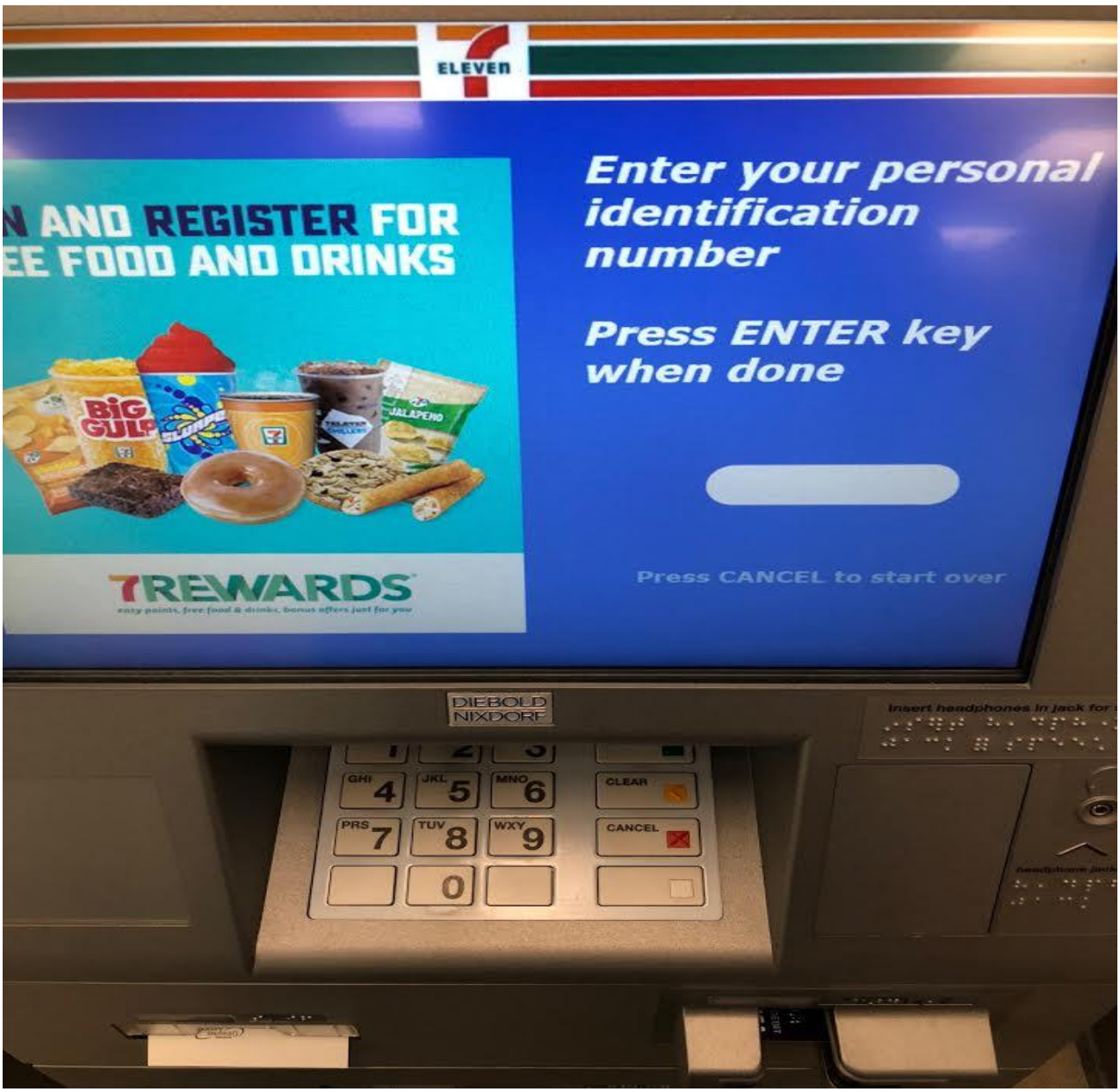
103. After selecting "Checking," consumers are presented with the following screen, presenting a "Total Balance" and their "Available Balance" for their checking

account and asking if the user would like "to print your receipt and ***continue*** the transaction"(*See* Exhibit No. 4, **FCTI Screen Prompt No. 5**):



104. Notably, with the phrase "continue the transaction," FCTI's screen prompts expressly represent that the just-performed balance inquiry is part and parcel of the same cash withdrawal "transaction" that the user came to the ATM for in the first place.

105. Because users are simply trying to execute what they came to the ATM for in the first place—a cash withdrawal—and because reasonable consumers understand they must select "Continue" in order to do so, reasonable consumers like Ms. Covell selected "Continue." Then the following screen appears, *unexpectedly terminating the interaction with the ATM*: **FCTI Screen Prompt No. 7** appears:



106. Despite having represented that the "transaction" would "continue," FCTI in fact terminates the transaction, then forces users to engage in a *second* transaction, requiring every customer to re-enter their debit card pin in order to proceed with their intended cash withdrawal.

107. Once a user re-enters his or her pin, another screen appears, requesting if the customer would like a receipt for "this" transaction (**FCTI Screen Prompt No. 8)**, with no mention whatsoever of viewing, inquiring or printing a balance:



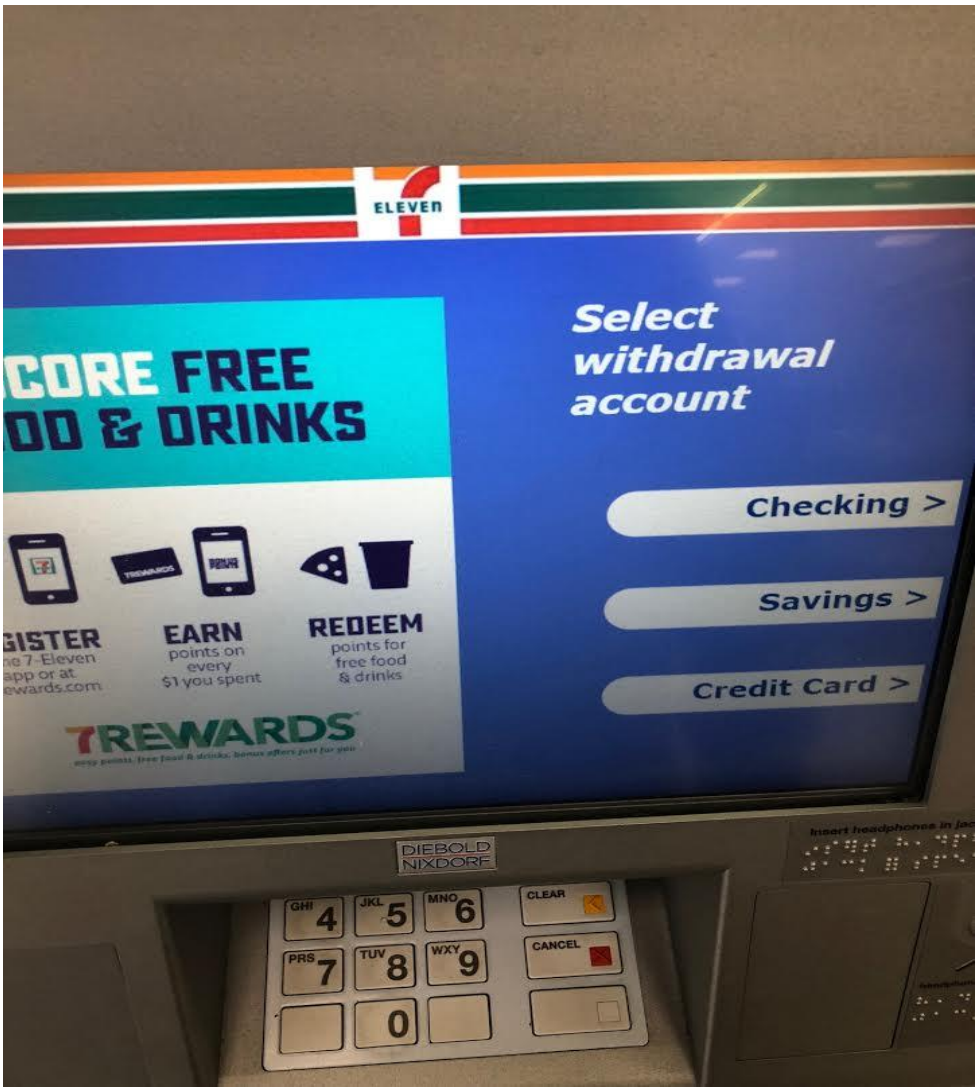
108. FCTI Screen Prompt No. 8 (above) asks only if the customer would like a "receipt for their transaction"—a transaction that can only reasonably be the cash

withdrawal they originally set out to make when they first entered their pin on FCTI Screen Prompt No. 1.

109. If the user chooses to request a "receipt," the user is directed to a traditional "main menu" screen (**FCTI Screen Prompt No. 9** (below)):



110. When a user selects the withdrawal screen, he or she is then directed to choose the account from which they make a withdrawal (**FCTI Screen Prompt No. 10** below):



111. The transaction then proceeds, the customer selects an amount of money to be withdrawn, and the cash is dispensed with a receipt of the transaction. *See* Exhibit No. 4, FCTI Screen Prompts 9-12-13.

112. After the initial request asking the customer if they would like to view their available account balance (FCTI Screen Prompt No. 3) until this point, at no time was the customer ever asked for their consent to a second balance inquiry. None of the FCTI Plaintiffs ever even arguably provided consent to a second balance inquiry.

113. Yet, in each case, FCTI customers, including the FCTI Plaintiffs, were charged **two** separate Balance Inquiry Fees by BofA during their single cash withdrawal transaction.

114. FCTI is doing one of two things: 1) it is either equating the customers' consent to receiving a receipt for their cash withdrawal (*See* FCTI Screen Prompt No. 6) as a second "balance inquiry"; or 2) it is intentionally or inadvertently miscommunicating to their customers' financial institutions, including BofA, that their customers are performing two balance inquiries when at the most they could only be considered to have performed one (and even then, under the deceptive circumstances described above). Discovery will reveal which one; either scenario is improper, unfair and unlawful, and both FCTI and BofAare reaping huge fee revenues from it.

115. Even putting aside the improper and fraudulent assessment and/or communication to the banks and credit unions (including BofA) that two balance inquiries were authorized, even the first assessed balance inquiry is deceptive and improper for all the reasons described above.

116. The FCTI Plaintiffs were lured with on-screen deception into undertaking a balance inquiry they had no desire or intention to pay for; the harm was then multiplied by FCTI and the Defendant Bank's improper doubling of the first purported balance inquiry.

E. Cash Depot

117. Cash Depot has a contract with Wal-Mart to provide the retail giant with its independent ATM machines in every Wal-Mart location—several thousand in total.

118. Cash Depot also sought to increase the revenue its ATM machines were earning, and its solution was in many respects the same as Cardtronics and FCTI: devise a deceptive series of screen prompts to trick consumers into performing balance inquiries

they didn't intend, and had no interest in paying for. But Cash Depot went further with its deception, making a prominent marketing representation on signs posted on its ATM machines, intended to lure consumers into performing balance inquiries with the message: **"PREVENT OVERDRAFT FEES CHECK YOUR BALANCE FOR FREE."**

See Exhibit No. 5; Cash Depot ATM Signage:



119. This marketing representation is deceptive and misleading because Cash Depot knows its customers, including those who have accounts with BofA, will be charged OON Fees by their banks for "checking their balance" at a Cash Depot ATM. ***Cash Depot***

knows this, of course, because it receives a portion of each of those fees from every bank and credit union whose customers fall prey to the trap. s.

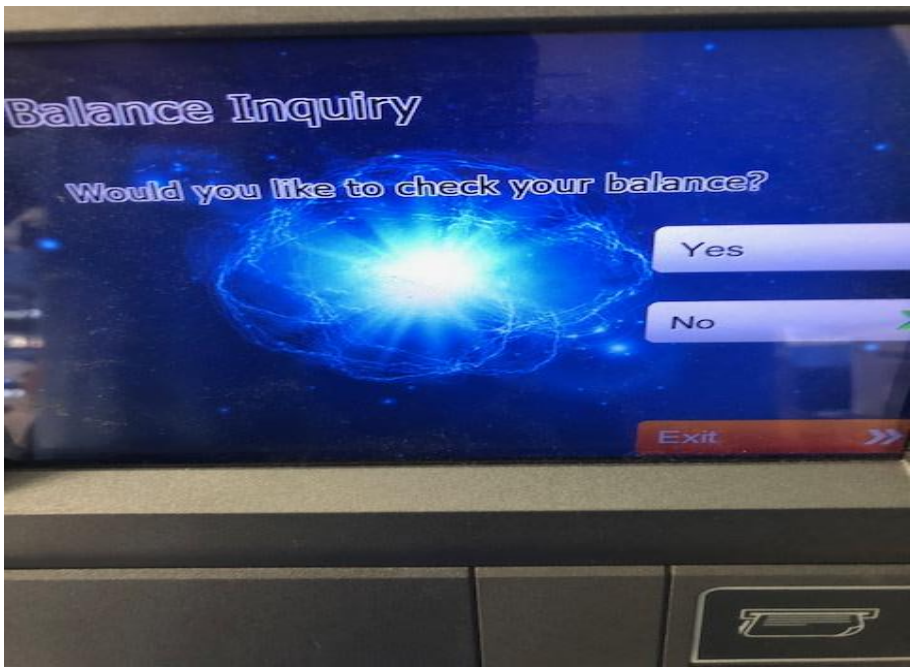
120. Consumers, including Plaintiff Hicks, read the representation as they approach the machine and it is fresh in their mind when they are then immediately confronted with Cash Depot's Balance Inquiry at Start screen. Thanks to Cash Depot's marketing lie, users are even more vulnerable to the deceptive lures of the Balance Inquiry at Start scheme, and are more likely to be deceived into engaging in a balance inquiry as they proceed to their ultimate cash withdrawal transaction.

121. Consumers, including Plaintiff Hicks, read the representation, "Check Your Balance for Free," as they approached the Wal-Mart-based, Cash Depot ATM machines. The representation is prominently placed above the ATM machine, in full view of consumers engaged in transactions: (*See* Id.)



122. It is in the context of that prominent, unavoidable advertisement that Cash Depot's ATM screen prompts (which are similar to those designed by Cardtronics and FTCI) become even more deceptive. The Cash Depot, "Balance Inquiry at Start" screen

prompt, like FCTI and Cardtronics, is offered up to customers immediately following their pin-entry (*See* Exhibit No. 6 Cash Depot Screen Prompts, Screen Prompt No. 2):



123. Consumers, including Plaintiff Hicks, read the representation, "Check Your Balance for Free," as they approached the Wal-Mart-based, Cash Depot ATM machines. That representation hangs above the screen prompts and misleads consumers as they are presented with Cash Depot's "Balance-Inquiry-At-Start" screen prompt.

124. Consumers, including Plaintiff Hicks, were lured into making a balance inquiry that they believed was free. Consumers, including Plaintiff Hicks, were deceived by this explicit misrepresentation and the deceptive prompts. They did not intend to perform a balance inquiry, and certainly never intended to pay for one.

III. FACTUAL BACKGROUND AND ALLEGATIONS AS TO BOFA.

125. Plaintiffs bring this class action against BofA arising from its unfair and unconscionable assessment of two or three OON Fees on a single ATM cash withdrawal that—due precisely to the types of deceptive screen prompts and marketing representations described above—happens to be preceded by what BofA and ATM Operators consider to

be a "balance inquiry." There is simply no warning, at the out of network ATM or in the Banks' account disclosures, that:

- First, BofA will consider its account holders' responses to intentionally deceptive prompts at out of network ATM machines to be tantamount to a balance inquiry—much less *two* of them;
- Second, what is described in BofA's disclosures as a fee for a "balance inquiry" undertaken at an out of network ATM will be assessed even when the out of network ATM screens never use the phrase "balance inquiry", and even where such ATM screens disguise balance inquiries with questions like "[W]ould you like your Available Balances on a receipt?" and "Would You Like a Receipt for this Transaction?";
- Third, BofA will assess two or three OON Fees on a single ATM transaction or use;
- Fourth, a balance inquiry performed in conjunction with, and as an integral part of, the same cash withdrawal transaction will, for fee assessment purposes, be treated the same as a balance for OON Fee purposes.
- Fifth, BofA would use its complete discretion to determine what counts as a valid "balance inquiry" to the detriment of their own accountholders.

126. BofA profits handsomely from what it knows to be deceptive and false out of network ATM screen prompts—including Balance Inquiry at Start—that lure consumers into purported balance inquiries without describing them as such, without consumers having freely chosen them, and without consumers ever having been warned they would result in a fee assessment.

127. BofA is fully aware of the infirmities with the representations made on out of network ATMs—they could not help but be aware, as they have seen their ATM fee revenues attributable to OON Fees rise exponentially over the years.

128. When the accountholders of BofA use an out-of-network ATM, including the Cardtronics, FCTI and Cash Depot branded ATM machines described above, the fees add

up very quickly—to their surprise. American consumers simply do not know they can been assessed *three or four discrete fees for a simple out of network ATM session that lasts less than two minutes.* BofA, along with the ATM owners, are all too happy to keep consumers in the dark.

129. Here's how the fees add up. Not only do ATM owners charge consumers a surcharge for withdrawing cash at their ATMs, but BofA charges an OON Fee for that withdrawal as well—a punishing double-fee on accountholders that often rises $7. BofA never once told or disclosed to consumers the **total** amount of those cash withdrawal double-fees.

130. BofA does not stop there, however. Specifically, as noted above, when accountholders are deemed to have checked their account balance prior to withdrawing funds at an Out-of-Network ATM—often through the force of the deceptive screen prompts designed by ATM owners—BofA charges their accountholders *two* or *three* OON Fees—*one for the out of network withdrawal, one for the supposed balance inquiry* (even if the customer was tricked into making it), and in the case of withdrawals at FCTI machines, an additional fee for a *phantom* balance inquiry.

131. BofA's practice of charging two or three OON Fees per cash withdrawal is deceptive and violates representations in its account documents. The bank's various account documents do nothing to place consumers on notice of the large triple or quadruple-fee for an Out-of-Network ATM withdrawal preceded by what they deem to be a consented-for "balance inquiry."

132. BofA knows its consumers expect a fair fee disclosure at the ATM, and have designed a scheme to assess Out of Network Fees on balance inquiries and exploit consumers' reasonable expectation that they will only engage in fee-worthy actions knowingly and with appropriate disclosures—and will be provided a warning and an opportunity to cancel actions before being assessed a fee. As described herein, the scheme involves assessing two or more additional OON Fees for pressing buttons during a cash

withdrawal transaction that BofA, in its discretion, deems to be tantamount to requests for balance inquiries.

133. As demonstrated above, many ATMs have adopted Balance Inquiry at Start in various forms, with on-screen displays that lure consumers into engaging in purported balances inquires they never intended to perform and never intended to pay for.

134. None of these ATM screens ever disclose that a balance inquiry alone is an independent basis for a fee from either the ATM owner or the user's bank—or warn consumers in any way that checking a balance could result in a fee.

135. Reasonable consumers understand that a balance inquiry is a common lead-in to a withdrawal, a mere first step to the real business at hand, an informational exercise offered by the ATM to help inform the cash withdrawal.

136. Reasonable consumers like Plaintiff do not, in sum, understand a balance inquiry to be an independent transaction worthy of a separate fee.

137. BofA knows this——that in the absence of a prominent warning otherwise, consumers expect a balance inquiry to be an integral, included part of a cash withdrawal—and they know the ATM Defendants, through the deployment of deceptive screen prompts, have figured out a way to sever the actions and make them into separate, fee-worthy transactions, without ever informing the customer that they have just engaged in two, separate, out of network transactions that will be assessed two or more OON Fees.

138. BofA has designed a scheme to assess OON Fees on those purported balance inquiries. BofA preys on the common sense that a balance inquiry preceded by a cash withdrawal is not an independent and separate transaction and therefore should not form the basis for a separate fee.

139. If the bank is going to charge such a conscience-shocking fee, it must fully and fairly disclose such a fee in its account documentation. BofA did the opposite—providing express and implied indications that balance inquires undertaken in conjunction with cash withdrawals would not incur additional OON Fees (much less two of them).

140. BofA holds complete discretion to determine whether an Out of Network Transaction occurred for purposes of determining whether a fee should be assessed. Rather than exercising their discretion in a manner that is fair to the consumer, BofA uniformly accepts what the ATM operators convey to them and gladly assesses a fee for anything deemed an out-of-network transaction by ATM operators like the ATM Defendants. This results in consumers being charged Out of Network fees for transactions where the consumers were tricked into unwanted balance inquiries (*e.g.*. at Cardtronics ATM machines), told explicitly that such inquiries would be "Free" *(e.g.* at Cash Depot ATMs), or are even being doubled charged for a single transaction (*e.g.* at all FCTI ATMs).

141. In other words, BofA has adopted automated processes that totally fail to distinguish between the very rare balance inquiries that, because they are not performed in conjunction with a cash withdrawal, are intentionally and knowingly consented to, are fully and daily disclosed at the ATM, and are valid; and those that are not.

A. Defendant BofA

142. Plaintiffs Hicks, Schertzer and Covell have BofA checking accounts, which are governed by BofA's standardized account agreement.

143. Each Plaintiff conducted an out of network ATM cash withdrawal at one of the ATM Defendants' ATM machines (Hicks, Cash Depot; Schertzer, Cardtronics; Covell, FCTI). Each Plaintiff was charged **three or four** discrete fees for their **single** cash withdrawal transaction that was deemed by BofA to have been preceded by a purported, separate, "balance inquiry," transaction.

1. BofA Account Disclosures

144. BofA issues debit cards to its checking account customers, including Plaintiffs, which allow their customers to have electronic access to their checking accounts for purchases, payments, and ATM withdrawals at both BofA and non-BofA ATMs.

145. Against the backdrop of the reasonable consumer expectations described above, BofA's disclosures deceive consumers and reinforce the reasonable understanding that no OON Fee will be assessed for a balance inquiry undertaken in conjunction with a

cash withdrawal; that not more than one OON Fee will be assessed for a single ATM usage—especially if ATM users are not warned beforehand.

146. Pursuant to BofA's standard account agreement:

> When you use an ATM that is not prominently branded with the Bank of America name and logo, you may be charged a fee by the ATM operator or any network used and you may be charged a fee for a balance inquiry even if you do not complete a fund transfer. We may also charge you fees.

See Exhibit No. 1, BofA Account Disclosures.

147. Similarly, BofA's Fee Schedule states:

> Non-Bank of America ATM Fee for: Withdrawals, transfers and balance inquiries at a non-Bank of America ATM in the U.S. $2.50 each.
>
> When you use a non-Bank of America ATM, you may also be charged a fee by the ATM operator or any network used and you may be charged a fee for a balance inquiry even if you do not complete a funds transfer.

See Exhibit No. 2, BofA Fee Schedule.

148. These disclosures totally fail to authorize the assessment of multiple OON Fees on the same ATM usage; or on a balance inquiry that precedes a cash withdrawal.

149. The most reasonable understanding of this disclosure is that for all activities incident to a cash withdrawal, including a balance inquiry undertaken simultaneously, a **single** $2.50 fee will be assessed by BofA, and a single fee "may" be assessed by the ATM operator; conversely, only when an inquiry alone is undertaken at an out of network ATM, a fee of $2.50 will be assessed.

150. First, the provisions regarding ATM Fees are prefaced by the phrase "*when you use* an [out of network ATM]." When a balance inquiry precedes a withdrawal, common sense and consumer expectation dictates that that two-step process is part of the same, singular, ATM "use."

151. Second, in general, and in Plaintiffs' case here, the ATM owner does not warn the user that there is a separate charge for a balance inquiry, and in fact the ATM owner does not charge a separate fee to the user for a balance inquiry. Therefore, the user can have no reasonable expectation that BofA will assess a fee for an action that the ATM owner does not charge or warn about.

152. Third, the Account Agreement recites the circumstances in which the **ATM owner *may*** charge a consumer an OON Fee. Importantly, **BofA** then represents to its accountholders that it "**may also** charge you fees." (emphasis added). The use of the phrase "may also" is significant, since it indicates that the ATM owner **has charged** the consumer **first.** In other words, the contract states that the accountholder will only be charged a fee by BofA if the ATM owner charges the consumer a fee first. But in general, ATMs do not directly charge consumers for making a balance inquiry—and the ATM Defendants uniformly do not charge fees for balance inquiries. Therefore, BofA customers, including Plaintiffs Hicks, Schertzer and Covell, have no reasonable expectation that BofA will charge them a Balance Inquiry Fee. BofA's OON fee for a balance inquiry is not "in addition to" any fee charged by the ATM Defendants. The ATM Defendants, like most ATM operators, do not charge for OON Balance Inquiries.

153. Fourth, BofA accountholders using a non-BofA ATM are never warned that they will receive two separate fees from BofA—plus another one from the ATM owner—when they check their balance before proceeding with a cash withdrawal at the same ATM. But that is exactly what happens. There is no mention of the possibility of three or more fees.

154. Fifth, importantly, BofA reserves **sole** discretion as to when it will impose an ATM Fee for a balance inquiry at a "Non-Bank of America ATM" and when it will deem that activities undertaken at an out of network ATM constitute a balance inquiry. BofA implies that it will exercise its discretion in good faith and in some cases **will not impose a fee**. But, in fact, it has adopted an automated process that blindly and in all cases simply

accepts the ATM owner's electronic communication to it that one or more balance inquiries have been ***knowingly*** requested by its accountholder.

155. Further, BofA's disclosure that the ATM owner may charge a fee for a balance inquiry "even if you do not complete a transaction" is problematic for several reasons.

156. First, as is the case here, owners generally do not charge such fees (and therefore do not disclose such fees). There can thus be no reasonable expectation that BofA alone will do so.

157. Second, even if ATM owners did charge such fees, the "even if you do not complete a transaction" phrase indicates that a consumer will **not** be charged a separate OON Fee for a balance inquiry if she **does** complete a cash withdrawal (and therefore does pay an OON Fee for that cash withdrawal)—especially where, as here, the ATM owner does not charge separate fees for balance inquiries and never provides an on-screen warning that either it or the consumer's bank will do so.

158. The reasonable consumer understanding that a balance inquiry is not itself an independent transaction or basis for a fee is the very reason the "even if you do not complete a transaction" is necessary. *Indeed, the warning would be nonsensical if it was generally understood that the balance inquiry was an independent transaction worthy of a fee.*

159. In other words, if the balance inquiry and the transaction (withdrawal) were not linked and intrinsic to each other in the minds of reasonable consumers—there would be no need to disclose the special case of when they are de-linked.

160. At the very least, by the repeated use of "may," BofA uses contractual discretion in bad faith when it a) unfairly deems as "balance inquiries" supposedly requested during a deceptive and unfair series of ATM prompts; b) assesses two OON Fees during the same ATM use on when a balance inquiry immediately precedes a cash withdrawal; c) never explains the circumstances under which an accountholder interaction with an out of network ATM will be considered a "balance inquiry" for purposes of an additional OON Fee; d) assesses fees for so called "balance inquiries" even when on-screen

prompts at out of network ATMs never use the same phrase—instead offering, for example, requests like: "[W]ould you like your Available Balances on a receipt?" (in the case of Cardtronics ATMs) and "Would You Like a Receipt for this Transaction? (in the care of FCTI ATMs)".

161. Plaintiffs are not challenging the Out of Network Fee incident to the cash withdrawal. Plaintiffs challenge the OON Fee assessed for the supposed balance inquiry that precedes the cash withdrawal and the additional fee assessed for the "phantom" balance inquiry assessed in concert with ATM providers like FCTI.

B. BOFA violates its Account Agreements by charging its customers more than the contract rate of 3.00% for International Exchange Fees.

162. Continued International Transaction Fees are charged by payment card-issuing retail banks when transactions made by their customers process in foreign currencies or pass through a foreign bank in the payment settlement process.

163. International Transaction Fees are usually comprised of two components. The first is a fee levied by the retail bank, which is typically a 1.00% to 2.00% fee on purchases or ATM withdrawals made abroad. Second, the card's payment network, such as Visa or Mastercard will tack on another fee, typically 1% of the total value of the transaction. The 1% added by the payment network(s) is referred to in the industry as the currency conversion fee, which is assessed by the payment network when a purchase is made in a currency other than U.S. dollars.

164. Despite these separate components, International Transaction Fees are typically disclosed and presented to retail banking customers in deposit account agreements and/or fee disclosure schedules as a fixed percentage, flat fee, ranging from 1.00% to 3.00% of the total value of the international transaction at issue.

165. BofA's Foreign Transaction Fee is not mentioned in its standard, 70 page Deposit Agreement and Disclosures. *See* Exhibit, "1" Deposit Agreement and Disclosures

(Effective November 2, 2018). It appears only, as incorporated by reference, in the BofA Personal Schedule of Fees. *See* Exhibit "2" BofA Personal Schedule of Fees, P.9.

166. BofA levies International Transaction Fees at the highest rate among the largest consumer retail banks in the U.S., at 3% per transaction.

167. BofA processes hundreds of thousands of international payment card transactions each day. When the Bank rounds up each International Transaction Fee amount in violation of its contract, it goes largely unnoticed by accountholders, but the Bank creates for itself millions of dollars in extra revenue annually.

1. BofA's International Transaction Fee

168. The BofA standard Deposit Agreement and Disclosures (Effective November 2, 2018) is the contract which governs the relationship between each account holder and the bank. The standard Deposit Agreement and Disclosures incorporates by reference, the Personal Schedule of Fees (Effective November 2, 2018). The Personal Schedule of Fees states:

International Transaction Fee	**3% of the U.S. Dollar amount of the transaction**	• Fee applies if you use your card to purchase goods or services in a foreign currency or in U.S. Dollars with a foreign merchant (a "Foreign Transaction"). Foreign Transactions include internet transactions made in the U.S. but with a merchant who processes the transaction in a foreign country. • Fee also applies if you use your card to obtain foreign currency from an ATM. Visa® or Mastercard® converts the transaction into a U.S. dollar amount , and the International Transaction Fee applies to that converted U.S. dollar amount. ATM fees may also apply to ATM transactions. See ATM Fees section below. • See disclosure information that accompanied your card for more information about this fee.

See Exhibit No. 2, BofA Fee Schedule, P. 9, Effective November, 2018.

169. The Personal Schedule of Fees states unambiguously that BofA will not charge more than 3% of the U.S. Dollar amount of the transaction. Simply put, the Bank may not ever assess an International Transaction Fee that exceeds 3.00% of the transaction amount.

170. However, BofA charges in excess of 3.00% on approximately half of all international payment card transactions. In fact, in violation of its contract and without disclosing this to its accountholders, BofA systematically rounds up International Transaction Fee amounts. This systematic, automated, rounding practice ensures that BofA charges foreign transaction fees in amounts greater than the 3.00% contractual limit and in some cases up to 5% of the total transaction amount.

171. For example, on a transaction amount of $10.17, BofA calculates the Foreign Transaction fee by multiplying 3% (0.03) x $10.17 = $0.3051. It then, systematically rounds up the $0.3051 to $0.31. However, in so doing, it violates its Personal Schedule of Fees, because $0.31 is actually 3.04% of the $10.17, not 3.00% as provided for by the contract. Simply stated, in order to avoid exceeding the maximum permissible fee of 3.00%, BofA is required to round down when calculating the fee. This is why other banks, including one of its largest California competitors, Union Bank, N.A., for example, "rounds down" when assessing its customers' foreign transaction fees to avoid a similar occurrence.

172. BofA breached its contract and deceived its customers when it assessed International Transaction Fees in excess of 3.00% due to the Bank's uniform rounding practice.

2. Plaintiff Schertzer's Experience

173. Ms. Schertzer maintains a regular checking account at BofA. Ms. Schertzer is a citizen of California and resides in San Diego, California 92101. On or about June 28, 2018, Ms. Schertzer traveled to London on her way to a European vacation. Ms. Schertzer, engaged in several foreign payment card transactions over the course of her nearly two week vacation.

174. For example, Ms. Schertzer made a payment card purchase in Amsterdam, Netherlands on July 9, 2018 for $0.19. BofA, in its processing of the International Transaction Fee, multiplied the $0.19 x 3% and arrived at $0.0055 cents, a fraction of a penny. Rather than waiving this charge as *de minimis*, BofA, "rounded up" and assessed Ms. Schertzer a Foreign Transaction Fee of $0.01. The $0.01 Foreign Transaction Fee applied by BofA to Ms. Schertzer's $0.19 charge is approximately 5.26% of the total value of her transaction – well over the total permissible contract rate of 3.00%. Ms. Schertzer received several additional overcharges on her trip as a result of BofA's rounding practice.

175. On or about August 13, 2018, Ms. Schertzer traveled to Tijuana, Mexico for a brief trip. BofA again assessed her International Transaction Fees in excess of the permissible contract rate delineated by the Fee Schedule.

176. Ms. Schertzer was charged the following International Transaction Fees on her two trips (one to Europe in July 2018 and one to Mexico in August of 2018) in violation of the mandated 3.00% as set forth on the BOFA Fee Schedule:

Date of Transaction:	**Amount of Payment Card Purchase:**	**Int. Tran. Fee Assessed by BOFA:**	**Total % of the International Transaction Fee:**
			Max Rate = 3.00%
07/02/2018	$13.22	$0.40	3.03%
07/02/2018	$6.61	$0.20	3.03%
07/02/2018	$18.50	$0.56	3.03%
07/02/2018	$6.61	$0.20	3.03%
07/02/2018	$11.90	$0.36	3.03%
07/02/2018	$30.87	$0.93	3.01%
07/05/2018	$4.96	$0.15	3.02%
07/05/2018	$0.19	$0.01	5.26%

07/09/2018	$56.84	$1.71	3.01%
07/09/2018	$26.89	$0.81	3.01%
07/09/2018	$23.53	$0.71	3.02%
07/09/2018	$3.52	$0.11	3.13%
07/09/2018	$23.54	$0.71	3.02%
07/11/2018	$16.60	$0.50	3.01%
07/11/2018	$10.97	$0.33	3.01%
07/11/2018	$12.30	$0.37	3.01%
8/13/2018	$10.17	$0.31	3.05%
8/13/2018	$17.19	$0.52	3.02%

177. Ms. Schertzer was overcharged $0.18 on her two trips alone from July, 2018 and August 2018. BofA boasts over 47 million accounts (*See* Bank of American Annual Report 2017, p.35, Executive Summary; Business Overview). If even one quarter or one third of those accountholders engaged in international travel or made internet purchases from foreign retailers, the Bank's ill-begotten gains from its rounding practice amount to millions of dollars per year.

178. Simply stated, the stolen pennies add up to millions of dollars.

3. BofA Abuses Discretion

179. To the extent the account documents do not explicitly permit the charging of International Transaction Fees in excess of 3.00%, as described above, BofA exploits contractual discretion to the detriment of accountholders and breaches good faith and fair dealing when it uses these policies.

180. BofA routinely and systematically charges International Transaction Fees over and above the contractually permissible rate of 3.00% of the total amount of the transaction, by rounding up, in the calculation of the fee to the nearest penny. What this means is when BofA multiplies 3% times the total dollar amount of the foreign transaction, if the third decimal place results in a "5" or higher number, the fee assessed is "rounded

up" to the nearest penny. The result of this rounding is that fractional charges of a penny, become full pennies, pushing the aggregate International Transaction Fee well above the permissible 3.00%.

181. BofA uses its discretion to round up these calculations without informing or disclosing to its customers that, in so doing, the aggregate International Transaction Fee will exceed 3.00%. BofA uses its discretion in an unreasonable way that violates common sense and reasonable consumer expectations. BofA uses its contractual discretion to set the meaning "3%" to include charges of 3.01%-5.26% of the aggregate foreign transaction amount; a choice that directly causes an improper amount of International Transactional Fees to be imposed.

By assessing International Exchange Fees in this manner, BofA engages in bad faith and contradicts reasonable consumer expectations.

VI. PARTIES

A. Plaintiffs

182. Plaintiff **Kristen Schertzer** is a resident of San Diego, California. Ms. Schertzer has a checking account with BofA. On June 1, 2018 and other occasions, she placed her BofA ATM Payment card into the Cardtronics ATM machine located at 817 West Washington Street, San Diego, CA 92103 in order to make a $60.00 cash withdrawal. Following her transaction, Plaintiff was surprised to learn that she was assessed, in addition to the cash withdrawal surcharge paid to Cardtronics ($3.75), a separate $2.50 OON Fee from BofA for making an balance inquiry; and an additional $2.50 fee from BofA for making an cash withdrawal. She was charged $8.75 in total fees for making a $60.00 withdrawal. Plaintiff is challenging the fee for the balance inquiry only.

183. Plaintiff **Brittany Covell** is a resident of San Diego, California. Ms. Covell has a checking account with BofA. On May 29, 2018, she placed her BofA ATM Debit card into the FCTI ATM machine located at a Seven Eleven (7-11) convenience store at 592 Santa Fe Drive, Encinitas, California to make a $20.00 cash withdrawal. Following her transaction, Plaintiff was surprised to learn that she was assessed, in addition to the

cash withdrawal surcharge paid to FCTI ($3.00), a separate $2.50 fee from BofA for making balance inquiry; and an additional $2.50 fee from BofA for making a cash withdrawal. Ms. Covell was also charged a **second** fee for a balance inquiry by BofA. She was charged $10.50 in total fees for making a $20.00 withdrawal. Plaintiff is challenging both balance inquiry fees.

184. Plaintiff **Meagan Hicks** is a resident of San Diego, California. Ms. Hicks has a checking account with BofA. On June 2, 2018 and other occasions she approached the Cash Depot ATM machine located in Wal-Mart at 4840 Shawline Street, San Diego, California 92111. She observed a large sign above the ATM machine which prominently displayed, the representation: "Avoid Overdraft Fees Check Your Balance for Free."

185. Plaintiff proceeded to make a $20.00 cash withdrawal. Following her transaction, Plaintiff was surprised to learn that she was assessed, in addition to the surcharge paid to Cash Depot ($2.50), a separate $2.50 fee from BofA for making a balance inquiry; and an additional $2.50 fee from BofA for making a cash withdrawal. She was charged $7.00 in total fees for making a $20.00 withdrawal.

186. Plaintiff is challenging the fee assessed on the balance inquiry.

B. Defendants

187. Defendant BofA is national bank with over 4,500 retail branches. BofA has its headquarters and principle place of business in Charlotte, North Carolina. Among other things, BofA is engaged in the business of providing retail banking services to customers, including Plaintiffs Schertzer, Hicks, and Covell, and members of the putative class, which includes the issuance of payment cards for use by its customers in conjunction with their checking accounts. BofA operates banking centers and conducts business throughout the State of California.

188. Defendant Cardtronics, Inc. is the world's largest operator of independent, stand-alone ATM machines. Cardtronics operates approximately 200,000 ATMs worldwide, including thousands of machines in the state of California and in this judicial

district. Cardtronics is a Delaware corporation. Cardtronics' headquarters and principle place of business is located in Houston, Texas.

189. Defendant ATM National, LLC is wholly owned subsidiary of Cardtronics and operates over 37,000 ATMs worldwide, including machines within the State of California and in this judicial district. ATM National is a Maryland Limited Liability Company.

190. Defendant Cash Depot, Ltd. is one of the nation's largest independent ATM operators with over 30,000 stand-alone ATM machines in service. The majority of Cash Depot's ATM machines are located in Wal-Mart retail stores. Cash Depot's headquarters and principle place of business are located in Green Bay, Wisconsin. Cash Depot, Ltd. is a Wisconsin Incorporated entity.

191. Defendant FCTI, is California Corporation, with its headquarters and principle place of business located in Los Angeles, California. FCTI is also one of the nation's largest independent operators of stand-alone ATM machines with over 30,000 such machines in service.

CLASS ALLEGATIONS

A. The Cardtronics Classes:

192. Plaintiffs Schertzer brings this action on behalf of herself and on behalf of all others similarly situated against Cardtronics, Inc. The Class includes:

> All holders of a checking account in California who, within the applicable statute of limitation preceding the filing of this lawsuit, were assessed one or more fees for purportedly undertaking a balance inquiry as part of a cash withdrawal at a CARDTRONICS ATM (the "California Cardtronics Class")
>
> All holders of a checking account in the United States who, within the applicable statute of limitation preceding the filing of this lawsuit, were assessed one or more fees for purportedly undertaking a balance inquiry as

part of a cash withdrawal at a CARDTRONICS ATM (the "National Cardtronics Class").

B. The FCTI Classes:

193. Plaintiffs Covell brings this action on behalf of themselves and on behalf of all others similarly situated against FCTI, Inc. The Class includes:

> All holders of a checking account in California who, within the applicable statute of limitation preceding the filing of this lawsuit, were assessed one or more fees for purportedly undertaking a balance inquiry as part of a cash withdrawal at a FCTI ATM (the "California FCTI Class").

> All holders of a checking account in the United States who, within the applicable statute of limitation preceding the filing of this lawsuit, were assessed one or more fees for purportedly undertaking a balance inquiry as part of a cash withdrawal at a FCTI ATM (the "National FCTI Class").

C. The Cash Depot Classes:

194. Plaintiff Hicks brings this action on behalf of herself and on behalf of all others similarly situated. The Class includes:

> All holders of a checking account in California who, within the applicable statute of limitation preceding the filing of this lawsuit, were assessed one or more fees for purportedly undertaking a balance inquiry as part of a cash withdrawal at a Cash Depot ATM (the "California Cash Depot Class")

> All holders of a checking account in California who, within the applicable statute of limitation preceding the filing of this lawsuit, were assessed one or more fees for purportedly undertaking a balance inquiry as part of a cash withdrawal at a Cash Depot ATM (the "National Cash Depot Class").

D. The BofA Classes relating to OON ATM Fees:

195. Plaintiffs Covell, Hicks and Schertzer bring this action on behalf of themselves and on behalf of all others similarly situated.

196. The proposed classes are defined as:

> All BofA checking account holders in the United States who within the applicable statute of limitations were assessed one or more fees for purportedly undertaking a balance inquiry as part of a cash withdrawal at an out of network ATM (the "National BofA Class").
>
> All BofA checking account holders in the United States who within the applicable statute of limitations were assessed one or more fees for purportedly undertaking a balance inquiry as part of a cash withdrawal at an out of network ATM (the "California BofA Sub-Class").

197. The National Class and the California Subclass are collectively referred to as the "BofA Classes."

198. Excluded from the Classes are Defendants, their subsidiaries and affiliates, their officers, directors and member of their immediate families and any entity in which defendants have a controlling interest, the legal representatives, heirs, successors or assigns of any such excluded party, the judicial officer(s) to whom this action is assigned, and the members of their immediate families.

199. Plaintiffs reserve the right to modify or amend the definition of the proposed Classes and/or to add a Subclass(es) if necessary before this Court determines whether certification is appropriate.

200. The questions here are ones of common or general interest such that there is a well-defined community of interest among the class members. These questions predominate over questions that may affect only individual class members because each ATM Defendant and BofA has acted (independently) on grounds generally applicable to the classes. Such common legal or factual questions include, but are not limited to:

201. The parties are numerous such that joinder is impracticable. Upon information and belief, and subject to class discovery, the Classes consist of thousands of members or more, the identity of whom are within the exclusive knowledge of and can be ascertained only by resort to the ATM Defendants' and/or

BofA's records. Defendants collectively have the administrative capability through their computer systems and other records to identify all members of the Classes, and such specific information is not otherwise available to Plaintiffs.

202. With respect to the cases against the ATM Defendants:

a) Whether the ATM Defendants improperly received interchange fees from financial institutions resulting from improper out of network balance inquiries;

b) Whether such conduct enumerated herein is deceptive;

c) Whether the ATM Defendants violated the UCL and CLRA;

d) Whether the ATM Defendants were negligent in the discharge of their duty to acquire meaningful and legal consent to a balance inquiry; and

e) Whether Plaintiffs and other members of the Classes have sustained damages as a result of the ATM Defendants' wrongful business practices described herein, and the proper measure of damages.

203. With Respect to BofA:

a) Whether BofA improperly collected Out of Network fees from their customers, including Plaintiffs, without ensuring their customers performed, engaged or otherwise consented to such transactions;

b) Whether BofA breached their contracts by collecting Out of Network Balance Inquiry fees for transactions that did not occur;

c) Whether BofA violated the UCL and CLRA;

d) Whether BofA breached their contracts with their customers, including Plaintiffs.

e) Whether BofA reserved discretion in defining the circumstances in which a customer would be deemed to have engaged in transaction that would give rise to a corresponding Out of Network fee;

f) Whether BofA failed to exercise such discretion in good faith;

g) Whether Plaintiffs and other members of the Classes have sustained damages as a result of the BofA's wrongful business practices described herein, and the proper measure of damages.

204. It is impracticable to bring Class members' individual claims before the Court. Class treatment permits a large number of similarly situated persons or entities to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort, expense, or the possibility of inconsistent or contradictory judgments that numerous individual actions would engender. The benefits of the class mechanism, including providing injured persons or entities with a method for obtaining redress on claims that might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in the management of this class action.

205. Plaintiffs' claims are typical of the claims of the other Class members in that they arise out of the same wrongful business practices by the ATM Defendants and BofA as described herein.

206. Plaintiffs are more than adequate representatives of each of the Classes in that each has suffered damages as a result of the ATM Defendants' and/or BofA's improper business practices. In addition:

a) Plaintiffs are committed to the vigorous prosecution of this action on behalf of themselves and all others similarly situated and have retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of consumers against financial institutions;

b) There is no conflict of interest between Plaintiffs and the unnamed Class members;

c) They anticipate no difficulty in the management of this litigation as a class action; and

d) Plaintiffs' legal counsel has the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

207. Plaintiffs know of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

208. The ATM Defendants and BofA have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

209. All conditions precedent to bringing this action have been satisfied and/or waived.

E. The BofA Foreign Exchange Fee Classes (brought on behalf of Plaintiff Schertzer):

210. Plaintiff Kristen Schertzer also brings this action on behalf of herself and on behalf of all others similarly situated against BOFA as follows:

> All BofA payment card accountholders who, within the applicable statute of limitation preceding the filing of this lawsuit, incurred an International Transaction Fee in excess of 3.00% on an International Transaction conducted with a Payment Card (the "National Class").
>
> All BofA payment card accountholders in the State of California who, within the applicable statute of limitation preceding the filing of this lawsuit, incurred an International Transaction Fee in excess of 3.00% on an International Transaction conducted with a Payment Card (the "California Class").

211. Excluded from the Classes are Defendant, its subsidiaries and affiliates, their officers, directors and members of their immediate families and any entity in which defendants have a controlling interest, the legal representatives, heirs, successors or assigns of any such excluded party, the judicial officer(s) to whom this action is assigned, and the members of their immediate families.

212. Plaintiff reserves the right to modify or amend the definition of the proposed Class and/or to add a Subclass(es) if necessary before this Court determines whether certification is appropriate.

213. The questions here are ones of common or general interest such that there is a well-defined community of interest among the class members. These questions predominate over questions that may affect only individual class members because BOFA has acted on grounds generally applicable to the class. Such common legal or factual questions include, but are not limited to:

a. Whether BofA improperly "rounds up," to the nearest penny, all International Transaction Fees assessed on foreign payment card transactions.

b. Whether such conduct violates the contract;

c. Whether such conduct is deceptive or in bad faith; and

d. Whether Plaintiff and other members of the Class have sustained damages as a result of BofA's wrongful business practices described herein, and the proper measure of damages.

214. The parties are numerous such that joinder is impracticable. Upon information and belief, and subject to class discovery, the Classes consist of thousands of members or more, the identity of whom are within the exclusive knowledge of and can be ascertained only by resort to BofA's records. BofA has the administrative capability through its computer systems and other records to identify all members of the Class, and such specific information is not otherwise available to Plaintiff.

215. It is impracticable to bring Class members' individual claims before the Court. Class treatment permits a large number of similarly situated persons or entities to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort, expense, or the possibility of inconsistent or contradictory judgments that numerous individual actions would engender. The benefits of the class mechanism, including providing injured persons or entities with a method for

obtaining redress on claims that might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in the management of this class action. No consumer would individually pursue a claim for these amounts. This type of conduct is precisely within the ambit of the F.R.C.P. Rule 23.

216. Plaintiff's claims are typical of the claims of the other Class members in that they arise out of the same wrongful business practice by BofA, as described herein.

217. Plaintiff is more than an adequate representative of the Classes in that she has a BofA checking account and has suffered damages as a result of BofA's usurious and improper business practices. In addition:

a. Plaintiff is committed to the vigorous prosecution of this action on behalf of herself and all others similarly situated and has retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of consumers against financial institutions;

b. There is no conflict of interest between Plaintiff and the unnamed Class members;

c. They anticipate no difficulty in the management of this litigation as a class action; and

d. Plaintiff's legal counsel has the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

218. Plaintiff knows of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

219. BofA has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

220. All conditions precedent to bringing this action have been satisfied and/or waived.

CAUSES OF ACTION
(As to the ATM Defendants)

FIRST CAUSE OF ACTION
VIOLATION OF THE UNFAIR COMPETITION LAW
Cal. Bus. & Prof. Code § 17200, *et seq.*
(Against Defendants Cardtronics and Cash Depot on Behalf of the California Classes)

221. Plaintiffs Schertzer and Hicks incorporate the preceding allegations by reference as if fully set forth herein.

222. California Business & Professions Code § 17200 prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice." Cardtronics' conduct in re-ordering their ATM screen prompts, utilizing the "Balance Inquiry at Start Screen Prompt," and deceptively requiring customers to opt-out of balance inquiries at their ATM machines violated each of this statute's three prongs.

223. Cardtronics committed an unlawful business act or practice in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, by violating California Finance Code § 130080(c) when it failed to adequately disclose to customers the circumstances in which the customer will incur fees for purported balance inquiries.

224. Cardtronics committed unfair business acts and practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, by, as alleged herein, re-ordering their ATM screen prompts, utilizing the "Balance Inquiry at Start Screen Prompt," and deceptively requiring customers to opt-out of balance inquiries that they would not otherwise engage in or did not knowingly consent to.

225. Cardtronics committed fraudulent business acts and practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, when it affirmatively and knowingly misrepresented to its customers that deposit account balance inquiries were implicitly offered free of charge and could be printed on the customers' receipt, when in fact, Cardtronics knew that the customers' financial institutions would charge them fees for such purported balance inquiries. Cardtronics, as alleged herein, knowingly and contractually profits from the receipt of out of network fees collected by its customers' financial institutions. Cardtronics' representations are likely to mislead the public with regard to

whether they understand they are engaging in an actual balance inquiry that will cost them money.

226. Additionally, Cardtronics' conduct was unfair insofar as it was not motivated by any business or economic need or rationale. The harm and adverse impact of Cardtronics' conduct on members of the general public was neither outweighed nor justified by any legitimate reasons, justifications, or motives.

227. The harm to Plaintiffs and Class members arising from Cardtronics's unfair practices relating to the imposition of out of network fees outweighs the utility, if any, of those practices.

228. Cardtronics' unfair business practices relating to tricking customers into performing balance inquiries as alleged herein are immoral, unethical, oppressive, unscrupulous, unconscionable, and/or substantially injurious to Plaintiffs and Class members.

229. Cardtronics' conduct was substantially injurious to consumers in that they have been forced to pay Out of Network Balance Inquiry Fees.

230. Similarly, Cash Depot's conduct in explicitly misrepresenting to consumers that balance inquiries undertaken at its Cash Depot ATM machines would be "free," violates each of the UCL's three prongs of liability.

231. Cash Depot committed an unlawful business act or practice in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, by violating Cal. Fin. Code § 13080(c) when it failed to adequately disclose to customers the circumstances in which the customer will incur Balance Inquiry Fees.

232. Cash Depot committed an unfair business act or practice in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, by, as alleged herein, explicitly misrepresenting on its Cash Depot ATM machines: "Avoid Overdraft Fees Check Your Balance for Free," utilizing the "Balance Inquiry at Start Screen Prompt," and deceptively requiring customers to opt-out of balance inquiries that they would not otherwise engage in or did not knowingly consent to.

233. Cash Depot committed a fraudulent business act or practice in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, when it affirmatively, knowingly, and explicitly misrepresented to its customers that balance inquiries were "free" of charge, when in fact, Cash Depot knew that the customers' financial institutions would charge them out-of-network Balance Inquiry Fees. Cash Depot, as alleged herein, knowingly and contractually profits from the receipt of out-of-network fees collected by its customers' financial institutions. Cash Depot's representations are likely to mislead the public with regard to the fact that they will incur a balance inquiry charge at all in light of Cash Depot's representation that such transactions are "free" and/or to whether they understand they are engaging in an actual balance inquiry that will cost them money.

234. Additionally, Cash Depot's conduct was unfair insofar as it was not motivated by any business or economic need or rationale. The harm and adverse impact of Cash Depot's conduct on members of the general public was neither outweighed nor justified by any legitimate reasons, justifications, or motives.

235. The harm to Plaintiff and Class members arising from Cash Depot's unfair practices relating to the imposition of out-of-network fees in light of the plain misrepresentation that balance inquiries will be "free" outweighs the utility, if any, of those practices.

236. Cash Depot's unfair business practices relating to tricking customers into performing available balance inquiries as alleged herein are immoral, unethical, oppressive, unscrupulous, unconscionable, and/or substantially injurious to Plaintiff Hicks and the Class members.

237. Cash Depot's conduct was substantially injurious to consumers in that they have been forced to pay out-of-network Balance Inquiry Fees despite blatant misrepresentations to the contrary.

238. As a result of Defendants' violations of the UCL, Plaintiffs and members of the Class have paid, and/or will continue to pay, unreasonably excessive amounts of money for banking services and thereby have suffered and will continue to suffer actual damages.

239. As a result of Defendants' unfair and deceptive conduct, Cardtronics and Cash Depot have been unjustly enriched and should be required to disgorge their unjust profits and make restitution to Plaintiffs and Class members pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17204.

240. Plaintiffs and the Classes further seek an order enjoining Cardtronics' and Cash Depot's unfair or deceptive acts or practices, and an award of attorneys' fees and costs under Cal. Code of Civ. Proc. § 1021.5.

SECOND CAUSE OF ACTION
VIOLATION OF THE UNFAIR COMPETITION LAW
Cal. Bus. & Prof. Code § 17200, *et seq.*
(Against Defendant FCTI on Behalf of the Nationwide Classes)

241. Plaintiff Covell incorporates the preceding allegations by reference as if fully set forth herein.

242. FCTI's conduct in double-charging consumers two out-of-network Balance Inquiry Fees for single balance inquiries, and the deceptive manner in which FCTI designs and presents its screen prompts at is ATM machines to consumers, constitutes a fraudulent and unfair business act or practice in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*

243. FCTI's conduct was unfair insofar as it was not motivated by any business or economic need or rationale. The harm and adverse impact of FCTI's conduct on members of the general public was neither outweighed nor justified by any legitimate reasons, justifications, or motives.

244. The harm to Plaintiff and Class members arising from FCTI's unfair practices relating to its deceptive screen prompts and the unconscionable double-charging out-of-network Balance Inquiry Fees for a single purported balance inquiry outweighs the utility, if any, of those practices.

245. FCTI's unfair business practices relating to their deceptive screen prompts and double charging out-of-network Balance Inquiry Fees as alleged herein are immoral,

unethical, oppressive, unscrupulous, unconscionable, and/or substantially injurious to Plaintiffs and Class members.

246. FCTI's conduct was substantially injurious to consumers in that they have been forced to pay double the amount of out-of-network Balance Inquiry Fees than necessary.

247. As a result of Defendant's violations of the UCL, Plaintiff and members of the Class have paid, and/or will continue to pay, unreasonably excessive amounts of money for banking services and thereby have suffered and will continue to suffer actual damages.

248. As a result of Defendant's unfair and deceptive conduct, FCTI has been unjustly enriched and should be required to disgorge their unjust profits and make restitution to Plaintiff and Class members pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17204.

249. Plaintiff and the Classes further seek an order enjoining FCTI's unfair or deceptive acts or practices, and an award of attorneys' fees and costs under Cal. Code of Civ. Proc. § 1021.5

THIRD CAUSE OF ACTION
CONVERSION
(Against the ATM Defendants on Behalf of the Nationwide Classes)

250. Plaintiffs Covell, Schertzer and Hicks incorporate the preceding allegations by reference as if fully set forth herein.

251. The ATM Defendants utilize deceptive screen prompts on their ATM machines to trick customers into engaging in balance inquiries that the consumers would not otherwise purchase. Plaintiffs and each consumer who used one of the ATM Defendants' ATM machine made a single balance inquiry, but was subsequently charged one or more out-of-network ATM Balance Inquiry Fees from their financial institutions.

252. FCTI's deceptive scheme has allowed consumers' financial institutions to wrongfully collect double the amount of out-of-network Balance Inquiry Fees than they

otherwise might have been entitled to. These funds are specific and readily identifiable from their customers' accounts.

253. Cardtronics' and Cash Depot's deceptive scheme has allowed consumers' financial institutions to wrongfully collect out-of-network Balance Inquiry Fees in addition to lawful, out of network cash withdrawal fees. These funds are specific and readily identifiable from their customers' accounts.

254. As a result, the ATM Defendants have wrongfully collected interchange fees from the consumers' financial institutions through their wrongful practices associated with assessing out-of-network balance inquiries at their ATM machines.

255. The ATM Defendants have thus, without proper authorization, assumed and exercised the right of ownership over these funds, in hostility to the rights of Plaintiffs and the members of the Nationwide Classes, without legal justification.

256. The ATM Defendants continue to retain these funds unlawfully without the consent of Plaintiffs or members of the Nationwide Classes.

257. The ATM Defendants intends to permanently deprive Plaintiffs and members of the Nationwide Classes of those funds.

258. These funds are properly owned by Plaintiffs and members of the Nationwide Classes, not the ATM Defendants which now claim they are entitled to a portion of their ownership, contrary to the rights of Plaintiffs and members of the Nationwide Classes.

259. Plaintiffs and the members of the Nationwide Classes are entitled to the immediate possession of these funds.

260. The ATM Defendants have wrongfully converted these specific and readily identifiable funds.

261. The ATM Defendants' wrongful conduct is continuing.

262. As a direct and proximate result of this wrongful conversion, Plaintiffs and the members of the Nationwide Classes have suffered and continue to suffer damages.

263. By reason of the foregoing, Plaintiffs and the members of the Nationwide Classes are entitled to recover from the ATM Defendants all damages and costs permitted by law, including all amounts that the ATM Defendants have wrongfully converted.

FOURTH CAUSE OF ACTION
NEGLIGENCE
(Against the ATM Defendants on Behalf of the Nationwide Classes)

264. Plaintiffs Covell, Schertzer and Hicks incorporate the preceding allegations by reference as if fully set forth herein.

265. The ATM Defendants utilize deceptive screen prompts on their ATM machines to trick customers into engaging in balance inquiries that the consumers would not otherwise purchase. Plaintiffs and each consumer who used one of the ATM Defendants' ATM machine made a single balance inquiry, but was subsequently charged one or more out-of-network ATM Balance Inquiry Fees from their financial institutions. Defendants FCTI, Cardtronics, and Cash Depot each used deceptive screen prompts at their out-of-network ATM machines, including the "Balance Inquiry At Start Screen Prompt,"

266. Each ATM Defendant owed a duty of care to Plaintiffs and Class Members to explicitly ask consumers and/or otherwise acquire their actual consent to engage in a balance inquiries.

267. The ATM Defendants each had a duty to meaningfully inform their customers, including Plaintiffs that balance inquiries preceding the Cash Withdrawals were separate transactions.

268. The ATM Defendants each had a duty to acquire the consent of the Plaintiffs to engage in a balance inquiry prior to acquiring and providing such information to Plaintiffs and prior to communicating the fact that a balance inquiry had occurred to BofA.

269. The ATM Defendants and each of them had a duty not to mislead Plaintiffs and trick them into engaging into balance inquiries that they otherwise did not seek to perform.

270. The ATM Defendants and each of them, failed in the discharge of their duties and did breach their duties as alleged herein.

271. Each ATM Defendant was negligent and breached its duty of care owed to Plaintiffs and Class Members in one or more of the following respects:

a. Reordering ATM machine screen prompts, (*i.e.*, the "Balance Inquiry at Start Screen Prompt") so that the fist screen a customer views after debit pin entry is an immediate prompt asking if they would like to view their available account balance, creating confusion and causing consumers to believe the service is an integral part of a cash withdrawal transaction; and/or,

b. Utilizing balance inquiry screen prompts that force consumers using the ATM to effectively opt-out of a balance inquiry, as opposed to affirmatively selecting to "opt-in;" and/or

c. Using confusing and misleading language to describe balance inquiries;

d. Failing to clearly ask whether the consumer wishes to engage in a balance inquiry prior to proceeding with their intended cash withdrawal; and/or

e. Misrepresenting and falsely advertising that balance inquiries are "free," when in reality, the consumers' financial institution assesses out-of-network Balance Inquiry Fees on each transaction.

272. Therefore as direct and proximate cause of said breach, Plaintiffs were harmed in the amount of the Out of Network Fees assessed and charged by BofA as alleged herein. Said fees were, in turn, in whole or in part paid directly to the ATM Defendants by BofA. As a direct and proximate result of one or more of the aforementioned negligent acts, Plaintiffs and Class Members suffered economic loss in the amount of each out-of-network Balance Inquiry Fee charged to each Plaintiff and Class Member and a portion of such fees received by the ATM Defendants in the form of interchange fees paid by each consumers' financial institution.

273. By reason of the foregoing, Plaintiffs and the members of the Nationwide Classes are entitled to recover from the ATM Defendants all damages and costs permitted by law, including all amounts that the ATM Defendants have wrongfully collected.

274. Accordingly, Plaintiffs seek damages against the ATM Defendants in the amount of interchange fees received directly from the consumers' financial institutions.

FIFTH CAUSE OF ACTION
VIOLATION OF THE FALSE ADVERTISING LAW
Cal. Bus. & Prof. Code § 17500, *et seq.*
(Against Defendant Cash Depot on Behalf of the California Class)

275. Plaintiff Hicks incorporates the preceding allegations as if fully set forth herein.

276. California Business and Professions Code § 17500 provides:

> It is unlawful for any . . . corporation . . . with intent . . . to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated . . . from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement . . . which is ***untrue or misleading***, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading . . .(Emphasis added).

277. Cash Depot's practice of advertising on its Cash Depot ATM machines that consumers can "Avoid Overdraft Fees Check Your Balance for Free," when in reality, consumers incur an out-of-network Balance Inquiry Fee from their financial institution, constitutes an unfair, untrue, and misleading practice.

278. Cash Depot's blatant misrepresentation that they can check their available balance for "free" gives consumers the false impression that they will not later incur an out-of-network Balance Inquiry Fee for conducting a balance inquiry at Defendant's Cash Depot ATM machines.

279. Consumers, including Plaintiff Hicks, read the unavoidable representation at Cash Depot's ATM machine and were subsequently deceived into engaging in a balance inquiry as they proceed to their ultimate cash withdrawal transaction.

280. Cash Depot knows or has reason to know that balance inquiries are not "free" because Cash Depot collects interchange fees from consumers' financial institutions for each balance inquiry that a consumer conducts at its Cash Depot ATM machines.

281. Cash Depot misleads consumers by making misleading and false statements and failing to disclose what is required as stated in the Code alleged above.

282. As a direct and proximate result of Cash Depot's misleading and false advertisement, Plaintiff Hicks and Class Members have suffered injury in fact and have lost money in the form of Balance Inquiry Fees. As such, Plaintiff Hicks requests that this Court order Cash Depot to restore this money to Plaintiff and all Class Members, and to enjoin Cash Depot from continuing these unfair practices in violation of the FAL in the future. Otherwise, Plaintiff Hicks, Class Members, and the broader public will be irreparably harmed and/or denied an effective and complete remedy.

SIXTH CAUSE OF ACTION
VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT
Cal. Civ. Code § 1770, *et seq.*
(Against Defendant Cash Depot on Behalf of the California Class)

283. Plaintiff Hicks incorporates the preceding allegations as if set forth fully herein.

284. Defendant Cash Depot is a "person" as defined by the CLRA. Cal. Civ. Code § 1761(c).

285. Plaintiff Hicks and Class Members are "consumers" within the meaning of the CLRA as defined by Cal. Civ. Code § 1761(d).

286. The CLRA prohibits "unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer[.]" Cal. Civ. Code § 1770(a).

287. Specifically, the CLRA prohibits "[a]dvertising goods or services with the intent not to sell them as advertised." Cal. Civ. Code § 1770(a)(9).

288. Cash Depot's blatant misrepresentation, "Avoid Overdraft Fees Check Your Balance for Free," constitutes a deceptive and misleading business practice in violation of the CLRA. Moreover, Defendant's misrepresentation violates Section 1770(a)(9) because consumers do incur an out-of-network Balance Inquiry Fee from their financial institutions despite Cash Depot's explicit advertisement that consumers can check their available balance for "free."

289. Cash Depot knows or has reason to know that consumers will be charged for such out-of-network balance inquiries because Cash Depot receives payments from consumers' financial institutions for each balance inquiry that a consumer conducts at its Cash Depot ATM machines.

290. Defendant continues to violate the CLRA and continues to injure the public by using the false, deceptive, and misleading advertisement on its Cash Depot ATM machines that consumers can check their balances for "free," when in reality, that is untrue.

291. Accordingly, Plaintiff Hicks seeks injunctive relief on behalf of the general public to prevent Cash Depot from continuing to engage in such deceptive and illegal practices.

292. Cash Depot's violation of the CLRA has caused Plaintiff and putative Class Members to suffer ascertainable losses.

Pursuant to Section 1782(d), Plaintiff reserves the right to amend this cause of action to include a request for damages under the CLRA pursuant to Section 1782(a) within 30 days of providing the required notice.

CAUSES OF ACTION
(Against BofA arising from the assessment of OON Fees)

SEVENTH CAUSE OF ACTION
BREACH OF CONTRACT INCLUDING THE COVENANT OF GOOD FAITH AND FAIR DEALING
(Against BofA on Behalf of the Nationwide Classes)

293. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

294. Plaintiffs Hicks, Schertzer, and Covell have BofA checking accounts, which are governed by BofA's standardized account agreement, fee schedule, and related documents

295. BofA has misconstrued in its standardized account agreements, fee schedules, and related documents the true nature of their mandatory assessment of OON Fees during out-of-network ATM transactions and breached the terms of their agreements with accountholders. BofA's standardized account agreements indicate that the bank will not assess an additional OON Fee for a balance inquiry undertaken in conjunction with a cash withdrawal and that not more than one OON Fee will be assessed for a single ATM usage and that no fee for a balance inquiry will be assessed without the knowing authorization of the accountholder.

296. BofA violates these provisions.

297. Similarly, no contractual provision authorizes BofA to assess two fee arising from a single purported balance inquiry preceding a cash withdrawal when a customer uses an FCTI ATM machine.

298. Therefore, BofA breached the terms of their standardized account agreements by charging OON Fees for balance inquiries conducted at out-of-network ATM machines.

299. Under the laws of the states where BofA does business, good faith is an element of every contract. Whether by common law or statute, all such contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit – not merely the letter – of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

300. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes their conduct to be justified. Bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Examples of bad faith are evasion of the spirit of the bargain, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.

301. BofA has breached the covenant of good faith and fair dealing in their standardized account agreements through their OON Fee policies and practices as alleged herein.

302. Plaintiffs and Class Members have performed all, or substantially all, of the obligations imposed on them under BofA's standardized account agreements.

303. Plaintiffs and Class Members have sustained damages as a result of BofA's breach of the contract and the covenant of good faith and fair dealing.

EIGHTH CAUSE OF ACTION
VIOLATION OF THE UNFAIR COMPETITION LAW
(Against BofA on Behalf of the California Class)

304. Plaintiffs incorporate the preceding allegations as if fully set forth herein.

305. BofA's conduct described herein violates the Unfair Competition Law (the "UCL") codified at California Business & Professions Code section 17200, *et seq.*

306. The UCL prohibits, and provides civil remedies for, unfair competition. Its purpose is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services. In service of that purpose, the Legislature framed the UCL's substantive provisions in broad, sweeping language.

307. By defining unfair competition to include any "any unlawful, unfair or fraudulent business act or practice," the UCL permits violations of other laws to be treated as unfair competition that is independently actionable, and sweeps within its scope acts and practices not specifically proscribed by any other law.

308. BofA has committed fraudulent business acts and practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, when they affirmatively and knowingly misrepresented their OON Fee practices. Such representations misled Plaintiffs and are likely to mislead the public.

309. In addition, BofA committed fraudulent business acts and practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, when they affirmatively and knowingly omitted the total price of out of network ATM transactions and failed to adequately inform consumers they would be charged two OON Fees for a cash withdrawal preceded by a balance inquiry at the same out of network ATM. Such omissions misled Plaintiffs and are likely to mislead the public.

310. Additionally, BofA's conduct was unfair insofar as it was not motivated by any business or economic need or rationale. The harm and adverse impact of BofA's conduct on members of the general public was neither outweighed nor justified by any legitimate reasons, justifications, or motives.

311. The harm to Plaintiffs and Class Members arising from BofA's unfair practices relating to the imposition of OON Fees outweighs the utility, if any, of those practices.

312. BofA's unfair business practices relating to the assessment of OON Fees as alleged herein are immoral, unethical, oppressive, unscrupulous, unconscionable, and/or substantially injurious to Plaintiffs and Class Members.

313. BofA's conduct was substantially injurious to consumers in that they have been forced to pay multiple OON Fees, which are misrepresented in their contracts with BofA.

314. BofA also committed fraudulent business acts and practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, in conjunction with the ATM Defendants when BofA blindly permitted the ATM Defendants to determine for them when and how an out-of-network ATM transaction has occurred and then subsequently collecting OON Fees that they would otherwise not be entitled to.

315. As a result of BofA's violations of the UCL, Plaintiffs and members of the Class have paid, and/or will continue to pay, unreasonably excessive amounts of money for banking services and thereby have suffered and will continue to suffer actual damages.

NINTH CAUSE OF ACTION
VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT
(Against BofA on Behalf of the California Classes)

316. Plaintiffs incorporate the preceding allegations by reference as if fully set forth herein.

317. BofA is a "person" as defined by the CLRA. Cal. Civ. Code § 1761(c).

318. Plaintiffs and Class Members are "consumers" within the meaning of the CLRA, as defined by Cal. Civ. Code § 1761(d).

319. The CLRA prohibits "unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer[.]" Cal. Civ. Code § 1770(a).

320. BofA's misrepresentations that they will not charge multiple OON Fees for a cash withdrawal preceded by a balance inquiry at a out-of-network ATM machine constitute deceptive and misleading business practices in violation of the CLRA.

321. BofA continues to violate the CLRA and continue to injure the public by using false, deceptive, and misleading terms in their standardized account agreements. Accordingly, Plaintiffs seek injunctive relief on behalf of the general public to prevent BofA from continuing to engage in these deceptive and illegal practices.

322. BofA's violation of the CLRA caused Plaintiffs and putative Class Members to suffer ascertainable losses.

323. In conjunction with the filing of the First Amended Complaint, Plaintiffs' Counsel mailed BofA a notice of its violations of Cal. Civ. Code § 1770 in accordance with Cal. Civ. Code § 1782 and demanded that it rectify the problems associated with the actions detailed above and give notice to all affected consumers of its intent to act.

324. BofA failed to appropriately respond to Plaintiffs' letter or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to § 1782 of the CLRA. Therefore, Plaintiffs seek claims for actual or punitive damages, as appropriate, against BofA.

TENTH CAUSE OF ACTION
CONVERSION
(Against BofA on Behalf of the Nationwide Classes)

325. Plaintiffs incorporate the preceding allegations as if set forth fully herein.

326. BofA had and continues to have a duty to maintain and preserve their customers' checking accounts and to prevent their diminishment through their own wrongful acts.

327. BofA has wrongfully collected OON Fees from Plaintiffs and the Nationwide Classes, and have taken specific and readily identifiable funds from their accounts in payment of these fees in order to satisfy them.

328. BofA has, without proper authorization, assumed and exercised the right of ownership over these funds, in hostility to the rights of Plaintiffs and the members of the Nationwide Classes, without legal justification.

329. BofA continues to retain these funds unlawfully without the consent of Plaintiffs or members of the Nationwide Classes.

330. BofA intends to permanently deprive Plaintiffs and the members of the Nationwide Classes of these funds.

331. These funds are properly owned by Plaintiffs and the members of the Nationwide Classes, not BofA, which now claims that that is entitled to its ownership, contrary to the rights of Plaintiffs and the members of the Nationwide Classes.

332. Plaintiffs and members of the Nationwide Classes are entitled to the immediate possession of these funds.

333. BofA has wrongfully converted these specific and readily identifiable funds.

334. BofA's wrongful conduct is continuing.

335. As a direct and proximate result of this wrongful conversion, Plaintiffs and members of the Nationwide Classes have suffered and continue to suffer damages.

336. By reason of the foregoing, Plaintiffs and the members of the Nationwide Classes are entitled to recover from BofA all damages and costs permitted by law, including all amounts that BofA has wrongfully converted.

CAUSES OF ACTION

(Against BofA arising from overcharging for International Transaction Fees)

TWELTH CAUSE OF ACTION
BREACH OF CONTRACT INCLUDING THE COVENANT OF GOOD FAITH AND FAIR DEALING

337. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

338. Plaintiff and BofA contracted for checking account and payment card services, as embodied in the Account Agreement and Fee Schedule.

339. The Fee Schedule states that BofA will assess an International Transaction Fee ***capped at 3%.*** *See* Exhibit No. 2, BofA Fee Schedule, P. 9. (bold and underline added).

340. BofA breached its contract with Ms. Schertzer and class members when it assessed International Transaction Fees in excess of 3.00%, as described herein.

341. Plaintiff and members of the putative Class have performed all of the obligations on them pursuant to Account Agreement and Fee Schedule.

342. Plaintiff and members of the putative Class have sustained monetary damages as a result of Defendant's breach.

343. Under the laws of the State of California and other states where BOFA does business, good faith is an element of every contract. Whether by common law or statute, all such contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and

other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

344. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes their conduct to be justified. Bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Examples of bad faith are evasion of the spirit of the bargain, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.

345. BofA breached the covenant of good faith and fair dealing in its Account Agreement and Fee Schedule by engaging in the policies and practices as alleged herein. Specifically, BofA abuses its discretion under the contract by rounding up transactions such that BofA charges International Transaction Fees exceeding 3.00% on a per transaction basis.

346. Plaintiff and members of the Class have performed all, or substantially all, of the obligations imposed on them under the contract.

347. Plaintiff and members of the Class have sustained damages as a result of BofA's breach of the contract and breach of the covenant of good faith and fair dealing.

THIRTEENTH CAUSE OF ACTION
VIOLATION OF THE UCL
Cal. Bus. & Prof. Code § 17200, *et seq.*
(On Behalf of Plaintiff and the California Class)

348. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

349. California Business & Professions Code § 17200 prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice."

BofA's conduct related to the imposition of International Exchange Fees violated the statute's "unfair" and "fraudulent" prongs.

350. BofA committed unfair business acts and practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq*., by representing to Plaintiff and the public that it will charge only a flat 3.00% fee for international payment card transactions. BofA failed to disclose that its rounding practices result in the assessment of such fees in excess of 3.00%.

351. BofA committed fraudulent business acts and practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq*., when it affirmatively and knowingly misrepresented that it charges a flat 3.00% International Transaction Fee.

352. As a direct and proximate result of BofA's unfair and deceptive practices, Plaintiff and Class members suffered and will continue to suffer actual damages.

353. As a result of its unfair and deceptive conduct, BofA has been unjustly enriched and should be required to disgorge its unjust profits and make restitution to Plaintiff and Class members pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17204.

354. Plaintiff and the Class further seek an order enjoining BofA's unfair or deceptive acts or practices, and an award of attorneys' fees and costs under Cal. Code of Civ. Proc. § 1021.5.

FOURTEENTH CAUSE OF ACTION
CONVERSION
(On Behalf of Plaintiff, the National Class, and the California Class)

355. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

356. BofA had and continues to have a duty to maintain and preserve its customers' checking accounts and to prevent their diminishment through its own wrongful acts.

357. BofA has collected excessive International Transaction Fees from Plaintiff and the members of the Classes, and has taken specific and readily identifiable funds from their accounts in payment of these fees in order to satisfy them.

358. BofA has, without proper authorization, assumed and exercised the right of

ownership over these funds, in hostility to the rights of Plaintiff and the members of the Classes, without legal justification.

359. BofA continues to retain these funds unlawfully without the consent of Plaintiff or members of the Classes.

360. BofA intends to permanently deprive Plaintiff and the members of the Classes of these funds.

361. These funds are properly owned by Plaintiff and the members of the Classes, not BofA, which now claims that it is entitled to their ownership, contrary to the rights of Plaintiff and the members of the Classes.

362. Plaintiff and the members of the Classes are entitled to the immediate possession of these funds.

363. BofA has wrongfully converted these specific and readily identifiable funds.

364. BofA's wrongful conduct is continuing.

365. As a direct and proximate result of this wrongful conversion, Plaintiff and the members of the Classes have suffered and continue to suffer damages.

366. By reason of the foregoing, Plaintiff and the members of the Classes are entitled to recover from BofA all damages and costs permitted by law, including all amounts that BofA has wrongfully converted.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants for themselves and the Class members as follows:

(a) Declaring BofA's Balance Inquiry Fee policies and practices to be wrongful, unfair, and a breach of contract;

(b) Restitution of all relevant fees paid by Plaintiffs and members of the proposed classes to BofA as a result of the wrongs alleged herein in an amount to be determined at trial;

(c) Restitution of all relevant fees paid by Plaintiffs and members of the proposed classes to the ATM Defendants as a result of those monies being paid to the ATM Defendants from BofA as alleged herein and as a result of the wrongs alleged herein in an amount to be determined at trial;

(d) Disgorgement of the ill-gotten gains derived by ATM Defendants and BofA from their misconduct;

(e) Actual damages in an amount according to proof;

(f) Statutory, punitive, and exemplary damages, as permitted by law;

(g) Pre-judgment interest at the maximum rate permitted by applicable law;

(h) An order on behalf of the general public enjoining BofA from continuing to employ unfair methods of competition and commit unfair and deceptive acts and practices alleged in this complaint and any other acts and practices proven at trial;

(i) An order on behalf of the general public enjoining the ATM Defendants from continuing to employ unfair methods of competition and commit unfair and deceptive acts and practices alleged in this complaint and any other acts and practices proven at trial;

(j) Costs and disbursements assessed by Plaintiffs in connection with this action, including reasonable attorneys' fees pursuant to applicable law;

(k) Such other relief as this Court deems just and proper.

-As to Defendant BofA as it relates to the overcharging of International Transaction Fees:

(l) Declaring BofA's practice of charging International Transaction Fees in excess of 3.00% to be wrongful, unfair, deceptive, and a breach of contract;

(m) Restitution of all relevant International Exchange Fees paid to BofA by Plaintiff and the Classes, as a result of the wrongs alleged herein an amount to be determined at trial;

(n) Disgorgement of the ill-gotten gains derived by BofA from its misconduct;

(o) Actual damages in an amount according to proof;

(p) Statutory, punitive, and exemplary damages, as permitted by law;

(q) Pre-judgment interest at the maximum rate permitted by applicable law;

(r) An order enjoining BofA from continuing to misrepresent its International Transaction Fee policies in its publicly available documents and marketing materials, such as its "Account Agreement" and "Fee Schedule"

(s) Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and

(t) Such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs and all others similarly situated hereby demand trial by jury on all issues in this complaint that are so triable as a matter of right.

Dated: May 31, 2019

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Exhibit 1

Exhibit 1

Deposit Agreement and Disclosures

Effective November 2, 2018

Bank of America

bankofamerica.com

Applies in all states.

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91-11-2000B (11/18)

29507

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Welcome to Bank of America

Thank you for opening and keeping an account with us.

Please read this entire agreement carefully so you understand your rights and obligations for your deposit account and deposit relationship with us and keep it in a convenient place for future reference.

In this agreement, "Bank of America", "Bank", "we", "us" and "our" means Bank of America, N.A. "You" and "Your" means each and every owner of the account and each and every other person with authority to withdraw funds from the account or otherwise operate the account.

Our accounts and services are generally available through all of our channels - in our financial centers, through telephone banking and online. However, some accounts and services may not be available at all times, in all locations, or through all channels.

How to Get Started

After you open your account, please consider these optional services. They can help you manage your account.

- **Debit card** – use your debit card to pay for purchases at merchants that accept debit cards, to make deposits at Bank of America ATMs, and to withdraw cash from ATMs.
- **Direct Deposit** – have your paycheck, retirement benefits, or other source of income deposited electronically into your checking or savings account.
- **Online Banking** – helps you manage and keep better track of your finances. Here are some of the things you can do using Online Banking:
  - Check your account balances and review transaction history.
  - Transfer funds between your accounts or to other Bank of America customers' accounts.
  - Receive your statements and posted checks online, then review or print them at your convenience.
  - Reorder checks and change your address.
- **Online Bill Pay service** – pay your bills electronically.
- **Online Alerts** – provide an electronic notice through email or text message about account activity, such as when a direct deposit posts or when your balance drops below an amount you set.
- **Scheduled Savings Transfers** – helps make saving easier by automatically transferring money from your checking account to your savings account.
- **Keep the Change®** – helps you grow your savings by automatically transferring money from your personal checking to your savings with each eligible debit card purchase.
- **Overdraft Protection Service** from another linked account, such as your savings or credit card account – helps you avoid overdrafts and declined or returned checks and other items by automatically transferring available funds from your linked account to your checking account.

How to Access Your Account

You can access your account and get information about our accounts and services:

- At our **financial centers** and at **Bank of America ATMs**.
- Through our **Online Banking Service** at bankofamerica.com
- By calling **customer service** at the number on your account statement.
- You can locate our nearest financial center or ATM on our website at bankofamerica.com

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The Agreement for Your Account

Binding Contract

This *Deposit Agreement and Disclosures*, the applicable *Schedule of Fees*, the signature card and other account opening documents for your account are part of the binding contract between you and us (this "Agreement") for your deposit account and your deposit relationship with us. They contain the terms of our agreement with you. Please read all of these documents carefully.

This *Deposit Agreement and Disclosures* also summarizes certain laws and regulations that apply to common transactions, provides some disclosures for deposit accounts required by federal law, and establishes terms that cover some transactions or situations that the law either does not cover or allows us to change by this contract. The *Schedule of Fees* lists our accounts and account fees.

When you complete our account opening documents (as an example, you sign our signature card), request an account, or keep your account open, you acknowledge that you have reviewed and understand the terms of this Agreement and you agree to be governed by these terms. You understand that these terms, as we may change or supplement them periodically, are a binding contract between you and us for your deposit account and your deposit relationship.

We give this Agreement to you when we open your account. You may obtain additional copies of this Agreement at a financial center or by calling the number on your statement. Our deposit relationship with you is that of debtor and creditor. This Agreement and the deposit relationship do not create a fiduciary, quasi-fiduciary or special relationship between us regardless of how you title your account, or whether you yourself act in a fiduciary or similar capacity with respect to funds deposited with us. We owe you only a duty of ordinary care. Our internal policies and procedures are solely for our own purposes and do not impose on us a higher standard of care than otherwise would apply by law without such policies or procedures.

Changes to This Agreement

We may change this Agreement at any time. We may add new terms. We may delete or amend existing terms. We may add new accounts and services and discontinue existing accounts or services. We may convert existing accounts and services into new accounts and services.

We ordinarily send you advance notice of an adverse change to this Agreement. However, we may make changes without prior notice unless otherwise required by law. We may, but do not have to, notify you of changes that we make for security reasons or that we believe are either beneficial or not adverse to you.

When we change this Agreement, the then-current version of this Agreement supersedes all prior versions and governs your account.

If you continue to use your account or keep it open, you are deemed to accept and agree to the change and are bound by the change. If you do not agree with a change, you may close your account as provided in this Agreement.

See the *Notices, Statements and Other Communications* section for information about how we provide notice.

Account Closures and Conversions/Changes to Account Settings

You or we may close your checking or savings account at any time without advance notice, except that we may require you to give us seven days advance notice when you intend to close your savings or interest bearing checking account by withdrawing your funds. See *Notice of Withdrawal* in the *Other Terms and Services* section. You or we may close your time deposit account at maturity without advance notice. Bank of America may close your account, convert your account to

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another account type or change your account's overdraft setting at its discretion due to excessive overdrafts.

If an account was closed and then we reopen it, the account is subject to our standard terms and fees for that type of account. Any waiver that applied before the account was closed does not apply when we reopen the account.

If your account reaches a zero balance, or you apply for an account but never deposit funds into it, we may either keep the account open or close the account without notice.

Sometimes after an account is closed, we receive a deposit for credit to the account or a check or other item for payment from the account. If this happens, we may at our option and without any liability to you: either return the deposit, check or other item; or we may reopen the account and accept the deposit, check or other item for you, even if this overdraws your account.

Sometimes after an account which had funds in it is closed, and while we are still holding the funds from the account, we receive a withdrawal request, check or other item for payment from the account. We may refuse the withdrawal request and return the check or other item. We are not liable for any losses or damage that may result from refusing the withdrawal or dishonoring the check or other item, even if we are still holding funds that would cover the withdrawal, check or other item.

When you ask us to close your account, we may continue to pay transactions as we receive them while we process your closure request. When we complete our closure process, we may close your account, even if your account has a balance and transactions you've told us about are still pending.

If your account is overdrawn when closed, you agree to pay immediately all amounts you owe us. If your account had funds in it when closed, we may:

- hold the funds for your pick up or to pay outstanding or expected items or claims;
- deposit the funds in another of your accounts with us; or
- mail the funds to any of you by check at the address in our records for the account.

If your account earned interest before it closed, your funds stop earning interest when you ask us to close your account, even if we continue to hold the funds. As an example, if we mail funds from an interest bearing account to you by check, then your funds do not earn interest, even if the check is returned to us or is not cashed.

This Agreement continues to govern matters related to your account even after your account closes.

Governing Law

This Agreement, and your and our rights and obligations under this Agreement, are governed by and interpreted according to federal law and the law of the state where your account is located. However, your rights and obligations for Remittance Transfers shall be governed by and interpreted as described in the *Funds Transfer Services* section. We ordinarily maintain your account at the financial center where we open your account. However, we may transfer your account to another financial center in the same state or in a different state. If state and federal law are inconsistent, or if state law is preempted by federal law, federal law governs.

Explanation of Some Terms

Definitions

Please keep in mind the following definitions as you review the Agreement.

Annual Percentage Yield (APY) is a percentage rate reflecting the total amount of interest paid on the account, based on the interest rate and frequency of compounding.

Average daily balance for a statement cycle – we take the balance that we determine is in the account for each day in the statement cycle, add those balances together, and then divide that sum by the number of days in the statement cycle.

Bank of America, Bank, we, us and **our** mean Bank of America, N.A.

Financial Center means a branch of Bank of America.

Business days – our business days are Monday through Friday, excluding bank holidays. Hours of the business day for a financial center are available at that financial center.

Collected balance is the ledger balance for the account minus that portion of funds deposited for which we have not received credit based on the availability schedule we apply to the account. We ordinarily apply the availability schedule provided to us by the Federal Reserve Bank to determine the time that we receive credit for deposited funds.

Item includes all orders and instructions for the payment, transfer or withdrawal of funds from an account. As examples, item includes: a check, substitute check, purported substitute check, electronic transaction (including an ACH transaction, ATM withdrawal or transfer, or point of sale transaction), draft, demand draft, remotely created check, remotely created consumer check, image replacement document, indemnified copy, preauthorized draft, preauthorized payment, automatic transfer, telephone-initiated transfer, Online Banking transfer or bill payment instruction, withdrawal slip, in-person transfer or withdrawal, cash ticket, deposit adjustment, or other order of instruction for the payment, transfer, or withdrawal of funds, or an image, digital image or a photocopy of any of the foregoing. *Item* also includes any written document created or authorized in your name that would be a check or draft but for the fact that it has not been signed. *Item* may also include a cash-in ticket and a deposit adjustment. *Item* may also include a check, draft, warrant, or other item deposited to your account, including a deposited item that was returned unpaid.

Minimum daily balance – the lowest balance that we determine is in the account during a statement cycle.

You and **your** means each and every owner of the account and anyone else with the authority to deposit, withdraw, or exercise control over the funds in the account.

Headings and Interpretation

We include section and paragraph headings in this Agreement to help you find terms and provisions. The headings are for convenience or reference only. They do not limit the term or provision.

Unless it would be inconsistent to do so, words and phrases used in this document should be construed so the singular includes the plural and the plural includes the singular.

In some sections we give examples. The examples cover some, but not all, of the situations or items that are covered by the section.

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Information About You and Your Account

Information You Give Us

When you open a deposit account with us, you give us information about yourself and confirm that it is correct. We enter the information into our records. We may rely on that information until you notify us of a change and we have had a reasonable time to act on the new information.

Identification

Federal law, including the USA PATRIOT Act, requires all financial institutions to obtain, verify and record information that identifies each customer who opens an account with that financial institution.

When you apply for an account, we will ask for your legal name, address, date of birth and your Tax Identification Number (TIN). For business accounts, we may require identification information related to a controlling manager and/or equity owners of your business. We may require one or more forms of unexpired photo identification. We may validate the information you provide to us to ensure we have a reasonable assurance of your identity. We may contact you for additional information. If your account is funded before we verify your information, you may not have access to your funds. If we are not able to verify your identity to our satisfaction, we will not open your account or we may close the account if it was previously funded.

Bank of America's Privacy Policy for Consumers

Our privacy policy for consumers is described in our publication, *U.S. Consumer Privacy Notice*. We provide our privacy policy to consumers who open a personal account with us. The privacy policy describes our policy on handling customer information and describes the situations when we may disclose information, including some examples.

You can also review our privacy practices on our website at bankofamerica.com/privacy.

Sharing Information with Affiliates

Accounts Held by Consumers We may share information that we have about you and your accounts among the Bank of America family of companies. Please refer to our publication, *U.S. Consumer Privacy Notice*, for information about the categories of information we may share among the Bank of America family of companies and how you may tell us not to share certain types of information among our family of companies.

Accounts Held by Businesses We may share information about our experiences with you with Bank of America Corporation and its subsidiaries and affiliated companies ("Bank of America Affiliates") and selected third parties. We may also share information that you have provided to us on applications or that we receive from outside sources among the Bank of America Affiliates. However, individuals may tell us not to share information about them from applications or outside sources compiled for purposes of determining eligibility for credit, insurance or other services by either calling us at 1.888.341.5000 or by notifying us at bankofamerica.com/privacy.

Consumer Reports and Other Inquiries

We may make any inquiries that we consider appropriate to help us verify your identity and determine if we should open, maintain, collect or close your account. This may include verification of employment and consumer reports or other reports from account information services and other consumer reporting agencies.

If you ask, we will tell you whether we requested such a report and, if we did request a report, we will tell you the name, address and telephone number of the reporting agency.

Disclosing Information About You and Your Account

This section applies to both business and personal accounts. We may disclose information about your accounts to consumer reporting agencies and to other persons or agencies who, in our judgment, have a legitimate purpose for obtaining information.

For example, subject to any applicable financial privacy laws or other laws or regulations, we may provide information on you and your accounts:

- to consumer reporting agencies, such as Early Warning Services, LLC;
- to anyone who we reasonably believe is conducting a legitimate credit inquiry, including inquiries to verify the existence or condition of an account for a third party such as a lender, merchant or consumer reporting agency;
- in response to any subpoena, summons, court or administrative order, or other legal process which we believe requires our compliance;
- in connection with collection of indebtedness or to report losses incurred by us;
- in compliance with any agreement between us and a professional, regulatory or disciplinary body;
- in connection with potential sales of businesses;
- to service providers who help us meet your needs by assisting us in providing or offering our products or services; and
- to other third parties as is described in our publication *U.S. Consumer Privacy Notice* or as required under applicable law or regulation.

For personal accounts, the terms of our *U.S. Consumer Privacy Notice* governs in the event of a conflict between the terms of this section and the terms of our U.S. Consumer Privacy Notice.

Account Information Services/Consumer Reporting Agencies If we close your account because of your unsatisfactory handling, we generally report to consumer reporting agencies such as Early Warning Services, LLC your name, address, Taxpayer Identification Number (TIN), driver's license number and the date and reason we closed the account. The consumer reporting agency may supply this information to others. This may adversely impact your ability to establish an account at any financial institution for up to five years from the date of the report.

We may report information about your account to credit bureaus. Late payments, missed payments or other defaults on your account may be reflected in your credit report.

Telephone Calls: Calling, Monitoring and Recording

When you give a telephone number directly to us, or place a telephone call to us, you authorize us to place calls to you at that number. You understand that a "telephone number" includes a cell phone number and "calls" include both telephone calls and text messages to or from your phone or cell phone. As examples, we may place calls to you about fraud alerts, deposit holds, and amounts you owe us (collection calls) on your account. When we place calls to you, we may use automatic dialers and artificial, text, or prerecorded messages.

You authorize us to monitor, and to record, telephone conversations and other electronic communications you have with us and with our representatives for reasonable business purposes, including security and quality assurance. We will not remind you that we may be monitoring or recording a call at the outset of the call unless required by law to do so.

You consent and agree in advance to these terms and conditions.

Release of Information

You can obtain information about your account by many methods, including at a financial center, by telephone, by mail and through Online Banking. We believe we have adopted reasonable security measures for each method, but we cannot ensure against unauthorized inquiries or intrusions. You agree that we are not responsible for the release of information to anyone who has gained possession of your ATM card, debit card or other code or access device or who has learned your identifying characteristics such as personal identification number (PIN), account number or social security number, even if you have not authorized them to obtain the information.

Account Ownership

Some General Terms

When you open an account, we may rely on information you give us and we maintain in our records. We determine the type and ownership of the account from this information. When you ask us to make a change to this information or your account, and we agree to the change, the change is not effective until we have had a reasonable time to act on the new information. As an example, if you ask us to change the signers on your account, your requested change is not effective until we have a reasonable time to act on it. If we ask you to give us additional documents or information, and you do not do so promptly, we may close your account.

When we accept a deposit to an account or permit a withdrawal or payment from an account, we may rely upon the form of the account and the terms of this Agreement at the time we process the transaction. We do not have to inquire about the source or ownership of any funds we receive for deposit or about the application of any withdrawal or payment from an account. When we permit a withdrawal or payment from an account at the request of any signer, or the agent of any signer, in accordance with the terms of this Agreement, the withdrawal or payment is a complete release and discharge of the Bank from all claims regarding the withdrawal or payment.

If you instruct us to open an account in the names of two or more people, and we do so, but later determine that one or more of them have not completed our account opening documents or other requirements, you agree to hold us harmless for reliance on your instruction. We may in our discretion for all purposes and circumstances (including determining ownership of the account following the death of any person in whose name the account was opened) either treat the account as being owned by all persons in whose names the account was opened or treat the account as being owned solely by the persons who have signed or completed our account opening documents or other requirements. If we treat the account as owned by all persons in whose names the account was opened, we may permit the non-signing person to withdraw funds or take other action on the account without any liability to you.

We may open an account without regard to whether you are married and without regard to whether the funds on deposit are your community or separate property. We may require you to close the account in order to remove a co-owner, terminate a joint ownership or change a payable on death or trust designation.

Some Basic Terms for Joint Accounts

If more than one person's name appears in the title of an account without a fiduciary, beneficiary or other designation, then the account is a joint account. All persons whose names appear on the account are co-owners of the account, regardless of whose money is deposited in the account.

Each co-owner acts as the agent of each other co-owner. Each co-owner authorizes each other co-owner to operate the account without the consent or approval of any other co-owner. We may act and rely on the instructions of one co-owner without liability to any other co-owner. So as examples, one co-owner may without the consent or approval of the others:

- add additional persons as co-owners;
- deposit funds and withdraw or transfer part or all of the funds in the account;
- endorse for deposit to the joint account on behalf of any other co-owner an item payable to another co-owner;
- instruct us to stop payment on a check or other item that another co-owner wrote on the account;
- obtain an ATM card or a debit card;
- draw upon an overdraft or other line of credit connected to the account;
- obtain information about the account, including transactions conducted by other co-owners;
- pledge the account as security for any debts; and
- close the account.

Each co-owner is jointly and severally liable to us for all fees, charges and other amounts owed to us on, and all costs, losses and liabilities related to, this Agreement or the account. Note that our right of setoff described in the *Right of Setoff* section of this Agreement applies to joint accounts.

All joint accounts are presumed to be joint accounts with the right of survivorship, unless the applicable state law does not permit this presumption or we have agreed with you in writing that the account is owned in another capacity. **Right of survivorship means that when a co-owner dies, the funds in the account belongs to the surviving co-owner(s),** subject to our right to charge the account for any amount the deceased co-owner or a surviving co-owner owes us. The rights of survivorship continue between surviving co-owners and we may pay the funds in the account to any surviving co-owner. The applicable state law may impose requirements that must be met to create a joint account with right of survivorship. You are solely responsible for meeting these requirements.

Some Basic Terms for "Payable on Death" Accounts

For an individual or joint account, you may choose to make your account payable on your death to one or more payable on death ("POD") beneficiaries. You can make your account a POD account by instructing us to list each POD beneficiary on the account and complying with the applicable state law. The applicable state law usually imposes requirements that must be met to create a POD account. As an example, you may have to include certain words or letters in the account title to create a POD account, such as: "payable on death," "POD," "in trust for," "ITF," "as trustee for," "ATF," "transfer on death," "TOD," or "Totten Trust." You are solely responsible for meeting these requirements. We may treat an account which names a POD beneficiary as a POD account. However, if the applicable requirements are not met, we may treat your account as though there is no POD beneficiary.

During your lifetime, a POD account belongs to you. You may close the account, remove or add one or more POD beneficiaries, change the account type or ownership, and withdraw all or part of the funds in the account. When the account owner or last co-owner dies, we may pay any funds remaining in the account to the then surviving (if any) POD beneficiary(ies), subject to our right to charge the account for any amount a deceased owner, co-owner or POD beneficiary owes us. We may distribute the account balance, subject to any bank claims, to such beneficiaries payable to one or all surviving beneficiaries jointly, or payable individually, in equal shares, to each surviving beneficiary. A POD beneficiary does not acquire an interest in the account until after the death of the account owner or the last co-owner. A POD beneficiary may acquire an interest in the account at that time but only if the POD beneficiary is alive.

Some Basic Terms for Business and Other Non-Personal Accounts

If the account owner is a corporation, unincorporated association, limited liability company, limited liability partnership, fiduciary, partnership, sole proprietorship or other entity holding an account in any capacity other than an individual capacity, each person signing the signature card or completing other account opening requirements represents and agrees that they:

- are fully authorized to execute all documents or otherwise complete our requirements in their stated capacity;
- have furnished all documents or other information necessary to demonstrate that authority; and
- will furnish other documents and complete other requirements as we may request from time to time.

We may refuse to recognize any resolution affecting the account that is not on our form or that appears to us to be incomplete or improperly executed.

Transferring Ownership

Your account is for your use only. It is non-transferable and non-negotiable. Ownership of your account is transferable only on our records with our consent.

- You may not grant, transfer or assign any of your rights to your account without our written consent.
- Even if we consent, we may require that you close the account and that the new account owner open a new account in their name.
- We may refuse to acknowledge or accept your attempted pledge or assignment of your account or any interest in it, including a notice of security interest.

Checking and Savings Accounts

Types of Accounts

We offer several different types of checking and savings accounts for personal and business customers.

- The *Personal Schedule of Fees* describes our personal accounts and lists applicable fees.
- The *Business Schedule of Fees* describes our business accounts (other than Commercial accounts) and lists applicable fees. The *Business Schedule of Fees* does not apply to Commercial accounts.

Eligibility for NOW Accounts

NOW accounts are commonly called interest checking accounts. Federal law provides that NOW accounts may only be opened and used by the following customers:

- individuals (including sole proprietors),
- certain nonprofit organizations,
- federal, state or local governmental entities, and
- fiduciaries (such as a bank trust department) where one or more individuals hold the entire beneficial interest in the funds.

If we believe that you are not eligible to own a NOW account, we may either close the account or convert it to another type of account. When we refer in this agreement to checking accounts, the reference includes NOW accounts.

Demand Deposit Accounts

Demand deposit accounts are commonly called checking accounts. All types of customers can open a demand deposit account. Most demand deposit accounts do not earn interest.

We do offer an interest bearing demand deposit account to business customers. Please ask us for details.

When we refer in this agreement to checking accounts, the reference includes demand deposit accounts.

How We Calculate Interest on Interest Bearing Checking and Savings Accounts

If you have an interest bearing checking or savings account, then please note the following.

- Your funds earn a variable rate. Your interest rate and annual percentage yield ("APY") may change. At our discretion, we may change the interest rate for your account at any time without notice or limit.
- We compound and credit interest to your account monthly.
- We use the daily balance method to calculate the interest on your account. The daily rate is 1/365 — or in a leap year we may use 1/366 — of the interest rate.
- For personal checking accounts and personal and business savings accounts, the daily balance method applies a daily periodic rate to the collected balance in the account each day.
- For business checking accounts, the daily balance method applies a daily periodic rate to the collected balance in the account each day (less an amount that we determine applies for reserves applicable generally to transaction accounts under the rules of the Federal Reserve).

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- For Public Service Trust Accounts, the daily balance method applies a daily periodic rate to the collected balance in the account each day (less an amount that we determine is required to offset service charges).
- When you deposit a non-cash item (such as a check), interest begins to accrue on the non-cash item no later than the business day on which we receive credit for the non-cash item.

Some checking and savings accounts do not earn interest. The checking and savings accounts that earn interest are described in the *Schedule of Fees* as interest bearing accounts. Other checking and savings accounts do not earn interest. We pay interest only in whole cents.

We set interest rates at our discretion. We may set the interest rate based on a specific account, customer, customer relationship, or based on the location or channel through which we open the account. This means that the interest rate and APY we offer on the same type of account may be higher or lower based on these factors. For example, an account opened through our Online Banking channel may earn a different rate (either higher or lower) than the same type of account opened in a financial center or by mail.

We may also offer interest rate bonuses and other special promotions based on these factors. Interest rate bonuses and other special promotional offers may not apply to all accounts, customers, customer relationships, locations or methods of account opening.

When we consider your customer relationship with us, that may include whether you have other accounts with us, your balances with us in your other accounts and how you use services that we offer with accounts.

You may obtain current interest rates for your account by calling us at the number for customer service on your statement or by asking a financial center associate.

Balance Tiers The daily interest rate we pay on some accounts depends on the tier into which the balance in the account falls. A tier is a range of account balances. If you have one of these accounts, your balance earns the interest rate and APY in effect that day for the balance tier associated with your end-of-day balance. We may set the rate for each tier in any amount. The interest rate for one tier may be the same rate, or a higher or lower rate, than the rate for a lower tier. We may change the tiers that apply to an account at any time without notice. Different tiers apply to different types of accounts.

Combined Balance Service

With some checking accounts you can designate your checking account as your primary checking account and then link many of your other accounts to it for pricing. When you link another account for pricing, you can use the balances in the other account to help you meet the combined balance required to avoid the monthly maintenance fee on your primary checking account. The *Schedule of Fees* lists the required combined balance for each checking account to which the service applies and the types of accounts that can be linked for pricing.

You must tell us what other accounts you want us to link to your checking account for pricing. We do not link your other accounts for pricing unless you tell us to do so. To determine what accounts are linked for pricing, please call us.

When an existing account is closed and a new account is opened to replace the existing account, we do not automatically link the new account to your checking account for pricing, even if the existing account was linked. You must tell us to link the new account for pricing.

When we calculate a balance or combined balance, we may ignore accrued interest, funds subject to a hold of any type, and each loan or line of credit that is in default. For each linked account, the period of time that we use as the basis for calculating the balance, and the day that we use to determine the balance, in the linked account may be different from the statement cycle for the primary checking account.

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You still need to meet the balance requirements, if applicable, in each linked account to avoid the monthly maintenance fees on those accounts.

You understand that the statement for your primary checking account may include information about each linked account, including the account name, number and balance. We may make this information available to each owner and signer of any linked account. We may also send you a single combined statement that reports activity for your checking account and each deposit account linked to that account, instead of separate statements for each account. See *Combined Statements* in the *Statements and Notices* section.

Limits on Linking Accounts

Some restrictions apply to what accounts can be linked to checking for pricing, including the following. You may only link an account to one checking account at a time. At least one of the owners of the linked account must also be an owner of the checking account. You may not link personal and business accounts together. You may not link a loan or line of credit that is in default.

We may in our discretion place other restrictions on what accounts can be linked.

Limits on Withdrawals and Transfers from Savings Accounts

This Agreement and federal law impose limits on the number of certain types of withdrawals and transfers you can make each month from a savings account. Please note that these limits do not apply to withdrawals and transfers you make at one of our financial centers, by mail or at an ATM.

You can make no more than a total of six transactions each monthly statement cycle (or each month if you have a quarterly statement cycle) from among the following:

- Preauthorized transfers from your savings account (including transfers for overdraft protection).
- Telephone transfers or other electronic transmissions from your savings account.
- Online Banking and Mobile Banking transfers or bill payment transfers from your savings account.
- Transfers by check, draft or debit card, if allowed on your savings account.

We count a transaction on the date that we post it to your savings account. This date may be different from the date you authorize, transfer or write the transaction, which means a transaction made during one statement cycle may not be counted until a later statement cycle.

If you exceed the transaction limits on more than an occasional basis, we may revoke your privileges on that account or we may convert your savings account to another type of account, such as a checking account. Your funds may no longer earn interest after we convert your account.

When you use our Online Banking bill payment service, we recommend that you do not use a savings account as your bill payment account because of these limits on transfers.

Note: Even if you make no more than 6 transactions, a fee may still apply to some withdrawals or transfers. Please see the *Schedule of Fees* for your account.

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Time Deposit or CD Account

When you open a time deposit account, you agree to leave your funds in the account until the maturity date of the account. We often refer to a time deposit account as a "CD" or a "Certificate of Deposit", even though we do not issue a "certificate".

This Agreement applies to CDs you open under your Individual Retirement Account (IRA) or Coverdell Education Savings Account (CESA) plans. Please see the *Traditional/Roth Individual Retirement Custodial Accounts and Disclosure Statements* and the *Coverdell Education Savings Custodial Account and Disclosure Statement* for additional terms of these plans.

A time deposit account is neither transferable nor negotiable.

Types of CDs

We offer several different types of CDs for personal and business customers.

The *Personal Schedule of Fees* describes our personal CDs.

The *Business Schedule of Fees* describes our business CDs.

How we Calculate Interest on CDs

Your funds earn interest during the term of the time deposit account. We calculate interest as follows:

- Time deposits earn interest at a fixed rate except for Opt-Up℠ CDs and Variable Rate IRAs. Fixed rate means that the interest rate that we apply to your account on the day we open it will not change for the term of the account.
- For an Opt-Up CD, your interest rate and annual percentage yield may change. The interest rate that we apply to it on the day that we open your Opt-Up CD remains fixed throughout the term of your Opt-Up CD unless you exercise your one time option to reset the interest rate. This reset option is described in the *Schedule of Fees*.
- For a Variable Rate IRA, your funds earn a variable rate. Your interest rate and annual percentage yield may change. At our discretion, we may change the interest rate for your account at any time without notice or limit.
- For terms of 27 days or less, we credit interest to your account at maturity. For terms of 28 days or more, we compound interest monthly and we credit interest to your account monthly and at maturity or disburse it to you according to the interest disbursement option you select.
- We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the ledger balance that we determine is in the account each day. The daily rate is 1/365 — or in a leap year we may use 1/366 — of the interest rate.
- When you deposit a non-cash item (such as a check), interest begins to accrue on the non-cash item on the business day the deposit is received. Deposits you give us on a weekend or bank holiday are treated as received the next business day.
- The annual percentage yield for your account assumes that interest will remain on deposit until maturity. A withdrawal will reduce earnings.

We generally set interest rates for new time deposit accounts based on the type of CD, the amount you deposit, and the term you select. We set interest rates at our discretion. Rates for new accounts may change daily. We pay interest only in whole cents.

We may also set interest rates based on a specific account, customer, customer relationship or based on the location or channel through which we open the account. This means that the

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interest rate and APY we offer on the same type of CD may be higher or lower based on these factors. For example, a CD opened through our Online Banking channel, may earn a different rate (either higher or lower) than the same type of CD opened in a financial center or by mail. We may also offer interest rate bonuses and other special promotions based on these factors. Interest rate bonuses and other special promotional offers may not apply to all accounts, customers, customer relationships, locations or methods of account opening.

When we consider your customer relationship with us, that may include whether you have other accounts with us, your balances with us in your other accounts and how you use services that we offer with accounts.

You may obtain current rates by calling us at the number for customer service on your statement or by asking a financial center associate.

Disbursing Interest

You may choose to have us credit your interest to your account. With this option, we reinvest the interest in your account monthly and at maturity.

Alternatively, you may have us regularly disburse the interest from your account by having us credit the interest to a Bank of America checking or savings account or by having us mail a check for the interest.

Depending on the term of your account, disbursement options include monthly, quarterly, semi-annually, annually on the anniversary date, and at maturity.

CDs That Automatically Renew

Unless your account information states that your time deposit does not automatically renew, we automatically renew your account by reinvesting your funds. For business CDs, you must notify us of any change in controlling manager and/or equity ownership of your business. We reinvest both principal and interest, unless you elected to have your interest disbursed. (See *Disbursing Interest* in this chapter.)

When we automatically renew your CD, the term for the reinvested CD is the same length as the previous term of your account unless we notify you that we are changing the term of the CD. For time deposits with a fixed interest rate, the interest rate and APY for any renewal term is based on the rate we offer on the first day of the new term for the type of CD, amount and term of the reinvested deposit. Unless specifically stated otherwise, any bonus or special promotion we are offering will not apply to automatically renewing accounts.

If at any maturity date we no longer offer time deposit accounts of the same term and type, we may reinvest your funds in a time deposit that we believe offers similar features.

CDs That Do Not Automatically Renew

Some time deposit accounts do not automatically renew. If your account information states that your time deposit does not automatically renew, then your account does not earn interest after its maturity date.

Grace Period

The grace period begins on the first day after the maturity date. The grace period is one calendar day for terms of seven through 27 days and seven calendar days for terms of 28 days or more. You may make a deposit or withdrawal, or change the length of the term, once during the grace period and, if you take one of these actions, the grace period ends on that day. If the last day of the grace period is a non-business day (a weekend or bank holiday), then the grace period ends on the last business day before that non-business day. We may pay interest during the grace period based on the rate we offer on the first day of the new term for the type of CD, amount, and term of the deposit.

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Deposits to a CD

You may make an additional deposit to your account during its grace period. Otherwise, for all CDs except Variable Rate IRAs you may not make deposits during the term of the CD.

You may not make a deposit to a time deposit account by wire or automated clearinghouse (ACH) transfer.

Early Withdrawals

You have contracted to keep your funds on deposit for the stated term. You may not withdraw all or part of a time deposit account except as provided in this Agreement.

At our discretion, we may allow you to withdraw all or part of your funds at times other than the grace period. We generally withdraw interest before principal. Each time we permit you to make an early withdrawal of principal, we may charge you an early withdrawal penalty. If your account has not earned enough interest to cover an early withdrawal penalty, we deduct any interest first and take the remainder of the penalty from your principal.

We calculate all early withdrawal penalties on the principal amount withdrawn at the interest rate in effect on the account on the withdrawal date. The early withdrawal penalty is:

- For CDs with terms of less than 90 days, the greater of all interest earned on the amount withdrawn or an amount equal to seven days interest on the amount withdrawn;
- For CDs with terms of 90 days up to 12 months, the penalty is an amount equal to 90 days interest on the amount withdrawn;
- For CDs with terms of 12 months up to 60 months, the penalty is an amount equal to 180 days interest on the amount withdrawn; and
- For CDs with terms of 60 months or longer, the penalty is an amount equal to 365 days interest on the amount withdrawn.

Please note that the term of a CD is the specified period of time you agreed to leave your funds on deposit – not the time remaining until maturity of your CD.

We add to the early withdrawal penalty the amount of any cash bonuses we paid you when you opened or reinvested the account.

If we are required to pay an amount from your CD (e.g. levy or garnishment), we may charge you an early withdrawal penalty, calculated on the amount withdrawn from the CD.

An early withdrawal from an IRA may also be subject to additional federal tax (and possibly additional state and local taxes) if you are under age 59 1/2.

Closing or Redeeming a CD

We may close or redeem an automatically renewable account at the end of the term. You may close or redeem your account during its grace period.

Information About Fees and Charging Your Account

Fees

You agree to pay for our services in accordance with the fees that apply to your account and your deposit relationship with us.

Account Fees Your account is subject to the fees described in the *Schedule of Fees* that applies to your account.

- The *Personal Schedule of Fees* lists account fees that apply to our personal deposit accounts.
- The *Business Schedule of Fees* lists account fees that apply to our business deposit accounts except for Commercial accounts (the *Business Schedule of Fees* does not apply to Commercial accounts).
- The schedule that applies to your account is part of the binding contract between you and us.

The fees for many of our products and services may vary from state to state or between regions within a state. We charge account fees to you based on the state or region in which the financial center where we maintain your account is located. Account fees are not based on your state of residence or the state where you use or purchase the service. Your account fees and terms may differ from those of other customers with the same type of account, based on our assessment of your overall relationship with us.

Fees for Other Services In addition to checking, savings and CD accounts we also offer many other services, such as wire transfers, cashier's checks and bond redemption. You can get current information about these services and the fees that apply to them at a financial center or by calling us at the customer service number shown on your account statement. We may occasionally list fees for some of these services in the *Schedule of Fees*. Fees for these services may vary from state to state. The fees you pay for these services are those charged by us in the state where we sell you the service. We may change these fees at any time without notice.

How We Set Fees We set our fees based on many factors, including the value we offer, our competitive position, deterrence of misuse of an account by our customers, consideration of profit and the safety and soundness of the Bank. We may also consider costs in setting fees, but we do not set our fees based only or primarily on the direct or overall costs and expenses associated with providing the particular account or service involved.

Calculating Balances When we calculate an account balance or combined balance to determine whether a fee applies to your account, we may use the balance that we determine is in each account. We may ignore accrued interest and funds subject to a hold of any type. For a balance in an account linked to a checking account, the period of time that we use as the basis for calculating the balance, and the day that we use to determine the balance, in the linked account may be different from the statement cycle for the primary checking account. If a loan or line of credit is linked, we may ignore each loan or line of credit that we determine is in default.

Charging an Account

We may deduct fees, overdrafts and other amounts you owe us under this Agreement from your accounts with us or our affiliates, except that this provision does not apply to any consumer credit covered by the federal Truth in Lending law. We may make these deductions at any time without prior notice to you or request from you. If there are not enough funds in your account to cover the amounts you owe us, we may overdraw your account, without being liable to you. You agree to pay immediately all fees, overdrafts and other amounts you owe us.

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We may use deposits you or others make to your account (including deposits of payroll and government benefits) to pay fees, overdrafts and other amounts you owe us.

Some government payments (such as Social Security, Supplemental Security Income, Veterans and other federal or state benefits) may be protected from attachment, levy, garnishment or other legal process under federal or state law. If such protections would otherwise apply to deductions we make for amounts you owe us, to the extent that you may do so by contract, you waive these protections and agree that we may use these funds to pay fees, overdrafts and other amounts you owe us under this Agreement.

Please see the *Right to Setoff* section of the Agreement for more information.

Insufficient Funds – Overdrafts and Returned Items

You can avoid fees for overdrafts and declined or returned items by making sure that your account always contains sufficient available funds to cover all of your transactions. We offer services that you can use to help you manage your account and help you avoid overdrafts, such as our Online Banking service and Online Alerts. Please see *How to Get Started* section in the *Introduction*.

We recommend that you enroll in one of the optional Overdraft Protection plans described below. These plans can help you avoid overdrafts and declined or returned items. While fees apply when you use an Overdraft Protection plan, the fees under the plan may be less expensive than the fees for overdrafts and declined or returned items.

Overdrafts and Declined or Returned Items

When we determine that you do not have enough available funds in your account to cover a check or other item, then we consider the check or other item an insufficient funds item. If you have enrolled in one of the optional Overdraft Protection plans and have enough available funds in the linked account under the Overdraft Protection plan, we transfer funds to cover the item. Otherwise, without notice to you, we either authorize or pay the insufficient funds item and overdraw your account (an overdraft item) or we decline or return the insufficient funds item without payment (a returned item).

We pay overdrafts at our discretion, which means we do not guarantee that we will always, or ever, authorize and pay them. If we overdraw your account to pay items on one or more occasions, we are not obligated to continue paying future insufficient funds items. We may pay all, some, or none of your overdrafts, without notice to you. If we do not authorize and pay an overdraft, then we decline or return the transaction unpaid.

The *Schedule of Fees* for your account explains when we charge you fees for overdrafts and for declined or returned items and the dollar amount of the fees. Please review the *Schedule of Fees* for your account carefully.

If we overdraw your account, you agree to repay us immediately, without notice or demand from us. We ordinarily use deposits you or others make to your account to pay overdrafts, fees and other amounts you owe us.

Impact of Holds

Sometimes funds in your account are not available to cover your checks and other items. When we determine that funds in your account are subject to a hold, dispute, or legal process, then these funds are not available to cover your checks and other items. We usually make this determination once at the end of the day when we process items. As examples of holds, holds include deposit holds, holds related to cash withdrawals, and authorization holds we place on the account for debit card transactions.

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Debit card transactions and related authorization holds may impact your available balance. It is important to know that your available funds may change between the time you authorize a transaction and when the transaction is paid. When you use your debit card you authorize the merchant with whom you use your card or to whom you previously provided your information to ask Bank of America to approve the transaction you want to make. At this time, in order for the transaction to go through, we must promise the merchant to pay for the purchase upon the merchant's request.

A hold immediately reduces the amount of available funds in your account by the amount of the authorization request. If, while the hold is in place, you do not have enough available funds in your account to cover other transactions you may have conducted (such as a check you previously wrote), those items may overdraw your account or be returned unpaid. This may result in an overdraft fee on the debit card transaction if this happens. In most cases, the hold expires when the transaction is paid.

The amount being held is not applied to the debit card transaction or to any specific transaction. If the hold expires and the transaction has not been paid, the amount being held is returned to your available funds. After the hold expires, we determine whether you have sufficient funds available to pay the debit card transaction. If you do not have sufficient funds, the debit transaction will cause you to overdraw and, if it is a recurring transaction, may incur an overdraft fee. This can occur even if your account did have sufficient available funds when the merchant requested authorization.

Your debit card transaction is paid when the merchant presents it to Bank of America for payment – that is, when the merchant asks us to transfer the funds from your account to the merchant. It is important to note that authorization and payment of debit card transactions do not occur simultaneously – there can be days between.

If other account activity has caused the funds available in your account to drop below zero before the debit card transaction is paid, you may no longer have sufficient funds to pay the merchant. If that occurs the debit card transaction will overdraw your account because we must honor our promise to pay the merchant. You may incur an overdraft fee when this happens.

Here is an example of how that may happen: On Monday we authorize a debit card transaction because you have enough available funds at the time. A hold is then placed on your funds until the merchant presents the transaction for payment. On Tuesday we process and post another transaction (such as a check you wrote) that reduces your available funds below zero. If the merchant presents the original debit card transaction for payment on Wednesday, and your available funds are now below the amount needed to pay the transaction, the debit card transaction will overdraw your account and you may incur an overdraft fee.

We may also treat as an insufficient funds item each fee that creates an overdraft and each deposited item returned to us unpaid that creates an overdraft.

For some business accounts, when your account is overdrawn, we also charge you interest on the overdraft amount. Please see the *Schedule of Fees* for your account.

What are "items"? Items include all orders and instructions for the payment, transfer, or withdrawal of funds from your account. As examples, item includes a check, draft, image, substitute check, everyday non-recurring debit card transaction, recurring debit card transaction, ACH transaction, ATM transaction, preauthorized payment, automatic transfer, telephone-initiated transfer, Online Banking transfer or bill payment instruction, withdrawal slip, and in-person payment, transfer or withdrawal instruction. For more examples, please review the definition of items in the *Explanation of Some Terms* section.

What are everyday non-recurring debit card transactions and what are recurring debit card transactions? Everyday non-recurring debit card transactions are usually purchases made with your debit card or debit card number on a one-time or day-to-day basis. As examples, you use your debit card for purchases of groceries, gas, or coffee in the morning. Recurring debit card transactions

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are usually transactions that you set up to occur automatically, such as automatic bill payments. As examples, you give merchants your debit card number to use for rent, mortgage, car, or utility payments. We rely on the merchant that processes the transaction to determine if it is a recurring transaction or an everyday non-recurring transaction.

Personal Accounts - Overdraft Practices and Settings

We automatically apply our standard overdraft practices to personal accounts. We refer to this as our Standard Overdraft Setting. We also offer an optional Decline All Overdraft Setting.

With our Standard Overdraft Setting, we do not authorize overdrafts for everyday non-recurring debit card transactions and ATM transactions. This means that we decline everyday non-recurring debit card transactions and ATM transactions when we determine that at the time of the transaction you may not have enough available funds in your account (or in any applicable Overdraft Protection plan) to cover the transaction. There is an exception for some ATM withdrawals. We may occasionally give you the opportunity at our ATMs to agree to our overdraft practices for a specific ATM withdrawal and, if you agree, we authorize and pay that ATM withdrawal. Please note that overdraft fees can apply to these withdrawals. We tell you at our ATM when this is available. With this overdraft setting, we may authorize and pay overdrafts for other types of transactions. Other types of transactions include checks and other transactions made using your checking account number, recurring debit card transactions, ACH transactions, preauthorized payments, and automatic and online bill payments. For more examples of other transactions, please review the definition of items.

Optional Decline All Overdraft Setting. This is an optional overdraft setting that you can ask us to apply to your account. With the Decline All Overdraft Setting we decline everyday non-recurring debit card transactions and ATM transactions when we determine that at the time of the transaction you may not have enough available funds in your account (or in any applicable Overdraft Protection plan) to cover the transaction. In addition we do not authorize or pay any transaction, including recurring debit card transactions, checks and ACH transactions unless we determine that at the time of the transaction you appear to have enough available funds in your account (or in any applicable Overdraft Protection plan) to cover the transaction. This means that if you ask us to apply the Decline All Overdraft Setting to your account, you are telling us to decline or return these transactions unpaid. Please note that returned item fees can apply to declined or returned transactions. You may also incur fees from third parties when these transactions are declined or returned.

We may also apply the Decline All Overdraft Setting to accounts at our discretion and to accounts with excessive overdrafts.

With either overdraft setting, your account might still become overdrawn. Please see the *Impact of Holds* section for an example of how this could occur.

With either overdraft setting, you may still incur fees for overdrafts and declined or returned items. Please review the *Schedule of Fees* for your account carefully.

Business Accounts - Overdraft Practices and Settings

We automatically apply our standard business overdraft setting to business accounts. With our standard business overdraft setting, we may occasionally authorize and pay overdrafts for all types of transactions. For some business accounts, we offer an optional Decline All Overdraft Setting that you can ask us to apply to your account. With the Decline All Overdraft Setting, we decline everyday non-recurring debit card transactions and ATM transactions when we determine that at the time of the transaction you may not have enough available funds in your account (or in any applicable Overdraft Protection plan) to cover the transaction. In addition we do not authorize or pay any transaction, including recurring debit card transactions, checks and ACH transactions,

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unless we determine that at the time the transaction is presented to us you appear to have enough available funds in your account (or in any applicable Overdraft Protection plan) to cover the transaction. This means that if you ask us to apply the Decline All Overdraft Setting to your account, you are telling us to decline or return these transactions unpaid. Please note that returned item fees can apply to declined or returned transactions. You may also incur fees from third parties when these transactions are declined or returned.

We may also apply the Decline All Overdraft Setting to accounts at our discretion and to accounts with excessive overdrafts.

With either overdraft setting, your account might still become overdrawn. Please see the *Impact of Holds* section for an example of how this could occur.

With either overdraft setting, you may still incur overdrafts and fees for overdrafts and declined or returned items. Please review the *Business Schedule of Fees* for your account carefully.

Posting Orders

We determine the order in which we process and post deposits and other credits and checks and other items to your account. We may pay or authorize some items, and decline or return others, in any order we deem appropriate. When you do not have enough available funds to cover all of the items presented that day, some processing and posting orders can result in more insufficient funds items and more overdraft and returned item fees than other orders. We may choose our processing and posting orders regardless of whether additional fees result.

Please see the *Processing and Posting Orders* section for more information.

Occurrences

An "occurrence" is a day during which your account has at least one overdraft item or returned item. If we transfer your account to another financial center or convert it to a different type of account, your record of overdraft items and returned items continues to apply.

Overdraft Protection Plans

We recommend that you enroll in one of the optional Overdraft Protection plans described below to help protect your account from overdrafts and declined or returned items. You can enroll most checking accounts and money market savings accounts in these plans. Please ask us whether your account is eligible. The fees under these plans may be less expensive than the fees for overdrafts and returned items.

The *Schedule of Fees* for your account explains the fees and other charges that apply to Overdraft Protection plans. Please review the *Schedule of Fees* for your account carefully.

Please note the following. Some of these Overdraft Protection plans are not available in all states. If the account you link for overdraft protection is opened in a different state than your primary checking account, there may be limitations on the ability to transfer funds the same day. Only one plan can be linked to an account at a time. Some accounts are not eligible for these plans. Under some plans we make transfers in a minimum amount so we might not make a transfer if you do not have at least the minimum transfer amount available under the plan. To have overdraft protection, at least one of the owner(s) of the account must be an owner of the other account. Certain other restrictions apply.

Overdraft Protection from Another Deposit Account This plan links your account to another Bank of America deposit account for overdraft protection. The other deposit account can be a second checking account or a savings account.

When you do not have enough available funds in your account to cover an item, we may automatically transfer funds from the available balance in your other deposit account to your

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account. We generally charge an overdraft protection transfer fee for each transfer. Funds you deposit into your other deposit account may not be available immediately for overdraft protection transfers. If you use your savings account for this service, each transfer counts as one of the six limited transactions you are allowed each month from your savings account. We cancel this Overdraft Protection plan if your account or the other deposit account is closed.

Please see the *Schedule of Fees* for your account for more information about overdraft protection from another deposit account.

Overdraft Protection from Your Credit Card This plan links an eligible Bank of America credit card to your account for overdraft protection.

When you do not have enough available funds in your account to cover an item, we may automatically advance available funds from your linked credit card account and transfer the funds to your account. An advance is made under, and is subject to, the terms and conditions described in the applicable credit card agreement. We ordinarily do not make an advance if you are in default under your credit card agreement or if the advance would cause you to exceed the amount of credit available for that type of transaction. As examples, we may decide not to advance funds from your credit card account if you fail to make a credit card payment by its due date or if you exceed any credit card limit on your credit card account. The funds advanced are subject to fees and finance charges under your credit card agreement. For some business accounts, we may also charge an additional overdraft protection transfer fee to your account for each transfer.

Please see your credit card agreement for more information about overdraft protection from your credit card account.

Overdraft Protection from Your Line of Credit This plan links an eligible Bank of America line of credit to your account for overdraft protection.

When you do not have enough available funds in your account to cover a check or other item, we may automatically advance funds from your linked line of credit and transfer the funds to your account. The advance is made under, and is subject to, the terms and conditions described in the line of credit agreement. We ordinarily make the advance as long as you are not in default under the line of credit agreement and as long as the advance does not cause you to exceed the amount of your available credit on your line of credit. The funds advanced are subject to fees and finance charges under the line of credit agreement. We may also charge an additional overdraft protection transfer fee to your account for each transfer.

Please see your line of credit agreement for more information about overdraft protection from your line of credit.

Processing and Posting Orders

Processing Transactions and Posting Orders

Posting transactions to your account impacts your account balance. Posting a credit increases your balance. Posting a debit or hold reduces your balance. Credits include teller deposits, direct deposits and credits we make. Holds include deposit holds, debit card authorizations, and holds related to cash withdrawals and electronic transfers. Debits include withdrawals, transfers, payments, checks, one-time and recurring debit card transactions, and fees.

We use automated systems to process transactions and then to post transactions to accounts. When we process multiple transactions for your account on the same day, you agree that we may in our discretion determine our posting orders for the transactions and that we may credit, authorize, accept, pay, decline or return credits, debits and holds in any order at our option.

Posting Orders

This section summarizes how we generally post some common transactions to your account.

We group the different types of transactions into categories. We use several different categories for holds, credits, and debits. Most categories include more than one transaction type.

After the end of the business day, our automated systems assign each transaction received for that day to a category. We generally post all transactions within a category, using the posting order or orders that apply to that category, before we post any transactions assigned to the next category.

We start with the balance in your account at the beginning of the business day, subtract holds from your balance, and make any adjustments from prior days. Next, we generally add credits to your balance and then subtract debits from your balance. Some, but not all, of our categories are shown below. For each debit category shown below, we list some common types of debits that we assign to the category and summarize how we generally post them within the category.

- We add deposits and other credits to your balance.
- Then, we subtract from your balance in date and time order the types of debits listed in this paragraph, when our systems receive date and time information. If our systems do not receive date and time information, then we subtract the remaining debits in this category from your balance in order from the highest to lowest dollar amount.

  Common debits in this category include:

  - one-time and recurring debit card transactions;
  - withdrawals made at our tellers and ATMs;
  - one-time transfers made at ATMs, through our tellers, by telephone, and through Online Banking and Mobile Banking;
  - checks you wrote that are cashed at our tellers; and
  - wire transfers.
- Then, for other checks you wrote, we subtract from your balance checks with check numbers sequentially in check number order when our systems can read the check number. Next, checks without a check number that our systems can read are subtracted in order from highest to lowest dollar amount.

  As an example, on the same business day we receive five checks that you wrote and were not cashed at a teller. Our systems can read three of the check numbers, which are #105, #112, and #115. The other two checks do not have check numbers that our systems can read. We subtract check #105 first, then #112, and then #115. Then, we subtract the two remaining checks in order from the highest to lowest dollar amount.

- Then, we subtract from your balance many other types of electronic debits in order from the highest to lowest dollar amount. These debits include: scheduled transfers, preauthorized or automatic payments that use your deposit account number (generally referred to as automated clearing house (ACH) debits), and Online Banking and Mobile Banking bill payments.
- Then, we subtract from your balance most fees (such as monthly maintenance fees, overdraft item fees, returned item fees, and ATM fees) in order from highest to lowest dollar amount. Some fees may show as "processing" until the next day.

Changing Posting Orders

You agree that we may determine in our discretion the orders in which we post transactions to your account.

You agree that we may determine in our discretion the categories, the transactions within a category, the order among categories, and the posting orders within a category. We sometimes add or delete categories, change posting orders within categories and move transaction types among categories. You agree that we may in our discretion make these changes at any time without notice to you.

Posting Orders Determined at End of Day

We receive credits, debits and holds throughout the day. Regardless of when during the day we receive transactions for your account, you agree that we may treat them as if we received all transactions at the same time at the end of the business day.

During the day, we show some transactions as processing. As an example, we show some transactions as processing on the Account Details screen in Online Banking. Please note that transactions shown as processing have not been posted yet. The posting order for these transactions is determined at the end of the day, with the other transactions we receive for that day.

You should note that often we do not receive debits on the same day that you conduct them. As an example, when you use your debit card to pay for a purchase at a merchant and sign for the transaction, we usually receive an authorization request from the merchant the same day, but we might not receive the final debit card transaction for payment and posting until several days later.

We generally post credits and debits to your account, and report them on your statement, in a different order than the order in which you conduct them or we receive them.

Overdraft Fees

We generally determine at the time we post a debit to your account whether it creates an overdraft and whether an overdraft or returned item fee applies. You should note that sometimes we authorize a transaction at a time when you have enough available funds to cover it, but because other transactions post before it and reduce your balance, the transaction creates an overdraft when we post it to your account. You can avoid fees for overdrafts and returned items by making sure that your account always contains enough available funds to cover all of your transactions. When your account balance includes some funds that are subject to a hold, dispute or legal process, you should note that those funds are not available to cover your transactions.

We offer services to help you manage and keep track of your finances, such as Online Banking and Online Alerts. Please see "How to Get Started" at the beginning of this agreement.

Our posting orders can impact the number of overdraft fees we charge you when you do not have enough available funds to cover all of your transactions. When several debits arrive the same business day for payment from your account and you do not have enough available funds in your account to cover all of the debits we receive for that day, you understand that some posting orders can result in more overdrafts, and more fees for overdraft items and returned items, than if we had used other posting orders. You agree that we may in our discretion choose our posting orders, and also change them from time to time, regardless of whether additional fees may result.

When your account balance includes some funds that are not available at the time that we post a debit, and you do not have enough available funds in your account to cover the debit, the debit results in an overdraft and we generally charge you an overdraft item fee or returned item fee for the debit. You should note that we do not show holds, or distinguish between available and unavailable funds in your account balance, on your statement so when you review your statement later, it might appear that you had enough available funds in your account to cover a debit for which we charged you a fee.

Certain Transactions Made After Business Day Ends

During processing, we generally include in your account balance some transactions that you make after the business day cut-off, but before the end of the calendar day. These transactions are described below. This can impact fees that apply to your account. The credits can help you avoid overdrafts, returned items, and related fees. However, the debits can cause you to incur overdrafts, returned items, and related fees. You should note that we show these transactions on your statement as posting to your account on our next business day.

Credits. We generally add to your account balance the following credits, when the transaction occurs after the cutoff time for the business day, but during the same calendar day:

- Cash deposited at one of our ATMs or financial centers, and
- Transfers to your account from another deposit account with us made at one of our ATMs or financial centers, through Online Banking, Mobile Banking, or by calling customer service.

Debits. We generally subtract from your account balance the following debits, when the transaction occurs after the cutoff time for the business day, but during the same calendar day:

- Cash withdrawals made at one of our ATMs or financial centers, and
- Transfers from your account made at one of our ATMs or financial centers, through Online Banking, Mobile Banking, or by calling customer service.

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Processing Deposits and Cashed Items

We may forward deposits, cashed items and other transaction requests for an account to one of our processing centers. We may use the date that our processing center receives the transaction as the effective date of the transaction.

Cashing Items or Accepting Items for Deposit

We may accept, accept for collection only, refuse, or return all or part of any deposit. If we accept checks or other items for deposit to your account or cash them, you are responsible for the checks and other items if there is a subsequent problem with them.

- If we cash a check or other item for you or credit it to your account and it is not paid for any reason, we may charge your account for the amount of the check or other item, even if this causes your account to become overdrawn.
- We may accept a check or other item for deposit to your account from anyone. We do not have to question the authority of the person making the deposit.
- If your account is overdrawn, we may use the deposit to pay the overdraft and any fees you owe us.
- We may adjust your account for any deposit errors, even if you have already withdrawn all or part of the deposit, though we reserve the right not to do so in every case.
- We may refuse to accept for deposit to your account items payable to another person.
- In receiving checks or other items for deposit or collection, we act only as your collecting agent and assume no responsibility beyond the exercise of ordinary care. We are not responsible for errors and delays made by others in the collection process.
- We may assess a charge for processing cash in a deposit.
- If you give us cash that we later determine to be counterfeit, we may charge your account for the amount we determine to be counterfeit.
- You will not knowingly deposit items into your account that do not have either a true original signature of the person on whose account it is drawn or an authorized mechanical reproduction of that person's signature.
- We may require ID or impose other conditions before accepting a deposit.
- An electronically created item (ECI) is an electronic image that has all the attributes of an electronic check but is not originally derived from a paper check. You agree not to deposit an ECI. You warrant that any item you deposit–including by means of mobile banking–has been created from a paper check, was authorized by the account holder, and will not be presented more than once. If you deposit or create for deposit an ECI, you agree to indemnify the Bank for any liability or loss resulting from a breach of any of these warranties and to fully reimburse the Bank for all losses incurred, including any loss due to the item not being derived from paper.

Deposit Slips You should always use our personalized deposit slips with your preprinted name and account number. If you use a blank deposit slip from one of our financial centers, rather than your personalized deposit slip, we are not liable to you for errors that may result from your or our hand encoding the account information.

Checks, Cashier's Checks, and Similar Items We cannot generally verify that checks, money orders, cashier's checks or similar items are authentic and valid at the time you ask us to cash them or accept them for deposit. If we cash, or accept for deposit, a check, money order, cashier's check or similar item and we later learn that the item is fraudulent, counterfeit or invalid for some other reason, we may charge your account for the amount of the item. This may occur even if we previously made the funds available to you, or this causes your account to become overdrawn.

Foreign Items You should be especially cautious about accepting items drawn on banks located outside of the United States. See *Foreign Items and Foreign Currency*.

Checks Lost in the Collection Process

When we cash a check for you or accept a check for deposit to your account, we are acting as your agent in collecting the check. We are not responsible if the check is lost or delayed in the collection process. We may charge your account for the amount of the check, even if this causes your account to become overdrawn, if a check is lost during the collection process or if the financial institution on which the check is drawn gives us a photocopy of the check or a debit slip representing the check.

A check that was lost may not be returned to us for some time. Despite any delay, we may charge your account when we receive either the returned check, a copy of the check, or a notice of return.

Collection Items

We may accept certain items — such as certain securities and checks payable in foreign currencies or at foreign locations — on a collection basis only. We route and process collection items separately. We normally credit your account for collection items only after we receive payment for them. But if we do credit your account and then do not receive payment, we may debit your account for the amount of the item, even if this causes your account to become overdrawn.

We charge fees for processing collection items. Financial institutions in the collection process and the financial institution on which the collection item is drawn may also charge fees. If a financial institution requires payment of a fee before that institution will process the collection item, we may pay the fee and charge your account. A financial institution may subtract its fee from the amount of the payment we receive. You have to pay these fees even if the collection item is returned unpaid.

For our current collection fees, call us at the number for customer service shown on your statement, or ask a financial center associate.

Demand Drafts and Remotely Created Checks

If you deposit a demand draft or remotely created check (an unsigned draft or a preauthorized draft) into your account, you warrant and guarantee that the draft or remotely created check is authorized according to the terms on its face by the person identified as drawer. You agree to indemnify us from all loss, expense and liability related to a claim that such draft or check was not authorized by the persons on whose accounts it was drawn.

Deposit Preparation and Acceptance

Please note that we may refuse to accept deposits to business accounts by mail.

When you make deposits through our financial centers, including lobby boxes, ATMs, night depositories and other automated depositories, or by mail, we may use the method of delivery to our branch or processing center to determine when we accept the deposit, when you receive credit for the deposit, and whether deposit fees apply.

If we credit your account for a deposit and provide you with a receipt, we may use the amount shown on the deposit slip or otherwise specified by you. The amount of the credit is subject to subsequent verification by us and, after review, we may adjust your account for any errors, though we reserve the right not to do so in every case.

Any of our employees or authorized agents may open and count any deposit that a teller did not count in front of you, including coin deposits, cash deposits, and each deposit made through the mail, a lobby box, a night depository, or other automated depository. You agree not to dispute that employee or agent's determination of the amount you delivered. The funds will be accepted for

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deposit after the counting has been completed and we have verified the amount, if we opt to do so. The funds will be made available to you in accordance with our funds availability schedule at that time.

If you make your deposit through a mechanical or automated depository such as an ATM or night depository, you agree to exercise due care in opening, closing and properly securing the depository.

If your deposit includes items that we do not accept for deposit, we may hold those items until claimed by you.

Deposit Error Correction

When we accept your deposits, we may provisionally credit your account for the amount declared on the deposit slip. You must ensure that the amount declared on the deposit slip is correct even if you did not prepare the deposit slip. If later we determine that the amounts declared on the deposit slip are incorrect, we may adjust (debit or credit) your account, though we reserve the right not to do so if the error in completing the deposit slip was apparently inadvertent and is less than our standard adjustment amount. In that case, we may not adjust the deposit unless you notify us of the error within one year of the date of your periodic statement that shows the deposit. After this notice period has passed without your bringing an error to our attention, the deposit amount indicated on the statement will be considered finally settled. That is, if the actual amount deposited was less than the amount declared on the deposit slip, the difference will become your property and if the actual amount deposited was more than the amount declared on the deposit slip, the difference will become our property. We may change our standard adjustment amount from time to time without notice to you.

Encoding Deposits

If you are a business client, you may ask us for permission to encode the MICR (Magnetic Ink Character Recognition) line of an item you deposit with us. If we permit this, you agree to follow the instructions we give you for preparing and encoding your deposits. If you make an encoding mistake that results in costs, losses or damages to us, you agree to reimburse us for our costs, losses and damages, including attorneys' fees. We may charge them to your account. We are not liable for any claims, costs, losses, or damages you may incur when you encode your own items.

If our equipment is unable to read what we consider a significant number of your encoded items, we may refuse to accept some or all of your items and we may charge you fees for each item we do accept.

You must provide us with a replacement or a copy of each original check if the deposit is lost or destroyed. We are not liable to you if you are unable to do so.

Endorsing Checks

We may endorse and/or collect items deposited to your account without your endorsement but may, at our option, require your personal endorsement prior to accepting an item for deposit. If you deposit items which bear the endorsement of more than one person or of persons who are not signers on the account, we may refuse the item or may require you to have their endorsement guaranteed before we accept an item.

We may accept for deposit checks payable to any signer on your account when endorsed by any other signer.

When you endorse checks that you ask us to cash or deposit, you must endorse checks in the area that extends 1 1/2 inches from the trailing edge of the back of the check. You must also confine information that you place or have preprinted on the back of your checks to the same area. Otherwise, it may overlap into the area reserved for the banks' endorsements. The trailing edge is the left side of the check when you look at it from the front.

If you endorse a check outside of that area, mark or otherwise obscure the other area or a prior endorsement or make an endorsement that is illegible or incomplete, we may refuse the item or we may accept such nonconforming endorsement and you agree to hold us harmless from any loss, delay, liability, claim or damage which may arise as a result.

If it becomes necessary for us to return one of your checks, your endorsement or information placed on the back of the check may interfere with the bank endorsements and cause delays in returning the item. You are liable for and agree to reimburse us for all claims, costs, losses and damages that result from late return of a check due to material entered on the back of the check that obscured or interfered with the depository or another bank's endorsement.

Identifying the Account for Your Deposit

You must correctly identify the account to which you want funds deposited. We may credit a deposit to an account based solely on the account number listed on the deposit slip or other instruction to credit an account, even if the name on the deposit slip or other instruction differs from the name on the account.

You are responsible for any claim, cost, loss or damage caused by your failure to properly identify the account to which a deposit is made or intended to be made.

Overpayments and Reversals

If funds to which you are not entitled are deposited to your account by mistake or otherwise, we may deduct these funds from your account, even if this causes your account to become overdrawn. If the funds were transferred from your account, we may reverse the transfer. We can do this without giving you any prior notice or demand.

Returned Items

This section applies to items that you deposit or that we cash for you (a "cashed or deposited item") and includes items drawn on us as well as items drawn on other financial institutions. You are responsible for returned items.

If a cashed or deposited item is returned to us at any time for any reason by the bank on which it is drawn or any collecting bank, we may accept that return, pay the claiming party, and charge the item to your account without regard to whether we or the other bank finally paid the item or returned the item in accordance with any applicable midnight deadline or clearinghouse rule. We may also deduct from your account any interest you may have provisionally earned on the item. We may charge you a fee for each returned item. Different fees may apply to domestic and foreign items. We may debit your account for a returned item at any time on or after the day it is returned to us by electronic, automated clearinghouse ("ACH") or other means or on the day we receive notice that the item is being returned to us - whichever is earlier.

As an example: if an item deposited in your account has been paid by the bank on which it is drawn (including on us) and that item is later returned to us with a claim that the item was altered, forged, unauthorized, bears a forged or missing endorsement or should not have been paid for any reason, we may at our discretion charge the item against your account or place a hold on the amount of that item against your account until the claim is finally resolved. We may take these actions without prior notice to you and regardless of whether settlement with respect to such item is considered final.

We are not obligated to question the truth of the facts that are asserted, to assess the timeliness of the claim, to take any action to recover payment of a returned item, or to assert any defense. We do not need to notify you in advance of our actions related to the claim. If you do not have sufficient available funds to cover a returned item, we may overdraw your account. We are not liable to you if there are insufficient funds to pay your items because we withdraw funds from your account or in any way restrict your access to funds due to a hold or debit to your account in

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connection with a returned item. You agree to repay immediately an overdraft caused by a return of a cashed or deposited item.

In some cases, the financial institution on which the returned check or other item is drawn may send us an electronic notice of return, an indemnified copy of the original, an image replacement document ("IRD") or an image, instead of returning the item. We may act on, and you agree to be bound by, the electronic notice of return, or indemnified copy or IRD just as if the original item had been returned.

We may send the unpaid item back for collection a second time before notifying you, but we are not obligated to do so. You waive notice of dishonor and protest. You agree that we will have no obligation to notify you of any item that is being returned. However, if we receive advance notice from another financial institution that it is returning to us unpaid a check of $5,000 or more, we may send you a notice. We do not send a notice about returned checks of less than $5,000.

Substitute Checks

You agree that you will not cash or deposit "substitute checks" as defined by federal law or Image Replacement Documents ("IRD") that purport to be substitute checks and have not been previously endorsed by a bank. If you cash or deposit such an item, you give us the same warranties and indemnities that we, as a reconverting bank, would give under applicable law or regulation and you agree to reimburse us for claims, losses, costs and damages we may incur. If you provide us with an electronic representation of a substitute check for deposit into your account instead of an original check, you agree to reimburse us for all claims, losses, costs and damages we incur because the substitute check resulting from the electronic representation does not meet applicable substitute check standards or causes duplicate payments.

Third-Party Endorsements

We may require that checks and other items you want to deposit or cash be endorsed by all parties to whom the items are payable. We may require verification of any endorsement through either an endorsement guarantee or personal identification.

When Funds are Available for Withdrawal and Deposit Holds

Our general policy is to make funds from your cash and check deposits available to you no later than the first business day after the day of your deposit. However, in some cases we place a hold on funds that you deposit by check. A hold results in a delay in the availability of these funds. When we place a hold, you will have to wait a few days before being able to use the funds. When we decide to place a hold at the time you make your deposit, the teller or ATM gives you a notice that lets you know funds are on hold. For ATM deposits, the hold notice is usually included on the ATM receipt. The hold notice will let you know the date and the time when the funds will be available for you to use. In some cases, you will not get the hold notice from the teller or ATM, but later by mail. You can avoid holds by using direct deposit or wire transfer.

In many cases, we make funds from your deposited checks available to you sooner than we are able to collect the checks. This means that, from time to time, a deposited check may be returned unpaid after we made the funds available to you. Please keep in mind that even though we make funds from a deposited check available to you and you withdraw the funds, you are still responsible for problems with the deposit. If a check you deposited is returned to us unpaid for any reason, you will have to repay us and we may charge your account for the amount of the check, even if doing so overdraws your account.

While we generally apply our funds availability policy to deposits you make to savings accounts (including money market savings accounts), and to deposits you make using a mobile device, please note that our funds availability policy does not apply to these deposits, and we may delay availability of funds from these deposits.

Your Ability to Withdraw Funds

Our general policy is to make funds from your cash and check deposits available to you no later than the first business day after the day we receive your deposit. Our policy is to make funds from electronic direct deposits made through the automated clearing house (ACH) or transfer systems that deliver payments in real time, and incoming wire transfers available to you on the day of the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays.

If you make a deposit on a business day that we are open at one of our financial centers before 2:00 p.m. local time, or at one of our ATMs before 5:00 p.m. local time in the state where we maintain your account, we consider that day to be the day of your deposit. However, if you make a deposit after such times, or on a day when we are not open or that is not a business day, we consider that the deposit was made on the next business day we are open. Some locations have different cutoff times.

Longer Delays May Apply

In some cases, we will not make all of the funds that you deposit by check available to you by the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the second business day after the day of your deposit. The first $200 of your deposits, however, may be available no later than the first business day after the day of your deposit.

If we are not going to make all of the funds from your deposit available by the first business day after the day of your deposit, we generally notify you at the time you make your deposit. We also tell you when the funds will be available. If your deposit is not made directly to one of our

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employees, or if we decide to take this action after you have left the premises, we mail you the notice by the next business day after we receive your deposit. If you need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, we may delay the availability of funds you deposit by check for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than $5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the seventh business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules may apply during the first 30 days the account is open. Funds from electronic direct deposits to your account are available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks are available no later than the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you and deposited in person to one of our employees. The excess over $5,000 is available by the fifth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first $5,000 will not be available until the second business day after the day of deposit. Funds from all other check deposits are generally available by the fifth business day after the day of your deposit.

However, we may place longer holds on certain items for other reasons, such as large deposits (see *Longer Delays May Apply* above).

Government Checks, Cashier's Checks and Other Special Types of Checks

Our policy is to make funds from U.S. Treasury checks that are payable to you available no later than the first business day after the day of the deposit.

If you make the deposit in person to one of our employees, and meet the other conditions noted below, our policy is to make funds from the following types of deposits available no later than the first business day after the day of your deposit:

- State and local government checks that are payable to you and are deposited in an account in the same jurisdiction that issued the check.
- Cashier's, certified and teller's checks that are payable to you.
- Federal Reserve Bank checks, Federal Home Loan Bank checks and U.S. Postal Service money orders that are payable to you.

If you do not make your deposit of these checks in person to one of our employees (for example, if you mail the deposit), our policy is to make funds from these deposits available no later than the second business day after the day of your deposit.

However, we may place longer holds on certain items for other reasons, such as large deposits (see *Longer Delays May Apply* above).

Cash-Withdrawal Limitation

If we delay availability of your deposit, we place certain limitations on withdrawals in cash or by similar means. In general, $200 of a deposit is available for withdrawal in cash or by similar means no later than the first business day after the day of deposit. In addition, a total of $400 of other funds becoming available on a given day is available for withdrawal in cash or by similar means at or after 5:00 p.m. on that day. Any remaining funds will be available for withdrawal in cash or by similar means on the following business day.

Similar means include electronic payment, issuance of a cashier's or teller's check, certification of a check, or other irrevocable commitment to pay, such as a debit card transaction.

Holds on Other Funds

If we cash a check for you that is drawn on another financial institution, we may withhold the availability of a corresponding amount of funds that are already in your account. If we accept for deposit a check that is drawn on another financial institution, we may make funds from the deposit available for withdrawal immediately but delay your ability to withdraw a corresponding amount of funds that you have on deposit in another account with us. In either case, we make these funds available in accordance with our policy described above for the type of check that was cashed or deposited.

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Processing Withdrawals

We may forward withdrawals and other transaction requests for an account to one of our processing centers. We may use the date that the processing center receives the transaction as the effective date of the transaction.

Cashing Checks for You

Check cashing services may not be available at some financial centers. We may occasionally refuse to cash a check written to you. If we do cash such a check and it is returned to us unpaid for any reason at any time, we may deduct the amount of the check from your account, even if this causes your account to become overdrawn, and we may charge you a fee.

We may cash checks payable to any signer on your account when endorsed by any other signer.

If you ask us to cash a check or other items for you, we may apply the proceeds of the check or other item to fees, overdrafts and other amounts you owe us.

Cashing or Accepting Your Checks for Others

When a person with a check or other item drawn on your account asks us to cash it or deposit it, we may require identification satisfactory to us. This identification may include their fingerprint or other biometric marker. When a person who is not our loan or deposit customer asks us to cash a check or other item drawn on your account, we may impose additional requirements. These may include: a dollar limit above which we will not cash the check or a fee for cashing the check. We may also refuse to cash the check.

If the person with your check fails or refuses to satisfy our requirements, we may refuse to cash the check or accept it for deposit.

When we cash your check, or accept it for deposit, we may do so without reviewing your account at that time to see whether you have enough available funds to cover the check. We may charge that person cashing a check or other item a fee for cashing the check or other item if that person is not a customer of Bank of America.

We are not liable to you for refusing to cash or accept the check, or for charging a check cashing fee.

Checks with Legends or Restrictions

Some customers print or write legends or restrictions on their checks. Sometimes the person to whom the check is payable prints or writes a legend or restriction on the check. Legends and restrictions include conditions, special or restrictive instructions, and other notations. Some examples are: "not valid after 60 days", "not valid over $1,000" or "paid in full". We may disregard legends and restrictions. We may pay the item even if the legend or restriction has not been met. We are not liable to you for any claims, costs, losses or damages that result from the placement of these legends or restrictions on your checks, or from our failure to abide by them.

Collection Items

When another financial institution submits to us for collection an item drawn on your account, we may charge the other financial institution a fee. When you do not have enough funds in your account for us to process a collection item drawn on your account, we may charge you an overdraft or returned item fee.

Check Stock and Ink

You agree to bear the risk of loss if you use check stock that contains defects, such as printing inaccuracies, faulty magnetic ink, faulty encoding, or duplicate serial numbers.

Checks you write may be converted into electronic images (truncated) during the check collection and return process. You also agree to bear the risk of loss if: you elect to have your checks printed by a vendor that has not been approved by us; you use check stock or features (such as security features) that cause critical data to disappear or be obscured upon truncation; or you make your check out in a way (such as, using a lightly colored ink) that causes critical data to disappear or be obscured upon truncation.

Converting Checks to Electronic Debits

Some businesses convert checks that you give them into electronic debits (sometimes referred to as an electronic check) and then sends us an electronic debit for the transaction amount. When we receive the electronic debit, we charge it to your account. We may receive the electronic debit to your account immediately after the business enters the transaction, so you may have a reduced right to stop payment and you may incur an overdraft if you do not have sufficient funds in your account to cover the amount of the check at the time you write the check or authorize the transaction. Since the check is not sent to us, we do not have a copy of your check. We list these electronic debits on your account statement. If the business uses your check to initiate an electronic debit at the point of sale, the business should give you notice of the conversion and return the voided check to you. You should treat the voided check with care because someone else who obtains possession of it could use the information to initiate additional debits against your account. A business that receives your check by mail and converts it to an electronic debit may give you notice of the conversion and destroy the original check.

Examining Checks

We receive checks in great volume. This and compliance with expedited funds availability laws require us to use automated check processing procedures. Although we may visually review a sample of checks and other items from time to time, reasonable commercial standards do not require us to do so.

We select some checks for review based on certain criteria that change from time to time. This means that most checks are processed on the basis of the MICR (Magnetic Ink Character Recognition) line printed along the bottom edge of the check, and are not individually examined for dates, maker signatures, legends or endorsements. You agree that we will have exercised ordinary care if we examine only those items that we have identified according to the criteria that we may establish in our discretion for inspection.

If we do visually review any check or other item, we may disregard any restrictive instructions or notations, such as an instruction to permit withdrawals only upon more than one signature. We may return the item unpaid if, in our opinion, it does not bear a signature matching any specimen signature we have on file for your account. You agree, however, that we will not be liable to you for honoring any check or other item bearing a signature that, in our sole opinion, resembles the specimen signature on file with us.

Since we do not individually examine most checks, it is critical for you to take care of your checks, promptly review your account statement, and immediately report any suspicious or unauthorized activity to us. You agree that automated processing of your checks is reasonable and that you accept responsibility for preventing and reporting forgeries, alterations, and other unauthorized uses of your checks or accounts. You agree that the exercise of ordinary care will not require us to detect forgeries or alterations that could not be detected by a person observing reasonable commercial standards.

Since some types of check fraud have become more difficult to detect, we may elect in some cases to make further inquiries about certain checks or other items that are presented for payment against your account. If we are unable to contact you, or take other steps, to determine with

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reasonable certainty that you authorized these payments, we may either pay the checks and other items or return them unpaid without any liability to you.

Items Resulting from Voluntary Disclosure

If you voluntarily disclose your account number to another person orally, electronically, in writing or by other means, you are deemed to authorize each item, including electronic debits, which result from your disclosure. We may pay these items and charge your account.

Large Cash Withdrawals

We may require reasonable advance notice for large cash withdrawals. We may also refuse to honor a request to withdraw funds in cash from your account or to cash a check (including a cashier's check or other official item) at a financial center if we believe that the amount is unreasonably large or that honoring the request would cause us an undue hardship or security risk. We may require that such withdrawals be made at one of our cash vaults by an armored courier, acceptable to us and at your sole risk and expense. We are not responsible for providing for your security in such transactions.

Paying Checks and Other Items

We may debit your account for a check or other item drawn on your account either on the day it is presented to us for payment, by electronic or other means, or on the day we receive notice that the item has been deposited for collection at another financial institution — whichever is earlier. If you do not have sufficient available funds to cover the item, we decide whether to return it or to pay it and overdraw your account.

We may determine your balance and make our decision on an insufficient funds item at any time between our receipt of the item or notice and the time we must return the item. We are required to determine your account balance only once during this time period.

When you deposit checks or other items that are drawn on another account with us, we may treat such items as presented to us for payment on the business day that they are received by our office that processes checks drawn on the other account.

Stale-Dated and Postdated Checks

If a stale-dated check — that is, a check dated more than six months in the past — is presented for payment against your account, we may pay the check and charge it to your account. If a postdated check — a check dated in the future — is presented for payment, we may pay the check and charge it to your account even if it is presented for payment before the date stated on the check. If you do not want us to pay a stale-dated or postdated check, you must place a stop payment order on it. See the *Stop Payment Orders and Postdating Orders* section.

Substitute Checks, Indemnified Copies, Images and Image Replacement Copies

In some cases, we may be sent an indemnified copy of your original check, an image replacement document (IRD), a substitute check or an image of your check, instead of the original item. We may act upon presentment of an IRD, indemnified copy, substitute check, or image of your check and pay these items against your account, just as if the original item had been presented.

Unpaid Items

If we decide not to pay a check or other item drawn on your account, we may return the original, an image or a copy of the item or we may send an electronic notice of return and keep either the original, an image or a copy of the item in our records. If we send an electronic notice of return, you agree that any person who receives that electronic notice may use it to make a claim against you to the same extent and with the same effect as if we had returned the original item.

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Substitute Checks and Your Rights

The following provisions help explain some of the rights a consumer has under a federal law commonly referred to as Check 21. Check 21 was enacted to increase the efficiency of the U.S. check clearing system. The clearing system relies heavily on the physical transport of checks between banks. Check 21 allows banks to create substitute checks and present them to other banks instead of the original check. This reduces the transport of checks among banks and helps enable the electronic collection of checks.

What is a substitute check?

To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

What are my rights regarding substitute checks?

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to $2,500 of your refund (plus interest if your account earns interest) within 10 business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not later than 45 calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

How do I make a claim for a refund?

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at the telephone number listed on your account statement, or write to us at:

Bank of America
Attn: Research and Adjustments
P. O. Box 655961
Dallas, TX 75265-5961

You must contact us within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

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Your claim must include—

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss;
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
- A copy of the substitute check or the following information to help us identify the substitute check: your account number, the check number, the name of the person to whom you wrote the check, the amount of the check and the date of the check.

Notices, Statements and Other Communications

General Terms for Notices, Statements and Other Communications

Please review promptly all notices, statements and other communications we send you. In this section "communications" means all notices, statements and other communications we send you.

We may provide communications in English. Many communications will be notices of change affecting your rights and obligations. If you have questions about any of them or difficulty reading English, please call us at the number for customer service on your statement.

We may:

- address communications to one account owner;
- provide communications in English, even though we may have given you account opening documents and disclosures in a language other than English;
- destroy communications that are sent to you and returned to us as being undeliverable, along with any accompanying checks and other items;
- authorize the Post Office or an agent to destroy communications, along with accompanying checks and other items, that the Post Office informs us are undeliverable; and
- stop sending communications to you until a new address is provided to us if one or more communications that we mail to you are returned to us as being undeliverable.

We are not responsible for communications, or for any checks or other accompanying items, lost while not in our possession.

If we receive communications that we sent you at a financial center, they are deemed to have been delivered to you at the time that they are available to you at the financial center.

Electronic delivery of communications We recommend that you use our Online Banking service and receive your communications electronically. When you use electronic or paperless delivery, we deliver communications to you by placing them in Online Banking. You can find your account statements, notices, and other eligible documents in Online Banking within the statements and documents area of your account details page. Communications currently available for electronic delivery are listed in the statements and documents area of Online Banking.

Notices

When we inform you of changes affecting your rights and obligations, we do so by delivering or otherwise making a notice available to you. In some cases, we may post a notice of a change in our banking offices or on our website. Otherwise, we mail the notice to you at the address we currently show for your statement or, if we have agreed on this method, we provide it to you electronically. We may provide a notice as a message on your statement or as an insert with your statement.

If a notice of a change to this Agreement is returned to us as being undeliverable or if we stop sending notices or statements to you because we consider your account dormant or because notices or statements we previously sent you were returned to us as being undeliverable, you understand that the notices are available to you through our financial centers. You agree to that method of delivery and that changes covered in these notices are still effective and binding on you.

A notice sent to any one owner is deemed notice to all account owners and is effective for all account owners.

Statements

We provide you with a single statement when there is activity on your checking or savings account. When there is no activity on your account, we may choose not to provide a statement. You may generally obtain an additional copy of your statement for a fee.

We recommend that you use our Online Banking service and receive your statements electronically.

If your statement is received at one of our offices, we may mail it to you or destroy it, along with any accompanying checks and other items.

For checking, money market savings and business savings accounts, we provide you with a monthly statement. Statement cycles generally vary from 28 to 33 days and may end on different days during the month. A statement cycle can be shorter than monthly. As examples, a statement cycle may only be a few days in length for the first statement cycle after an account is opened or when a statement date is changed to link accounts for combined statements. If you want to know the date your statement cycle ends, call us at the number for customer service on your statement.

For Regular Savings accounts, we provide you with a quarterly statement. If you have an electronic fund transfer (such as a direct deposit or an ATM withdrawal) to or from your account during any month, we provide a statement for that month.

For analyzed business checking accounts, you can elect to receive an additional monthly account analysis statement. This statement includes balance and float information, quantity of services used during the period, fees and charges for these services and the earnings allowance, if any.

For **IRAs**, we provide you with a quarterly statement.

Combined Statements With combined statement service we provide a single statement that reports activity for all accounts linked for this service, instead of separate statements for each linked account.

Accounts must contain identical ownership in order to be eligible to receive Combined Statements.

You must generally request combined statement service and tell us what accounts you want us to link and report on a combined statement. In some cases, however, we may automatically send you a combined statement. As an example: we may automatically link accounts that have the same owners and provide a combined statement for those accounts.

We may restrict what accounts can be linked for a combined statement. Please note that combining accounts on a single statement does not mean they are also linked for pricing. To determine which accounts can be linked, or to link accounts, for combined statements or for combined balances (pricing), please call us.

Check Image, Safekeeping and Enclosure Services

For most accounts, we offer the following options regarding your canceled checks.

Check Image Service We provide with your statement an image of the front of each of your canceled checks that we post to your account during the statement cycle. We print images of your checks up to 10 images on a page. We do not return your canceled checks. In some states and for some business accounts we provide an image of the front and back of your canceled checks.

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When you use this service, checks are deemed to be made available to you at the same time your statement is made available.

We store copies of your canceled checks (usually on microfilm or as a digital image) and then destroy the checks. Copies of checks are generally available for seven years from the date the checks are paid. See *Check Copies* in *Other Terms and Services*.

Check Safekeeping Service We report on your statement information about canceled checks (check number, amount and date posted) that posted to your account during the statement cycle. You do not receive your canceled checks with your account statement. When you use this service, checks are deemed to be made available to you at the same time your statement is made available.

If your statements are returned to us, you automatically receive check safekeeping service. If you usually receive your checks with your statement but we are unable to return them because of circumstances beyond our reasonable control, we may convert your account to check safekeeping service.

We store copies of your canceled checks (usually on microfilm or digital image) and destroy the checks. Copies of the checks are generally available for seven years from the date the checks are paid. See *Check Copies* in *Other Terms and Services*.

If you use our check safekeeping service, we cannot provide a *copy* of a check that posted to your account, and you lose money as a result, we may cover the loss up to the amount of the check. However, we are not liable to you for consequential loss or damage of any kind.

Check Enclosure Service *This service is no longer available for most accounts.* We return with your statement canceled checks that we received and posted to your account during the statement cycle. We may also provide you with images of your canceled checks.

We may not return some of your canceled checks. For example, if a check that you write is converted into an image or electronic debit during the check collection process, your check is not sent to us and, as a result, we cannot return the check to you. In some cases, we may receive a substitute check (also called an image replacement document) instead of your check. We do not return substitute checks with your statement.

Your Address and Change of Address

We may send notices, statements and other communications regarding your account to you at the electronic or street address we have in our records for your account.

You agree to notify us if you change your address. If the United States Post Office or one of its agents tells us that your address has changed:

- we may change your address on our records to the address specified by the Post Office; and
- we may send notices, statements and other communications regarding your account to that new address.

Actions You Can Take to Help Protect Your Account

Your role is extremely important in helping to prevent the wrongful use of your account. Please consider the measures below to help you protect your account.

Stay Informed We offer several services you can use to help you keep track of your account on a daily basis. You can use our Online Banking service to review your accounts and Online Alerts to receive notice of account balances and activity. Please see the information about these services in *How to Get Started*.

Be Cautious about Giving Out Your Personal Information We will not send you e-mails requesting personal information. If you receive an e-mail that seems to come from us and requests personal information, do not answer it. Instead, please contact us immediately at the number on your statement.

Be Cautious about Accepting Checks, Money Orders and Cashier's Checks, especially from Strangers You should be cautious about accepting checks, money orders and cashier's checks (especially, foreign checks) from strangers. Sometimes they are fraudulent or counterfeit. We cannot verify that a check, money order or cashier's check that purports to be issued by another company or financial institution is authentic, or has any value at all, when you give it to us and ask us to cash or deposit it.

We ordinarily make funds from a check you deposit (or we cash for you) available to you sooner than we are able to collect the check or determine whether the check is any good. If the check is returned to us unpaid for any reason, you are still responsible for the check. We charge your account for, and you will have to repay us, the full amount of the returned check. A check may be returned because it "bounces" or because the check is fraudulent, counterfeit or invalid for some other reason.

One way to help protect yourself is to take the check to the bank, company (such as Western Union) or service (such as the U.S. Postal Service) that issued it and redeem the check for cash. For more information on how to avoid being a victim of fraud, visit bankofamerica.com, or consult trusted organizations such as your local Better Business Bureau or the Federal Citizen Information Center. The following website is also a good resource - www.fakechecks.org.

Review Statements and Report Suspected Problems Immediately You must promptly review the notices, statements and other communications, along with any accompanying checks and other items, we send you. You must also report problems or unauthorized transactions to us immediately, by calling the number for customer service on your statement. See *Reporting Problems*.

Identity Theft Identity theft occurs when someone uses your personal information without your permission to take over your existing account or to open new accounts in your name. Identity theft often begins with the loss or theft of a wallet or purse. Criminals can also obtain your personal information by stealing records from your trash or sending fraudulent e-mails to you requesting your information.

You should destroy or shred account statements, checks, deposit slips and other documents with your personal information before you throw them away.

Other Actions You Can Take

Here are some other actions you can take to help control your risk. This is by no means a complete list of preventive measures. You may want to take other or additional actions.

- Do not share your passwords, user numbers or Personal Identification Number (PIN) for Online Banking or your ATM or debit card.

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- Call us if your new check order or debit card does not arrive within 14 business days.
- Be cautious about giving someone your account number. If you give your account number to a third person and authorize that third person to initiate one or more transactions on your account, you may be liable for all transactions initiated by the third person even if you did not intend to authorize a particular transaction.
- Do not give anyone a pre-signed blank check. Do not give anyone permission to sign your name on a check.
- Do not preprint your driver's license or Social Security Number on your checks.
- Write checks in a dark colored permanent ink and fill in all lines. Make sure the written and numeric amounts match, are readable and begin on the far left of the line so additional numbers or words cannot be added.
- Write and sign your checks clearly, because illegible checks are easier to forge.
- Use tamper resistant checks. If you do not order checks through us, ask your check vendor about tamper resistant checks.
- Store blank checks, deposit slips and statements in a safe place and audit your check stock frequently. When discarding, destroy them by shredding or other means so they cannot be copied or used. Call us immediately if any of these items are lost, stolen or missing.
- Use the same precautions that apply to your checks to your endorsement and signature stamps.
- Do not leave outgoing mail in an unlocked collection box or in your residence mailbox. Deposit outgoing mail in a locked Postal Service mail deposit box.
- Keep accurate records of your transactions and reconcile your statements as soon as they are made available to you. Pick up your mail every day. When reviewing your statements, watch for:
  - Checks cashed out of sequence or made payable to cash
  - Use of a check number from a previously cleared item
  - Balance discrepancies or unexpected fluctuations
- Reconcile your account yourself. If you have authorized someone else to transact on your account and you do not reconcile your account yourself, someone other than an authorized signer should reconcile your accounts.
- Business customers should assign to different individuals responsibilities for: opening mail, reconciling bank statements, endorsing incoming checks, making deposits, reconciling accounts payable checks with vendor invoices, reconciling incoming checks against outstanding receivables and issuing checks.

Reporting Problems

If you find that your records and ours disagree, if you suspect any problem or unauthorized transaction on your account or you do not receive a statement when expected, call us immediately at the number for customer service on your statement. If you fail to notify us in a timely manner, your rights may be limited.

This section does not apply to electronic fund transfers that are subject to Regulation E. If we have a specific agreement with you for a service or this Agreement has specific provisions for a service (such as the *Funds Transfer Services* section), these provisions supplement the specific agreement and provisions to the extent they are not inconsistent.

Your Responsibility

You must exercise reasonable control over your statements, checks, deposit slips, endorsement and signature stamps, debit and ATM cards, Personal Identification Numbers and other access devices. It is your responsibility to keep them safe and secure and to promptly discover and report if any of them are missing in time to prevent misuse. You assume full responsibility for monitoring and reviewing the activity of your account, the work of your employees, agents and accountants, and any use they make of your account.

We may deny a claim for losses due to forged, altered or unauthorized transactions, items or signatures if you do not guard against improper access to your checks, statements, deposit slips, endorsement and signature stamps, and account information. We may also deny your claim if you do not monitor your account and report problems as provided in this section. Please review this *Reporting Problems* section carefully.

In some states we offer certain fraud prevention and detection products and services to business customers. If we have offered you one or more of these services, and you decline to use them or fail to implement them, or you fail to follow the procedures necessary for proper use of these products or services, or you fail to follow other precautions reasonable for your particular circumstances, you are precluded from asserting any claims against us for paying any unauthorized, altered, counterfeit or other fraudulent item that such product, service, or precaution was designed to detect or deter, and we will not be required to re-credit your account or otherwise have any liability for paying such items.

What Are Problems and Unauthorized Transactions

Problems and unauthorized transactions include suspected fraud; missing deposits; unauthorized electronic transfers; missing, stolen, or unauthorized checks or other withdrawal orders; checks or other withdrawal orders bearing an unauthorized signature, endorsement or alteration; illegible images; encoding errors made by you or us; and counterfeit checks. This is not a complete list.

Reviewing Your Account Statements

Your review of your statements, checks and other items is one of the best ways to help prevent the wrongful use of your account. You agree:

- to review your statements, checks and other items and reconcile them as soon as they are made available to you;
- that our statements provide sufficient information to determine the identification and authenticity of any transaction including without limit, whether any are forged, altered or unauthorized if the statement includes the item number, amount and the date the item posted to your account;
- to report any problems or unauthorized transactions as soon as possible; and

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- that 60 days after we send a statement and any accompanying items (or otherwise make them available) is the maximum reasonable amount of time for you to review your statement or items and report any problem or unauthorized transaction related to a matter shown on the statement or items. There are exceptions to this 60-day period. For forged, unauthorized or missing endorsements, you must notify us within the period specified by the state law applicable to your account. For substitute checks, you must notify us within 40 days to qualify for an expedited recredit. See section titled *Substitute Checks and Your Rights*.

We Are Not Liable If You Fail To Report Promptly

Except as otherwise expressly provided elsewhere in this agreement, if you fail to notify us in writing of suspected problems or unauthorized transactions within 60 days after we make your statement or items available to you, you agree that:

- you may not make a claim against us relating to the unreported problems or unauthorized transactions, regardless of the care or lack of care we may have exercised in handling your account; and
- you may not bring any legal proceeding or action against us to recover any amount alleged to have been improperly paid out of your account.

Except as otherwise expressly provided elsewhere in this agreement, we are not liable to you for subsequent unauthorized transactions on your account by the same person if you fail to report an unauthorized transaction on your account within 30 days (or such lesser period as is specified in the state law applicable to your account) following the closing date of the statement containing information about the first unauthorized transaction.

For business deposit accounts, also see *Electronic Banking Disclosures* in the *Electronic Banking Services* section and *ACH Debits and Credits* in the *Funds Transfer Services* section.

Written Confirmation and Other Assistance

If you report to us that an unauthorized transaction has occurred on your account, we may require you to confirm your report in writing. We may also require that you give us a statement, under penalty of perjury, about the facts and circumstances relating to your report and provide such other information and proof as we may reasonably request.

If you assert a claim regarding a problem, you must cooperate with us in the investigation and prosecution of your claim and any attempt to recover funds. You also agree to assist us in identifying and in seeking criminal and civil penalties against the person responsible. You must file reports and complaints with appropriate law enforcement authorities.

If you fail or refuse to do these things, we will consider your failure or refusal to be your ratification of the defect in the statement or item, unauthorized transaction or other problem and your agreement that we can charge the full amount to your account.

Our Investigation and Maximum Liability

We may take a reasonable period of time to investigate the facts and circumstances surrounding any claimed loss. We do not have to provisionally credit your account while we investigate.

Our maximum liability is the lesser of your actual damages proved or the amount of the missing deposit or the forgery, alteration or other unauthorized withdrawal, reduced in all cases by the amount of the loss that could have been avoided by your use of ordinary care.

We are not liable to you for special or consequential losses or damages of any kind, including loss of profits and opportunity or for attorneys' fees incurred by you.

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Business Insurance

If your claim relates to a business account, you agree to pursue all rights you may have under any insurance coverage you maintain before making a claim against us in connection with any transaction involving your accounts. You will provide us with all reasonable information about your coverage, including the name of your insurance carrier, policy number, policy limits and applicable deductibles. Our liability is reduced by the amount of all insurance proceeds you receive or are entitled to receive. At our request, you agree to assign to us your rights under your insurance policy.

Opening a New Account

If you or we suspect that your account is or may be compromised, we may recommend that you close your account and open a new account. If there are any unauthorized transactions on your account, we recommend that you close your account and open a new one. If we recommend that you close your account and you do not do so, we are not liable to you for subsequent losses or damages on the account due to unauthorized transactions. When you open a new account, you are responsible for notifying any third parties that need to know your new account number.

Foreign Items and Foreign Currency

What is a Foreign Item

A foreign item is a check or other item in any currency (including United States dollars) that is drawn on a bank or branch of a bank located outside of the United States. A foreign currency is any currency other than United States dollars. Some foreign items are payable in United States dollars. Some are payable in a foreign currency.

Be Cautious About Accepting Foreign Items

You should be cautious about accepting foreign items because foreign items are not subject to United States laws or regulations. A foreign item may be returned unpaid much later (sometimes many months later) than checks or other items that are drawn on banks located in the United States. If a foreign item is returned to us unpaid or there is some other problem with the foreign item, you are responsible for the item and you may incur a loss.

Currency Exchange Rates

We may receive transactions related to your account or relationship with us for which we determine that it is appropriate to convert the transaction from one currency to another currency. As an example, we receive a wire denominated in a foreign currency for credit to your account. When we decide to convert a transaction, we may determine in our discretion the currency exchange rate and then assign that currency exchange rate to your transaction without notice to you. You agree to this procedure and accept our determination of the currency exchange rate.

If we assign an exchange rate to your foreign exchange transaction, that exchange rate will be determined by us in our sole discretion based upon such factors as we determine relevant, including without limitation, market conditions, exchange rates charged by other parties, our desired rate of return, market risk, credit risk and other market, economic and business factors.

Exchange rates fluctuate at times significantly, and you acknowledge and accept all risks that may result from such fluctuations. You acknowledge that exchange rates for retail and commercial transactions, and for transactions effected after regular business hours and on weekends, are different from the exchange rates for large inter-bank transactions effected during the business day as may be reported in *The Wall Street Journal* or elsewhere. Exchange rates offered by other dealers, or shown at other sources (including online sources) may be different from our exchange

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rates. The exchange rate you are offered may be different from, and likely inferior to, the rate paid by us to acquire the underlying currency.

We provide all-in pricing for exchange rates. The price provided may include profit, fees, costs, charges or other mark ups as determined by us in our sole discretion. We do not accept any liability for our exchange rates.

In connection with our market making and other activities, we may engage in hedging, including pre-hedging, to facilitate customer transactions and hedge the associated market risk. Such trading may include trading ahead of order execution. These transactions will be designed to be reasonable in relation to the risks associated with the potential transaction with you. These transactions may affect the price of the underlying currency, and consequently, your cost or proceeds. You acknowledge that we bear no liability for these potential price movements. When our pre-hedging and hedging activity is completed at prices that are superior to the agreed upon execution price or benchmark, we will keep the positive difference as a profit in connection with the transactions. You will have no interest in any profits.

We also may take proprietary positions in certain currencies. You should assume we have an economic incentive to be a counterparty to any transaction with you. Again, you have no interest in any profit associated with this activity.

You acknowledge that the parties to these exchange rate transactions engaged in arm's length negotiations. You are a customer and these transactions do not establish a principal/agent relationship or any other relationship that may create a heightened duty for us.

You acknowledge that any and all liability for our exchange rates is disclaimed, including without limitation direct, indirect or consequential loss, and any liability if our exchange rates are different from rates offered or reported by third parties, or offered by us at a different time, at a different location, for a different transaction amount, or involving a different payment media (including but not limited to bank-notes, checks, wire transfers, etc.).

Wires Sent to a Foreign Currency Account

When you send a wire denominated in United States dollars to an account denominated in a foreign currency, an intermediary bank or the receiving bank may convert your wire into the applicable foreign currency and we may receive compensation in connection with any such conversion. When this occurs, the intermediary bank or the receiving bank determines in their discretion the currency exchange rate. We are not responsible for the exchange rate set by an intermediary bank or the receiving bank.

You May Not Write Foreign Currency Checks

You may not write checks or give other withdrawal orders on your account, which order payment in a foreign currency. If we receive such a check or order, we may refuse to accept or process it without any liability to you.

Processing and Collecting Foreign Items

We may refuse to accept a foreign item for deposit or collection. If we accept a foreign item for deposit or collection, you assume all the risks relating to or arising from: the collection process, a late return and changes in currency exchange rates.

If we accept a foreign item for deposit or collection, we may decide not to credit the value of the foreign item to your account until we receive the proceeds in cleared funds from the paying bank. However, if we do credit your account, the credit is provisional and we may reverse the credit at any time.

If we accept an item for deposit which we later determine to be a foreign item, we may decide that the item needs to be sent for collection. If so, we may reverse any credit given for the item and mail the foreign item to you at the address we have for your account statement. You may ask us to send the item for collection.

When we send a foreign item for collection, you understand that the foreign item is sent solely for you and at your risk and that we are not liable for any event in the collection process which is beyond our control. As examples, we are not liable for a default by any bank or agent involved in the collection process or for the loss of the foreign item in transit. We may send the foreign item through a correspondent bank or directly to the paying bank. We may deduct our fees and the fees and charges assessed by the paying bank and any agents involved in the collection process from any amount collected or from your account.

If you request, we will try to determine the status of a collection. You agree to pay all fees and charges related to such a request. We may refuse your request if less than 30 business days have passed since we first processed the collection.

If a foreign item is returned to us unpaid for any reason at any time or is initially paid but then subsequently returned unpaid, we may charge your account for the foreign item and mail the foreign item to you at the address we have for your account statement. Even though the item is returned unpaid, we may charge you for our collection fees and for fees and charges assessed by the paying bank and any agents involved in the collection process.

When we credit your account for a foreign item, we use our applicable currency exchange rate on the day we credit the item to determine the amount of the credit. When we reverse a credit for a foreign item, we use our applicable currency exchange rate on the day we reverse the credit to determine the amount of the debit. Currency exchange rates are highly volatile and our rate on the day of the credit is likely to be different (sometimes very different) than our rate on the day of the debit. You understand and agree that this may result in a currency exchange loss to you.

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Other Terms and Services

Account Changes

You must notify us of any change to your name or address. If you do not provide notice of change of address, we may send notices, statements and other correspondence to you at the address maintained on our records for your account and you agree to indemnify us and hold us harmless for doing so.

You agree to notify us in writing of any change in ownership or authorized signers of your account or if an owner or authorized signer on the account dies or is adjudicated incompetent.

If there is more than one owner and/or authorized signer on the account, any one account holder or authorized signer may request the account be closed without consent of any other account holder or authorized signer. Further, any one account holder may request, and we may, at our option, permit removal of any account holder or authorized signer without consent of any other account holder or authorized signer on the account.

You acknowledge that we may, but need not, require a new signature card to be completed before any change in ownership or authorized signers becomes effective and each time you open a new account, we may require a Taxpayer Identification Number certification(s). You also acknowledge that we may require you to close your account in the event of any change in ownership or change in the authorized signers.

After we receive notice of a change and all documents we require regarding the change, we may take a reasonable period of time to act on and implement the change to your account.

Automatic Transfer Service

You may have funds transferred automatically from most Bank of America checking or savings accounts to another Bank of America checking or savings account or to pay a Bank of America loan or credit card account or safe deposit rental fee.

Federal regulation and this Agreement place limits on the number of automated transfers you may make from savings accounts each month. Please see *"Limits on Withdrawals and Transfers from Savings Accounts"*. Certain other restrictions apply.

You must schedule transfers to pay a Bank of America loan for the due date each month. In most other cases, you may schedule transfers periodically on the dates and for the amounts that you specify. Transfers can only be made on a business day. If a scheduled transfer date falls on a weekend or bank holiday, we may make the transfer on the next business day. If we are unable to complete a transfer because you do not have enough available funds in your account, we may cancel this service.

Check and Deposit Slip Forms

We offer checks, withdrawal forms and deposit slips in a number of styles and at various prices. We recommend that you use checks and other forms that we provide.

You are responsible for verifying the accuracy of all information on your checks and other forms, whether obtained through others or us. Our liability, if any, for any printing errors on checks or other forms obtained through us is limited to the cost of replacing the forms. We are not liable for any claims, costs, losses or damages you may incur when you use checks or other forms not obtained through us. Check deposits with a retired routing number will be returned unpaid.

We may refuse to accept checks or other forms that you create or someone else provides that do not meet our then current specifications, even if they met our specifications at the time they were initially drawn. You may obtain a copy of our printing specifications by calling the telephone number on your statement or asking your account representative. These specifications include the magnetically encoded numbers, the size of the check and the weight, color and type of paper. If you create or obtain checks or other forms from someone else and our automated check processing systems are unable to read or process them, we may refuse to accept them and we may charge you a fee for each check or other item that we are unable to read or process through our automated systems.

Check Copies

We generally keep a copy of each check we post to your account for seven years from the date the check posts to your account. We have no obligation to retain the original check. We typically keep the copies on microfilm or as a digital image. If a copy is unavailable or of poor quality, we are not liable to you for any claim, cost, loss or damage of any kind. After seven years, we may destroy the copies.

Requesting Copies You may request a copy of a canceled check by calling us at the number for customer service on your statement. To produce a copy, we need the account number, check number, exact amount of the check, and date the check was paid. This information is on your statement. Generally, we mail or make a copy available within seven business days. If we need more time, we will tell you. A fee may apply to each check copy. Please see the *Schedule of Fees* for your account.

If a check that you wrote was converted to an electronic debit, then the check was not sent to us for processing so we do not have a copy. We list these electronic debits on your account statement.

Compliance

You agree to comply with applicable laws and regulations. You may not use your account or related services for any illegal transactions or activity, for example those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et. seq. You agree to indemnify us from every action, proceeding, claim, loss, cost and expense (including attorney's fees) suffered or incurred by us due to any U.S. or foreign government entity seizing, freezing or otherwise asserting or causing us to assert control over any account or funds in an account of yours (or ours) when purportedly caused by, or arising out of, your action or inaction. This will apply whether or not such action is ultimately determined to be authorized under the laws of the U.S. or its territories, or of any foreign jurisdiction. We are not required to inquire or determine the authority of any action taken by the U.S. or foreign government entity prior to acceding to any legal process initiated by it.

Please note that your agreement to comply with applicable laws and regulations includes United States economic sanctions laws and regulations, including regulations issued by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury, and Executive Orders issued by the President of the United States.

Conflicting Demands and Disputes

We are not required to make payment from an account to a signer, a payee, a beneficiary of a trust account or Payable on Death (POD) account, or to any other person claiming an interest in any funds in the account:

- if we have actual knowledge of, or otherwise believe in good faith that there may be a bona fide dispute between the signers, beneficiaries, payees, or other persons concerning their rights to the account proceeds or
- if we are otherwise uncertain as to who is entitled to the account funds.

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We may notify all signers, beneficiaries, payees, and other persons claiming an interest in the account of the dispute or uncertainty without liability to you.

We also may, at our option and without liability to you, take one or more of these actions:

- continue to rely on current signature cards and other account documents;
- honor the competing claim upon receipt of evidence we deem satisfactory to justify such claim;
- freeze all or part of the funds until the dispute is resolved to our satisfaction;
- close the account and distribute the account balance, subject to any bank claims, to each claimant payable jointly, or payable individually in equal shares to each claimant;
- pay the funds into an appropriate court for resolution; or
- refuse to disburse any funds in the account to any person until such time as: all persons claiming an interest in the account consent in writing to a resolution of the dispute; or a court of proper jurisdiction authorizes or directs the payment; or the person with a conflicting claim withdraws his or her claim in writing.

You are liable for all expenses and fees we incur, including attorneys' fees, and we may charge them to your account.

Converting an Account

We may convert your account to another type of account, revoke privileges or close your account:

- if you make frequent transactions on a savings account;
- if your account frequently has debits against uncollected funds;
- if your account has excessive deposit activity;
- if you use a personal account for business purposes; or
- when we consider it appropriate or necessary to do so.

If we discontinue your type of account, we may convert your account to another type of account. We may also convert your account to another type of account based on our evaluation of how you use the account. If we convert your account, we will send you information about your new account.

Cutoff Time for Receipt of Orders

Our cutoff time for receipt at a financial center of an order relating to your account is 10:00 a.m. local time or, if later, one hour after the financial center opens each business day. Orders include a stop payment order or postdating order, restraining order, writ of attachment or execution, levy, garnishment and any similar order.

The cutoff time relates to our obligation to pay or return checks and other items. If we receive an order before this cutoff time, we may review items presented for payment against your account on the previous business day to determine whether we need to return any of them to comply with the order. If we receive the order after the cutoff time, we may not review items presented on the previous business day.

For example, if you give us a stop payment order after our cutoff time and the item you want to stop was previously presented for payment or otherwise before we have the opportunity to act on your order, your order comes too late to stop payment on the item. Or, if we receive a levy before the cutoff time and you do not have enough funds in your account to cover both the levy and all items presented against your account the previous business day, we may return one or more items and apply the funds to the levy.

Death or Incompetence

You agree to notify us promptly if any owner or authorized signer on your account dies or is declared incompetent by a court. Until we receive a notice of death or incompetency, we may act with respect to any account or service as if all owners, signers or other persons are alive and competent and we will not be liable for any actions or inactions taken on that basis.

If you give us instructions regarding your account, and you or another owner of the account subsequently dies or is declared incompetent, we may act on the instructions unless we receive written notice of death or incompetency prior to honoring such instructions.

When we receive a notice that an owner has died or been declared incompetent, we may place a hold on your account and refuse to accept deposits or permit withdrawals. We may hold any funds in your account until we know the identity of the successor.

If a deposit — including salary, pension, Social Security and Supplemental Security Income (SSI) — payable to the deceased owner is credited to the account after the date the deceased owner died, we may debit the account for the deposit and return it to the payer.

We may accept and comply with court orders, and take direction from court appointed personal representatives, guardians, or conservators from states other than where your account was opened or where the account, property or records are held. We reserve the right to require U.S. court documents for customers who reside outside of the U.S. at time of incompetence or death.

Facsimile Signature

A facsimile signature can be a convenient method for signing or endorsing documents and other items. If you use a facsimile signature, you are responsible for any withdrawal from your account that bears or appears to us to bear a facsimile signature that resembles or purports to be the signature of a person authorized to withdraw funds. We will not be liable to you if use of the facsimile device (or similar device utilized to affix your signature) was unauthorized. You are responsible even if the size, or color of the facsimile signature is different from that of any signature previously presented to us. We may pay the withdrawal and may charge your account for it. You agree to reimburse us (and we may charge your account) for all claims, costs, losses and damages, including attorneys' fees, that result from our payment of a withdrawal bearing either a facsimile that resembles or purports to bear your signature or a facsimile that we believe you authorized.

Deposit Bank Assessment

For some business accounts, Bank of America may, at our discretion, charge you a Deposit Bank Assessment on your average positive ledger balances. The assessment rate is variable and we may change it at any time without notice.

Fingerprint

If a person to whom you gave your check asks us to cash the check, we may require them to place their fingerprint on the check. If they refuse to provide their fingerprint, we may refuse to cash the check. We have no liability to you for refusing to cash the check.

"Freezing" Your Account

If we decide to close your account, we may freeze it. If we do this, we may in our discretion either accept or return deposits, checks and other items that we receive after we freeze your account without being liable to you.

If at any time we believe that your account may be subject to irregular, unauthorized, fraudulent or illegal activity, we may, in our discretion, freeze some or all of the funds in the account and in

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other accounts you maintain with us, without any liability to you, until such time as we are able to complete our investigation of the account and transactions. If we do freeze your account funds, we will provide notice to you as soon as reasonably possible. Notice may be made by mail or verbally or provided by other means such as via Online Banking or text alerts as permitted by law or by updated balance information. We may not provide this notice to you prior to freezing the account if we believe that such notice could result in a security risk to us or to the owner of the funds in the account.

Indemnification and Limitation of Liability

You agree to reimburse us for all claims, costs, losses and damages (including fees paid for collection) we may incur with respect to overdrafts or returned deposits in connection with your account.

We are not liable to you for errors that do not result in a financial loss to you. We may take any action authorized or permitted by this Agreement without being liable to you, even if such action causes you to incur fees, expenses or damages.

We are not liable to you for any claim, cost, loss or damage caused by an event that is beyond our reasonable control. In particular, we are not liable to you if circumstances beyond our reasonable control prevent us from, or delay us in, performing our obligations for a service, including acting on a payment order, crediting a funds transfer to your account, processing a transaction or crediting your account. Circumstances beyond our reasonable control include: a natural disaster; emergency conditions, such as fire, theft or labor dispute; a legal constraint or governmental action or inaction; the breakdown or failure of our equipment for any reason, including a loss of electric power; the breakdown of any private or common carrier communication or transmission facilities, any time-sharing supplier or any mail or courier service; the potential violation of any guideline, rule or regulation of any government authority; suspension of payments by another bank; or your act, omission, negligence or fault.

Except as limited by applicable law, we are not liable for special, incidental, exemplary, punitive or consequential losses or damages of any kind.

Our liability for a claim will be limited to the face value of an item or transaction improperly dishonored or paid or the actual value of any deposits not properly credited or withdrawals not properly debited.

You agree that the amount of any claim you have against us in connection with any account or transaction with us, whether brought as a warranty, negligence, wrongful dishonor or other action, is subject to reduction to the extent that: 1) negligence or failure to use reasonable care on your part, or on the part of any of your agents or employees, contributed to the loss which is the basis of your claim; and 2) damages could not be avoided by our use of ordinary care.

Any loss recovery you obtain from third parties on a particular claim will reduce the amount of any obligations we may have to you on that claim and you will immediately notify us of any such recovery. You agree to pursue all rights you may have under any insurance policy you maintain in connection with any loss and to provide us information regarding coverage. Our liability will be reduced by the amount of any insurance proceeds you receive or are entitled to receive in connection with the loss. If we reimburse you for a loss covered by insurance, you agree to assign us your rights under the insurance to the extent of your reimbursement.

Legal Process – Subpoena and Levy

"Legal process" includes a writ of attachment, execution, garnishment, tax withholding order, levy, restraining order, subpoena, warrant, injunction, government agency request for information, search warrant, forfeiture or other similar order.

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We may accept and comply with legal process: served in person, by mail, by facsimile transmission, or by other means; or served at locations other than the location where the account, property or records are held. You direct us not to contest the legal process. We may, but are not required to, send a notice to you of the legal process. We do not send a notice if we believe the law prohibits us from doing so.

We may hold and turn over funds or other property to the court or creditor as directed by the legal process, subject to our right of setoff and any security interest we have in the funds or other property. We do not pay interest on the funds during the period we hold them pursuant to legal process. If we hold or turn over funds, we may without any liability to you return checks and other items unpaid and refuse to permit withdrawals from your account. If the legal process applies to a time deposit account, we may charge the applicable early withdrawal penalty for funds taken from the time deposit.

We may charge your account a fee for each legal process. You agree to pay us for fees and expenses (including administrative expenses) that we incur in responding to any legal process related to your account, such as expenses for research and copying of documents. The fees and expenses may include attorneys' fees. We may deduct these fees and expenses from any of your accounts without prior notice to you.

If the legal process directs us to release information about one or more, but not all, accounts that are reported on a combined statement, we may release the entire combined statement, even though other accounts reported on the combined statement are not covered by the legal process. If the legal process requests information about one or more, but not all, account owners or signers, we may release information about all co-owners or signers on the account, even though some of the other co-owners or signers are not covered by the legal process.

We may produce documents held at, or provide access to property that is located in, any of our facilities or any facility operated by a third party on our behalf, even if the facility is not designated as the place to be searched in the legal process.

We have no liability to you if we accept and comply with legal process as provided in this section or by law.

Multiple Signatures Not Required

We may act on the oral or written instructions of any one signer on the account. Each signer may make withdrawals, write checks, transfer funds, stop payments, obtain ancillary services (e.g., electronic fund transfer services or wire transfers), and otherwise give us instructions regarding your account. We may require written authorization for some actions.

We do not assume a duty to enforce multiple signature requirements that you may agree upon among yourselves. If you indicate on your checks or signature card or other account documents that more than one signature is required for withdrawal, this indication is for your own internal procedures and is not binding on us.

We may disregard any instructions to permit withdrawals only upon more than one signature with respect to checks, electronic fund transfers or other debit/withdrawal requests. We may pay out funds from your account if the check, item, or other withdrawal or transfer instruction is signed or approved by any one of the persons authorized to sign on the account. We are not liable to you if we do this.

Notice of Withdrawal

Federal regulations require us to retain the right to require all savings and all NOW account depositors to give seven days' written notice before making a withdrawal. It is unlikely, however, that we would require this notice.

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Powers of Attorney/Appointment and Payment to Agents

You may decide to appoint someone to act for you as your agent or attorney-in-fact ("agent") under a power of attorney. Please note that the form must be satisfactory to us in our discretion and unless prohibited by law, we may refuse, with or without cause, to honor powers of attorney that you grant to others.

For our customers' convenience we have a banking power of attorney form, which is available at many of our financial centers. If your state has a statutory form power of attorney, we also generally accept that form. We may, however, accept any form that we believe was executed by you and act on instructions we receive under that form without any liability to you. You agree to reimburse us for all claims, costs, losses and damages that we incur in accepting and acting on any power of attorney form that we believe you executed.

We may pay any funds deposited in your account to your agent or upon the order of your agent. When we accept a power of attorney, we may continue to recognize the authority of your agent to act on your behalf without question until we receive written notice of revocation from you or notice of your death or incapacity and have had a reasonable time to act upon it. We will not be liable for action in accordance with the most current documentation if we have not received such notice.

We may require a separate form for each agent and for each account for which you want to grant power of attorney. We may require your agent to present the original form and refuse to act on a copy. In some cases, we may require that your agent confirm in an affidavit that the power has not been revoked or terminated or that you register the power with the appropriate recording authorities. We may restrict the types or sizes of transactions we permit your agent to conduct.

The authority of your agent to receive payments, transact on or otherwise make changes to your account generally terminates with your death or incapacity, unless the document creating such agency provides, in accordance with applicable law, that the agent's powers continue in spite of your incapacity.

Records

We may in our discretion retain records in any form including, without limit, paper, film, fiche, digitalized or other electronic medium. If we are not able to produce the original or a copy of your signature card or any other document relating to your account or service, our records (including our electronic records) will be deemed conclusive. If there is a discrepancy between your records and our records, our records will be deemed conclusive.

Right of Setoff

We may take or setoff funds in any or all of your accounts with us and with our affiliates for direct, indirect and acquired obligations that you owe us, regardless of the source of funds in an account. This provision does not apply to IRA or tax-qualified retirement accounts, to consumer credit card obligations or where otherwise prohibited by law. Your accounts include both accounts you own individually and accounts you own jointly with others. Our setoff rights are in addition to other rights we have under this Agreement to take or charge funds in your account for obligations you owe us.

If the law imposes conditions or limits on our ability to take or setoff funds in your accounts, to the extent that you may do so by contract, you waive those conditions and limits and you authorize us to apply funds in any or all of your accounts with us and with our affiliates to obligations you owe us.

We may use funds held in your joint accounts to repay obligations on which any account owner is liable, whether jointly with another or individually. We may use funds held in your individual accounts to repay your obligations to us, whether owed by you individually or jointly with another, including: obligations owed by you arising out of another joint account of which you are a joint owner, even if the obligations are not directly incurred by you; obligations on which you are secondarily liable; and any amounts for which we become liable to any governmental agency or department or any company as a result of recurring payments credited to any of your accounts after the death, legal incapacity or other termination of entitlement of the intended recipient of such funds. If you are a sole proprietor, we may charge any of your personal or business accounts.

If we take or setoff funds from a time deposit account, we may charge an early withdrawal penalty on the funds withdrawn.

We may take or setoff funds from your account before we pay checks or other items drawn on the account. We are not liable to you for dishonoring items where our action results in insufficient funds in your account to pay your checks and other items.

Some government payments may be protected from attachment, levy or other legal process under federal or state law. If such protections may apply, to the extent that you may do so by contract, you waive these protections and agree that we may take or setoff funds, including federal and state benefit payments, from your accounts to pay overdrafts, fees and other obligations you owe us.

This section does not limit or reduce our rights under applicable law to charge or setoff funds in your accounts with us for direct, indirect and acquired obligations you owe us.

Sample of Your Signature

To determine the authenticity of your signature, we may refer to the signature card or to a check or other document upon which your signature appears. We may use an automated process to reproduce and retain your signature from a check upon which your signature appears.

If you create your own checks, or obtain them from someone else, and we cannot accurately verify your signature on a check by comparing it with a check that posted to your account, you are responsible for any losses that may result from our inability to use that check to verify your signature.

Stop Payment Orders and Postdated Orders

Acceptance of Stop Payment Orders If we have not already paid a check or other item that is drawn on your account, then at your request and risk we may accept a stop payment order on it. If you request a stop payment on a check or other item in a financial center, we may require identification such as a Bank of America debit card with photo and a secondary form of identification. You may not stop payment on a point of sale transaction or an ATM withdrawal or transfer.

Postdated Orders If you write a postdated check (that is — you put a future date on the check), you may ask us not to pay the check before its date by giving us a stop payment order. Otherwise, we may pay it and deduct the amount from your account even if it is presented for payment before its date.

If we receive a postdated check that is subject to a stop payment order, we may return the check "payment stopped," "refer to maker," or with a similar designation.

Placing A Stop Payment Order We may accept a written or oral stop payment order from any person who has a right to withdraw funds from the account. We may require you to complete a form authorizing the order. You must give us sufficient notice and information so that we have a reasonable opportunity both to verify that the item is unpaid and to act on your request. We may charge you a fee for each stop payment order and each renewal of the order.

We use a computer system to identify items. Therefore, to place a stop payment order on a check or draft, we need specific information to process the request, such as the account number, the routing number, the name of the party to whom the item was made payable, the item number

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and the exact amount of the item — in dollars and cents. If you give us the wrong amount (even one penny off) or the wrong item number, we may pay the item. We may also require the date of the item, the name of the person who signed or authorized the item, and the name of the party to whom the item was made payable. We may use only a portion of the required information to identify an item. Please see the *Additional Information about Stop Payments for Preauthorized (Recurring) Electronic Funds Transfers* section for information about how to stop those types of payments.

In some cases, we may pay an item even if an order is in effect. For example, if one of our financial centers, without notice of your request, pays a check that you have asked us to stop, we may still pay the check.

A stop payment order generally expires after twelve months. However, we may, in our sole discretion, elect to honor a stop payment order for a longer period of time without notice to you. If you want the order to continue after twelve months, you must ask us to renew the order. Each request for a renewal is treated as a new order. If you want the order to expire in less than twelve months, you must ask us to cancel the order on or after the date you want it to expire. We may accept a written or oral instruction to cancel the order. Your request to cancel the order is not effective until we have a reasonable opportunity to act on it. We cancel the order automatically when the account on which the item is drawn is closed. If the item is presented to us for payment after the stop payment order expires, we may pay the item.

If we pay an item subject to a valid and timely stop payment order, we may be liable to you if you had a legal right to stop payment and you establish that you suffered a loss because of the payment. Our liability, if any, is limited to the actual loss suffered, up to the amount of the item. You must prove the loss to our satisfaction. We are not liable to you for any special, incidental or consequential loss or damage of any kind.

Additional Information about Stop Payments for Preauthorized (Recurring) Electronic Funds Transfers If you have told us in advance to make regular payments out of your account (such as recurring debit transactions) or if you have authorized someone else to debit your account through the ACH system, you can stop these payments.

Here's how: Call us at 1.800.432.1000 or write us at Bank of America Customer Service, P.O. Box 25118, Tampa, FL 33622.

You must notify us in time to receive your request at least three business days before the payment order is scheduled to be made. If you call us to stop the payment, we may require you to confirm the request in writing. If you do not notify us in writing, we may remove the stop payment after 14 days. We may charge you a fee for each stop payment order you give.

Stop payment orders for preauthorized (recurring) payments do not expire without action on your part, including recurring debit card and ACH transactions. Should your debit card number change, please contact us to place a new stop payment on the transaction on your new card.

To place a stop payment order on an ACH debit, we may require you to provide your name and telephone number, the type of account (checking or savings), and the exact company name used by the sender of the ACH debit, and some of the other information listed under *Placing a Stop Payment Order*. You can obtain the company name used by your sender from your statement by looking at a prior ACH debit from this sender that posted to your account.

If you do not know the amount of the ACH debit, we may still be able to place the stop payment order based on the company name of the sender, but this may stop all ACH items from this sender. If you give us the wrong company name or if the sender changes the company name, we may pay the item.

To place a stop payment on other preauthorized (recurring) transactions, you must give us the identifying information we request. You may be able to give us a specific expiration date for certain stop payment orders if you choose to do so.

You must notify the payee that you have withdrawn your authorization for any preauthorized (recurring) transaction.

Notice of Varying Amounts
If these regular payments may vary in amount, the person you are going to pay will tell you, 10 days before each payment, when it will be made and how much it will be. You may choose instead to receive this type of notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.

Liability for Failure to Stop Payment
If you order us to stop a preauthorized payment three business days or more before the transfer is scheduled, and you have given us all of the information we requested, and we do not stop the payment, we will be liable for your losses or damages directly caused by our failure to stop the payment.

Subaccounts

For regulatory accounting purposes, we may classify checking accounts as two subaccounts: a checking subaccount and a savings subaccount. For interest bearing checking accounts, we calculate and pay interest at the same rate and in the same way on both subaccounts. For non-interest bearing checking accounts, we do not pay interest on either subaccount. We may transfer funds between these subaccounts. We record the subaccounts and any transfers between them on our internal accounting records only. Otherwise, the subaccounts are subject to the same terms as the checking and savings accounts described in this Agreement.

Unclaimed Property – Accounts Presumed Abandoned or Inactive

State and federal law and our policy govern when accounts are considered abandoned. The applicable state law is generally the state listed in the address for your account statement.

Your account is usually considered abandoned if you have not performed at least one of the following activities for the period of time specified in the applicable state's unclaimed property law: made a deposit or withdrawal, written to us about the account, or otherwise shown an interest in the account, such as asking us to keep the account active. You usually need to perform the activity. Therefore, bank charges and interest payments, and automatic deposits and withdrawals, are usually not considered activity.

We are required by the unclaimed property laws to turn over accounts considered abandoned to the applicable state. Before we turn over an abandoned account, we may send a notice to the address we currently show for the account statement. We may not send this notice if mail we previously sent to this address was returned. Unless prohibited by the applicable state law, we may charge to the account our costs and expenses of any notice, advertisement, payment and delivery of the account to the applicable state agency.

After we turn the funds over to the state, we have no further liability to you for the funds and you must apply to the appropriate state agency to reclaim your funds.

If we consider your account inactive, then (unless prohibited by federal law or the law of the state where we maintain your account) we may:

- charge dormant account fees on the account in addition to regular monthly maintenance and other fees,
- stop sending statements,

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- if the account received interest, stop paying interest on the account; and
- refuse to pay items drawn on or payable out of the account.

If you re-establish contact with us, we do not have to reimburse you for these fees and we are not liable to you for any interest that would otherwise have accrued on your account.

Verification of Transactions and Right to Reverse Transactions

Transactions, including those for which we provide a receipt, may be subject to subsequent verification and correction, though we reserve the right not to do so in every case. We do not verify a deposit at the teller window so the receipt that you receive at the time of your deposit is not evidence that your deposit has been verified. We may reverse or otherwise adjust any transaction (both credit and debit) that we believe we erroneously made to your account at any time without prior notice to you, if we opt to do so.

Waiver, Severability, and Change of Law by Agreement

Waiver We may delay or waive the enforcement of any of our rights under this Agreement without losing that right or any other right. No delay in enforcing our rights will affect your obligation to pay us fees and other amounts you owe us under this Agreement. If we waive a provision of this Agreement, the waiver applies only in the specific instance in which we decide to waive the provision and not to future situations or other provisions regardless of how similar they may be.

Severability A determination that any part of this Agreement is invalid or unenforceable will not affect the remainder of this Agreement.

Change of Law by Agreement If any part of this Agreement is inconsistent with any applicable law, then to the extent the law can be amended or waived by contract, you and we agree that this Agreement governs and that the law is amended or waived by this Agreement.

Electronic Banking Services

We offer a variety of electronic banking services for use with your deposit accounts. We describe some in this section and also provide certain disclosures that apply to use of an electronic banking service with personal deposit accounts. We provide separate agreements to you that govern the terms of some services, including separate agreements for ATM and debit cards and Online and Mobile Banking services. Please review the following provisions and the separate agreement for the service.

Types of Electronic Banking Services

ATM and Debit Cards

We may issue you an ATM or debit card (either is called a "card") and a personal identification number (PIN) when you open your account. The terms that govern this service are in a separate agreement that you receive with your card. Please review that agreement carefully.

There are daily dollar limits for withdrawals and purchases. We provide your card limits to you as part of the separate agreement for card services. We may occasionally decide not to issue a card or code to a customer. We may suspend or terminate a card or code at any time without cause or notice.

The following information is a summary of how you can use your card. Some of these uses may not be available with every card or at every ATM or other terminal.

At ATMs You can use your card with linked accounts at participating ATMs to withdraw cash, transfer funds, and find out balances. At most ATMs that are prominently branded with the Bank of America name and logo, you can also use your card and PIN with linked accounts to make deposits and make payments to qualifying Bank of America credit cards and loans.

At participating merchants You can use your card with linked accounts at participating merchants to purchase goods and services. Some merchants may also permit you to withdraw cash from your checking account while making a purchase.

At participating financial institutions You can use your card with linked accounts at participating financial institutions to obtain a cash withdrawal from a teller.

Payments, Credits, and Transfers You can send or receive electronic transfers from or to your accounts. We may do this by ACH (as a member of a national or local automated clearinghouse association) or other similar networks. Electronic transfers may take various forms, such as:

- Automatic electronic deposits to your account, such as payroll or benefits payments;
- Automatic one-time or repeating charges to your account for bill payments, sent by a merchant or other payee with your authorization. The merchant or payee may ask you for bank number and account information from your check or a canceled check to create these orders; and
- A "check conversion" transfer, where a merchant or other payee uses a check that you have written to create an electronic transfer from your account. The merchant may either keep the check you wrote or return it to you.

Online and Mobile Banking Online and Mobile Banking services are governed by a separate agreement. You receive the agreement for the service at the time you enroll. You can use these services with linked accounts to view your account information, make deposits, transfer funds between your accounts and to the accounts of others, pay qualifying loans or credit cards, and make payments from your account to third parties. You can enroll for these services on our website bankofamerica.com.

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Telephone Banking You may use our automated customer service system with an Access ID or speak to a telephone banker to get your account information, transfer funds between your accounts with us, and pay qualifying loans or credit cards.

Access ID

An Access ID is a numeric code which, when used with a separate PIN number or passcode (plus, in some circumstances, another piece of identifying information called a "verbal verification code"), enables consumer and small business customers to do the following through our automated telephone system or in person at a financial center:

- obtain information about deposit and credit accounts that are linked to the Access ID
- transfer funds and make payments between linked accounts, and
- obtain other services such as stop payments, check reorders, and copies of checks and statements

You may request an Access ID and related security codes by calling customer service or at any financial center. Please note that Access IDs may not be available to customers in all states. In some states, individual account numbers, combined with additional security codes, may be required to obtain account information and transact other business.

Two activity levels are available for most accounts linked to your Access ID:

(1) Inquiry: Allows you to obtain account balances and transaction information.
(2) Financial: Allows you to obtain account information, transfer funds among accounts linked to the Access ID, and obtain certain other banking services.

When you first choose your Access ID, and when you subsequently open any new accounts, we will link all your Bank of America accounts that are eligible, and assign the financial activity level to all accounts for which that activity level is available, unless you tell us otherwise. We may establish certain limits on the accounts that can be linked to your Access ID and that can have the financial activity level.

If you permit another person to use your Access ID or account number(s) and related code(s), you are responsible for all transactions conducted by that person (even if he or she exceeds your authorization), until you notify us that the person is no longer authorized so that we may block the codes and issue new ones.

You must review your periodic statements and promptly report to us any unauthorized funds transfers initiated through the use of your security codes or otherwise. You must also promptly notify us of any suspected loss or theft of your security codes. Failure to take these actions may affect the extent of your liability for any unauthorized transfers under federal banking regulations or other applicable laws.

Small Business Access IDs If you are a small business customer, to uniquely identify each person who initiates a request for banking services, you should establish a separate Access ID and related security codes for each person who you determine needs access to your accounts. Your authorization (whether express or implied) for any individual to establish an Access ID shall constitute your authorization for the bank to provide account information to such individual and (unless inquiry only access is selected) to transfer funds and conduct other banking transactions upon that person's request. Such authorization supersedes any resolution, signature card or other document filed with the bank that purports to limit authority over any of your accounts, whether currently on file or submitted or modified in the future, unless the Access ID authorization is expressly modified or revoked.

Electronic Banking Disclosures

Personal deposit accounts Our *Personal Schedule of Fees* describes our personal deposit accounts. This *Electronic Banking Disclosures* section explains provisions that apply to electronic fund transfers to or from personal deposit accounts (sometimes referred to as "consumer deposit accounts"). These Transfers are governed by Regulation E, which implements the federal Electronic Fund Transfer Act. A personal deposit account is an account that is owned by a natural person and that is established primarily for personal, family, or household purposes.

Business deposit accounts Our *Business Schedule of Fees* describes our business deposit accounts. Business deposit accounts are accounts that are established primarily for business purposes. When you open one of our business deposit accounts, you represent and agree to that you are establishing it primarily for business purposes. Provisions below that explain a consumer's liability for unauthorized transfers do not apply to business deposit accounts, although as a matter of practice we generally follow the error resolution procedures described in this *Electronic Banking Disclosures* section for business-purpose accounts. Please note that we are not required to follow these procedures for business accounts and that we may change our practice at any time without notice.

Consumer's Liability for Unauthorized Transfers

Tell us AT ONCE if you believe your card or your personal identification number (PIN) or other code has been lost or stolen. Also, tell us AT ONCE if you believe that an electronic fund transfer has been made without your permission using information from your check. The best way to keep your possible losses down is to call us immediately.

Your losses could include all of the money in your account plus, if you have an overdraft protection plan linked to your account, any transfers from another account or any advances on a credit line.

If you tell us within two business days after you learn of the loss or theft of your card or code, you can lose no more than $50 if someone uses your card without your permission.

If you do NOT tell us within two business days after you learn of the loss or theft of your card or code, and we can prove we could have stopped someone from using your card or code without your permission if you had told us, you could lose as much as $500.

Also, if your statement shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us in writing within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

Note: *These liability rules are established by Regulation E, which does not apply to business deposit accounts. For personal deposit accounts, our liability policy regarding unauthorized debit card or ATM card transactions, and unauthorized Online Banking transactions may give you more protection, provided you report the transactions promptly. Please see the agreement you receive with your ATM or debit card and the Online Banking agreement.*

You should never write your PIN on your card or carry the PIN with you. This reduces the possibility of someone using your card without your permission if it is lost or stolen.

If you give, or make reasonably available, your card, PIN or other access device or code to anyone, you may be liable for any use made of such until you advise us that such person is not authorized to use them.

Also, the state law applicable to your account may give you more time to report an unauthorized transaction or may give you more protection. For example, in Massachusetts, the two day and 60 day time limits for reporting unauthorized transactions do not apply and the $500 limit does not apply.

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Contact in Event of Unauthorized Transfer; and Lost or Stolen Card, PIN or Other Code

If you believe your card, PIN or other code is lost or stolen, or learned by an unauthorized person, or that someone has transferred or may transfer money from your account without your permission, notify us immediately by calling the number listed below.

Telephone: 1.800.432.1000

You can also write to us at: Bank of America, P.O. Box 53137, #7405, Phoenix, AZ 85072-3137

You should also call the number or write to the address listed above if you believe a transfer has been made using the information from your check without your permission.

If unauthorized activity occurs, you agree to cooperate during the investigation and to complete a Lost/Stolen Card and Fraud Claims Report or similar affidavit.

Business Days For purposes of these electronic banking disclosures, our business days are Monday through Friday. Weekends and bank holidays are not included.

Documentation of Transfers

Receipts You can usually get a receipt at the time you make any transfer to or from your account at an ATM or point of sale terminal. You may not get a receipt for small dollar transactions. Transactions may be verified by us though we reserve the right not to do so in every case, so the receipt is not final and our records will control if there is a conflict.

Preauthorized Credits If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you can call us at 1.800.432.1000 to find out whether or not the deposit has been made.

Periodic Statements We send you a monthly account statement unless there are no electronic fund transfers in a particular month. In any case, we send you a statement at least quarterly unless we consider your account inactive.

Preauthorized Payments

Please see the *Additional Information about Stop Payments for Preauthorized (Recurring) Electronic Funds Transfer section* in the *Stop Payment Orders and Postdated Orders* section of the Agreement.

Liability for Failure to Make Transfers

If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- If, through no fault of ours, you do not have enough money in your account to make the transfer.
- If the transfer would go over the credit limit on your overdraft line.
- If the ATM where you are making the transfer does not have enough cash.
- If the ATM, terminal or system was not working properly and you knew about the breakdown when you started the transfer.
- If circumstances beyond our control (such as power outages, equipment failures, fire or flood) prevent the transfer, despite reasonable precautions that we have taken.
- If the funds are subject to legal process or other encumbrance restricting the transfer.
- If we consider your account to be inactive or dormant.
- If your card or code has been revoked due to inactivity or at our discretion.

There may be other exceptions stated in our agreement with you or permitted by law.

Confidentiality - Account Information Disclosure We will disclose information to third parties about your account or transfers you make as stated in the *Information about You and Your Account* section near the front of this Agreement.

Fees

ATM Fees When you use an ATM that is not prominently branded with the Bank of America name and logo, you may be charged a fee by the ATM operator or any network used and you may be charged a fee for a balance inquiry even if you do not complete a fund transfer. We may also charge you fees.

Other Fees For other fees that apply to electronic banking services, please review the *Schedule of Fees* for your account and each agreement or disclosure that we provide to you for the specific electronic banking service, including the separate agreement for Online and Mobile Banking services and the separate agreement for ATM and debit cards.

In Case of Errors or Questions about your Electronic Transfers You May Sign into Online Banking to Report the Error Promptly, or Call or write us at the telephone number or address below, as soon as you can, if you think your statement or receipt is wrong, or if you need more information about a transfer listed on the statement or receipt.

Call us at 1.800.432.1000 during normal Claims Department business hours or write us at Bank of America, P. O. Box 53137, #7405, Phoenix, AZ 85072-3137.

We must hear from you NO LATER than 60 days after we sent you the FIRST statement on which the error or problem appeared. Please provide us with the following:

- Tell us your name and account number;
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information;
- Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point of sale, or foreign-initiated transactions, we may take up to 90 days (instead of 45) to investigate your complaint or question. For new accounts we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within 3 business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

Notice: As part of the security system to help protect your card and PIN, we may use hidden cameras and other security devices to determine who is using a card at an ATM. You consent to this.

Additional Information for Massachusetts customers: Any documentation provided to you which indicates that an electronic fund transfer was made shall be admissible as evidence of the transfer and shall constitute prima facie proof that the transfer was made. And the initiation by you of certain electronic fund transfers from your account will effectively eliminate your ability to stop payment of the transfer. **UNLESS OTHERWISE PROVIDED IN THIS AGREEMENT, YOU MAY NOT STOP PAYMENT OF ELECTRONIC FUND TRANSFERS. THEREFORE, YOU SHOULD NOT EMPLOY ELECTRONIC ACCESS FOR PURCHASES OR SERVICES UNLESS YOU ARE SATISFIED THAT YOU WILL NOT NEED TO STOP PAYMENT.**

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ATM Safety Tips

The suggestions that follow offer some simple tips on protecting your card and PIN and exercising care when using an ATM.

Protect Your ATM Card and Personal Identification Number (PIN)

- Always protect your card by keeping it in a safe place. If your card is lost or stolen, contact us immediately.
- Memorize your PIN. Do not write it on your card, keep it in your wallet or give it to anyone.
- If you choose your own PIN, avoid using numbers for your PIN that are easily identifiable (such as birth dates, telephone numbers, addresses, etc.)
- Never give information about your card or PIN over the telephone, email or the Internet, unless to a trusted merchant in a call or transaction initiated by you. If someone is asking for this information, refuse and immediately contact us.
- Carefully review your account statements and report any fraudulent transactions immediately.

Be Aware of Your Surroundings at ATMs

- Be aware of people and your surroundings before, during and after you use an ATM, particularly at night. If you think it is unsafe, leave immediately and visit another ATM.
- If you must visit an ATM at night, take someone with you.
- When using an ATM with a door that requires card access, close the door completely upon entering and exiting and do not open the door to anyone you don't know.
- When you use a drive-up ATM, keep your engine running, doors locked and only the driver's window open during the transaction.
- The activity around Bank of America ATMs may be monitored or recorded by surveillance cameras.

Protect Your Privacy

- Shield the key pad with your hand or body while entering your PIN at an ATM.
- Put your card and receipt away immediately after completing your transaction. Do not count your cash at the ATM.
- Do not leave your transaction record at the ATM. Keep your transaction record in a safe place, so you can compare it to your statement.

Request Emergency Assistance

- If you need emergency assistance, call 911 from the nearest telephone. If you have a complaint about the security of a Bank of America ATM, call our Corporate Security Department at 1.800.222.7511.
- Report all crimes immediately to law enforcement. If you think you're being followed from an ATM, go to a busy area and immediately contact the police.

Funds Transfer Services

The following provisions apply to funds transfers you send or receive through us, but do not apply to electronic fund transfers governed by Regulation E, Subpart A of the Consumer Financial Protection Bureau. We provide separate agreements to you that govern the terms of some funds transfer services, including separate agreements for Online and Mobile Banking, telephone transfers, and funds transfers in the financial centers. If you have a specific agreement with us for these services, these provisions supplement that agreement to the extent these provisions are not inconsistent with the specific agreement.

The Uniform Commercial Code includes provisions relating to funds transfers. These provisions define the following terms: funds transfer, payment order and beneficiary. These terms are used here as they are defined in Article 4A of the Uniform Commercial Code – Funds Transfers as adopted by the state whose law applies to the account for which the funds transfer service is provided. In general: A funds transfer is the process of carrying out payment orders that lead to paying a beneficiary. The payment order is the set of instructions given to us to transfer funds. The beneficiary is the person or business who receives the payment.

In addition, funds transfers sent outside of the United States that are initiated by consumers primarily for personal, family or household purposes are governed by federal law (Remittance Transfers) (see below). Effective as of the date set forth in the final rules implementing EFTA (defined below), federal law may provide rights with respect to Remittance Transfers that may vary in certain ways from the terms and conditions set forth herein. Your rights with respect to Remittance Transfers, including disclosure, error resolution and cancellation rights, will be explained to you contemporaneously with each Remittance Transfer transaction you initiate, either orally or in writing.

In general, your and our rights and obligations under this Agreement are governed by and interpreted according to federal law and the law of the state where your account is located. However, Remittance Transfers shall be governed by federal law and, as applicable, the law of the State of New York. Funds transfers to your account or funded from your account or otherwise funded by you may involve one or more funds transfer systems, including, without limitation, Fedwire or Clearing House Interbank Payments System (CHIPS). Accordingly, notwithstanding any choice of law that may be provided elsewhere in this agreement, such transfers will be governed by the rules of any funds transfer system through which the transfers are made, as amended from time to time, including, without limitation, Fedwire, the National Automated Clearing House Association, any regional association (each an "ACH"), and CHIPS. Funds transfers through Fedwire will be governed by, and subject to, Regulation J, Subpart B, and Uniform Commercial Code Article 4A incorporated by reference thereunder. Funds transfers through CHIPS are governed by, and subject to, CHIPS Rules and Administrative Procedures and by the laws of the State of New York, including Article 4-A of the New York Uniform Commercial Code, regardless of whether the payment message is part of a transfer that is a Remittance Transfer, except that in the case of an inconsistency between New York law and EFTA, EFTA shall govern.

We may charge fees for sending or receiving a funds transfer. We may deduct our fees from your account or from the amount of the transfer. Other financial institutions involved in the funds transfer may also charge fees. For current fees, call us at the number for customer service on your statement or ask a financial center associate.

Remittance Transfers

The Bank may execute certain payment orders for you known as Remittance Transfers. A Remittance Transfer is a wire transfer initiated by a consumer primarily for personal, family or household purposes to a designated recipient in a foreign country. Effective as of the date set forth in the final rules implementing EFTA (defined below), federal law may provide certain rights

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and obligations related to Remittance Transfers that may differ from rights and obligations that apply to other types of payment orders, including disclosure, cancellation and error resolution rights. To the extent the provisions of this Agreement are inconsistent with the oral or written disclosures provided to you for a Remittance Transfer governed by section 919 of the Electronic Fund Transfer Act (EFTA), 15 U.S.C. section 1693o-1, the terms of the disclosures provided at the time of the Remittance Transfer shall govern. Notwithstanding anything to the contrary contained herein, rights and obligations that apply to Remittance Transfers are as set forth in EFTA and, as applicable, as set forth in New York law.

Sending Funds Transfers

You may subscribe to certain services we offer or you may give us other instructions to pay money or have another bank pay money to a beneficiary. This *Sending Funds Transfers* section applies to wire transfers (excluding Remittance Transfers) and transfers we make between your Bank of America accounts. It does not apply to automated clearing house (ACH) system funds transfer services.

You may give us payment orders for ACH system funds transfers only if you have a separate agreement with us for those services.

Cutoff Times for Payment Orders We have cutoff times for processing payment orders. Cutoff times vary depending on the particular office of our bank and the type of payment order. We may treat payment orders we receive after a cutoff time as if received the next business day. We tell you our cutoff times upon request.

Amending or Canceling Payment Orders You may not amend or cancel a payment order after we receive it. If you ask us to do this, we may make a reasonable effort to act on your request. But we are not liable to you if, for any reason, a payment order is not amended or canceled. You agree to reimburse us for any costs, losses or damages that we incur in connection with your request to amend or cancel a payment order.

Inconsistency of Name or Number The beneficiary's bank may make payment to the beneficiary based solely on the account or other identifying number, even if the name on the payment order differs from the name on the account. We or an intermediary bank may send a payment order to an intermediary bank or beneficiary's bank based solely on the bank identifying number, even if the payment order indicates a different bank name.

Sending Payment Orders We may select any intermediary bank, funds transfer system or means of transmittal to send your payment orders. Our selection may differ from that indicated in your instructions.

Notice of Rejection We may reject payment orders. We notify you of any rejection orally, electronically or in writing. If we send written notices by mail, we do so by the end of the next business day.

We are not liable to you for the rejection or obligated to pay you interest for the period before you receive timely notice of rejection.

Errors or Questions About Your Payment Orders We notify you about certain funds transfers by listing them on your account statement. In some cases, we also may notify you electronically, in writing or by a report produced through one of our information reporting services.

You must notify us at once if you think a funds transfer shown on your statement or notice is incorrect. You must send us written notice, including a statement of relevant facts, no later than 14 days after the date you receive the first notice or statement on which the problem or error appears.

If you fail to notify us within this 14-day period, we are not liable for any loss of interest because of an unauthorized or erroneous debit or because your statement or notice is incorrect. We are not

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required to compensate you, and we are not required to credit or adjust your account for any loss of interest or interest equivalent.

Calculations Unless otherwise prohibited by law, if we are obligated to pay for loss of interest that results from our error or delay regarding your payment order, we calculate compensation as follows. With an analyzed checking account, we credit the account to reflect the applicable value date or otherwise adjust the account under our account analysis procedure, to recalculate earnings credits for the period involved. With a non-analyzed, non-interest bearing account, we use a rate equal to the average of the Federal Funds rates set by the Federal Reserve Bank of New York, less a reserve factor. With a non-analyzed, interest bearing account, we use the rate applicable to the account. If we have a separate agreement with you specifying a different calculation method, we use that method instead.

Receiving Funds Transfers

We may receive instructions to pay funds to your account. We may receive funds transfers directly from the sender, through a funds transfer system or through some other communications system. This includes wire transfers, ACH transfers that may be sent through an ACH system or processed directly to an account with us, transfers sent through transfer systems that deliver payments in real time, and transfers between Bank of America accounts.

ACH Provisional Payment Rule Under ACH rules, funds transfers sent through an ACH are provisional and may be revoked prior to final settlement. You agree to these rules. If the funds transfer is revoked before final settlement, we may charge your account for the amount credited. The person who sent the payment order is considered not to have paid you. If this happens, we do not send a separate notice; we report the information on your account statement.

Notice of Funds Transfer We notify you that we have received funds transfers by listing them on your account statement. We provide statements to you by mail or through Online Banking if you selected paperless delivery through Online Banking for your deposit account documents. If you use one of our information reporting services, you may receive notice through that service.

We are not obligated to send you a separate notice of each incoming funds transfer. While we generally do not provide such separate notices, we may do so on occasion, in which case we send the notice within two business days after we credit your account.

We are not obligated to pay you interest for the period before you receive notice.

If you are expecting a funds transfer and want to find out if it has been credited to your account, call us at the number for customer service on your statement.

Posting Your Customers' Payments We credit to your account electronic payments (such as bill payments) that we receive from your customers. If you do not apply a payment to an account of your customer, you must promptly return the payment to us.

ACH Debits and Credits

From time to time, originators that you authorize may send automated clearing house (ACH) credits or debits for your account. For each ACH transaction, you agree that the transaction is subject to the National Automated Clearing House Association (NACHA) Operating Rules and any local ACH operating rules then in effect. You agree that we may rely on the representations and warranties contained in these operating rules and either credit or debit your account, as instructed by the originator of the ACH transaction.

You should be careful about giving someone your account number to help prevent unauthorized transactions on your account. You must notify us immediately of unauthorized activity.

For information about stopping payment of an ACH transaction, see *Stop Payment Orders and Postdating Orders* in the *Other Terms and Services* section.

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Business deposit accounts You acknowledge and agree that if you request us to transmit an ACH return transaction in connection with any problem, including a claim of erroneous or unauthorized ACH debit posted to your account, the related originating depository financial institution has no obligation to accept that return transaction if the return request is not made within the applicable time frame set forth in the NACHA Operating Rules. We will respond to your reported problem and attempt to pursue your request with the originating depository financial institution as long as you report the problem to us in writing within 60 days after the statement first reflecting the transaction was mailed to you; however, we do not guarantee that we will be able to recover your funds if you notify us of the problem beyond NACHA time frames. In some cases, depending on the facts, your claim may not be honored and you could incur a loss.

Tax Information

Generally, we are required to report annually to you and to the Internal Revenue Service (IRS) interest payments that total $10 or more during the year on your deposit account with us. We may also be required to report this information to the appropriate state revenue authority.

When you open an account, we are required to obtain — and each U.S. citizen or resident alien must give us — a certified U.S. Taxpayer Identification Number (TIN) and information regarding your backup withholding status. When you apply for an account, you certify that you have provided the correct TIN for the account holder and the correct backup withholding status.

For individual accounts, the TIN is your Social Security Number (SSN). For individual accounts with more than one owner, we report taxpayer information for the person listed first in our records. Resident aliens who do not qualify for Social Security should provide their Individual Taxpayer Identification Number (ITIN). For other accounts, the TIN is the owner's Employer Identification Number (EIN). If you do not give us a certified name and TIN, if the IRS notifies us that the name and TIN you gave us is incorrect, or if the IRS notifies us that you failed to report all your interest and dividends on your tax return, we are required to backup withhold at the current backup withholding rate on interest paid to your account and pay it to the IRS. In some cases, a state and local tax authority may also require that we pay state and local backup withholding on interest paid to your account when we are required to pay backup withholding to the IRS. Backup withholding is not an additional tax. If you are subject to backup withholding, we are required to report to you and to the IRS regardless of the amount of the interest payment. You may claim amounts withheld and paid to the IRS as a credit on your federal income tax return.

If you are a certified nonresident alien individual, you are generally exempt from backup withholding on interest but may be subject to information reporting if you reside in a country in which we are required to report. If you are a certified foreign entity, you are generally exempt from backup withholding and information reporting for interest payments. Deposit interest income that is effectively connected with the conduct of a trade or business in the United States is subject to information reporting.

You must renew your status as an exempt foreign person or entity prior to the end of the third calendar year following the year in which you last certified your status. If you fail to renew your status by the last day of the fourth calendar year, your interest payments will be subject to backup withholding. If you become a U.S. citizen or resident after opening your account, you must notify us within 30 days and provide us with your certified name and TIN.

We comply with Foreign Account Tax Compliance Act (FATCA) as mandated by U.S. federal tax law. We will withhold on certain payments when required by such law.

For more information or to determine how this information applies to you, consult your U.S. tax advisor.

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Exhibit A

If you administer your account as a retirement account, all IRS reporting and filing implications are the sole responsibility of the account holder and should be discussed with the account holder's tax advisor as neither Bank of America, its affiliates, nor its employees, provide tax advice.

Resolving Claims

If you and we are not able to resolve a claim ourselves, then you and we agree that the claim will be resolved as provided in this *Resolving Claims* section. This is a dispute resolution provision. Please read it carefully.

What does "Claim" Mean?

Claim means any claim, dispute or controversy (whether under a statute, in contract, tort, or otherwise and whether for money damages, penalties or declaratory or equitable relief) by either you or us against the other, or against the employees or agents of the other, arising from or relating in any way to this deposit agreement (including any renewals, extensions or modifications) or the deposit relationship between us.

Claim does not include provisional or ancillary remedies from a court of competent jurisdiction, which either you or we may exercise without waiving the right to arbitration or reference.

How Claims on Personal Accounts will be Resolved

You and we both agree that all Claims relating to a personal account will be resolved in court by a judge without a jury, as permitted by law.

JURY TRIAL WAIVER FOR PERSONAL ACCOUNTS

FOR PERSONAL ACCOUNTS, AS PERMITTED BY LAW, YOU AND WE AGREE AND UNDERSTAND THAT YOU AND WE ARE BOTH GIVING UP THE RIGHT TO TRIAL BY JURY. THIS IS A JURY TRIAL WAIVER.

How Claims on Business Accounts will be Resolved

You have the right to compel us at your option, and we have the right to compel you at our option, to resolve a Claim relating to a business account by binding arbitration. If neither you nor we decide to compel arbitration, then the Claim will be resolved in court by a judge without a jury, as permitted by law. There is an exception for Claims brought in a California state court. If a Claim relating to a business account is brought in a California state court, either you or we can seek to compel the other to have the Claim resolved by general reference to a judicial referee under California Code of Civil Procedure (C.C.P.) Section 638, as provided below. Both parties may also agree to resolve their disputes through judicial reference. The arbitration, judicial reference or trial by a judge will take place on an individual basis without resort to any form of class or representative action.

CLASS ACTION AND JURY TRIAL WAIVER FOR BUSINESS ACCOUNTS

FOR BUSINESS ACCOUNTS, YOU AND WE AGREE AND UNDERSTAND: (1) THAT YOU AND WE ARE BOTH GIVING UP THE RIGHT TO TRIAL BY JURY, AND (2) THAT THIS SECTION PRECLUDES YOU AND US FROM PARTICIPATING IN OR BEING REPRESENTED IN ANY CLASS OR REPRESENTATIVE ACTION OR JOINING OR CONSOLIDATING THE CLAIMS OF OTHER PERSONS. THIS IS A CLASS ACTION WAIVER AND JURY TRIAL WAIVER.

Judicial Reference

A case sent to judicial reference is heard by a neutral individual (a "judicial referee"), but remains in the court system subject to the same rules of procedure, discovery and evidence and appeal as

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any court case. The judicial referee will be an active or retired judge or attorney with more than 10 years of experience, chosen by mutual agreement of you and us.

If you and we are unable to agree on a judicial referee, then the judicial referee will be appointed according to the procedure for appointment of a referee under California C.C.P. Section 640.

The judicial referee, sitting alone without a jury, will decide questions of law and fact and will resolve the Claim. This includes the applicability of this *Resolving Claims* section and the validity of the deposit agreement.

Judicial reference will be governed by California C.C.P. Section 638 at seq. and the judicial referee will determine all issues in accordance with federal and California law and the California rules of evidence. The referee is empowered to provide all temporary or provisional remedies and rule on any motion that would be authorized in pretrial or trial proceedings in court, including motions for summary judgment or summary adjudication. The award that results from the decision of the referee will be entered as a judgment in the court that appointed the referee, in accordance with the provisions of California C.C.P. Sections 644(a) and 645. You and we both reserve the right to seek appellate review of any judgment or order to the same extent permitted in a court of law.

Arbitration

This section on arbitration applies to business accounts and is subject to the provisions of the *Limitation and Non-Severability* section below.

Arbitration is a method of resolving disputes in front of one or more neutral individuals, instead of having a trial in court in front of a judge and/or jury. The arbitrator will be an active or retired judge or attorney with more than 10 years of experience, chosen by mutual agreement of you and us.

If you and we are unable to agree on an arbitrator, then you agree to choose one of the following Administrators within 10 days of our written notice that an agreement cannot be reached.

- JAMS Resolution Center
  1920 Main St., Suite 300
  Irvine, CA 92614
  www.jamsadr.com
  (800) 352-5267
- American Arbitration Association ("AAA")
  1633 Broadway, 10th Floor
  New York, NY 10019
  www.adr.org
  (212) 716-5800

If you do not choose the Administrator on a timely basis, we will select the Administrator and the Administrator will select the arbitrator using the Administrator's rules. If an Administrator cannot hear or refuses to hear the arbitration, then the arbitration will be handled by the alternative Administrator.

The arbitrator, sitting alone without a jury, will decide questions of law and fact and will resolve the Claim. This includes the applicability of this *Resolving Claims* section and the validity of the deposit agreement, except that the arbitrator may not decide or resolve any Claim challenging the validity of the class action and jury trial waiver. The validity of the class action and jury trial waiver will be decided only by a judicial referee or a court.

After a decision is given by an arbitrator, and where the amount of the Claim exceeds $200,000, either you or we can appeal the arbitrator's decision to another arbitrator. If the amount of the Claim exceeds $1,000,000, either you or we can appeal the arbitrator's decision to a panel of three arbitrators. No decision may be appealed under this paragraph, unless the arbitrator that heard the matter first makes a finding that the Claim could reasonably have exceeded either

$200,000 or $1,000,000. Any arbitrator who hears an appeal under this paragraph will be selected according to the rules of the Administrator.

The arbitration of any matter involves interstate commerce and is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. (the "FAA"). The arbitrator will follow applicable substantive law to the extent consistent with the FAA. The arbitrator will give effect to the applicable statutes of limitation and will dismiss barred claims. Arbitrations will be governed by the rules of the Administrator to the extent those rules do not conflict with this *Resolving Claims* section. In addition, you or we may submit a written request to the arbitrator to expand the scope of discovery normally allowable. At the timely request of either you or us, the arbitrator must provide a brief written explanation of the basis for the award.

Judgment upon the award given by the arbitrator may be entered in any court having jurisdiction. The arbitrator's decision is final and binding, except for any right of appeal provided by the FAA or under this Agreement.

Limitation and Non-Severability

For both personal and business accounts. Regardless of anything else in this *Resolving Claims* section, you and we both acknowledge and agree that the validity and effect of the class action and jury trial waiver for business accounts and the jury trial waiver for personal accounts may be determined only by a court or judicial referee and not by an arbitrator. You and we both have the right to appeal the limitation or invalidation of the waiver.

For business accounts. Regardless of anything else in this *Resolving Claims* section, you and we both acknowledge and agree that the class action and jury trial waiver is material and essential to the arbitration of any disputes between you and us and is non-severable from the agreement to arbitrate Claims. If the class action and jury trial waiver is limited, voided or found unenforceable, then the agreement to arbitrate (except for this sentence) will be null and void with respect to such proceeding and this *Resolving Claims* section will be read as if the provisions regarding arbitration were not present. You and we both have the right to appeal the limitation or invalidation of the class action and jury trial waiver. You and we acknowledge and agree that under no circumstances will a class action be arbitrated.

Rules of Interpretation

Except as provided in the *Limitation and Non-Severability* section above, if any portion of this *Resolving Claims* section is determined to be invalid or unenforceable, it will not invalidate the remaining portions of this section. If there is a conflict or inconsistency between this *Revolving Claims* section and other terms of this deposit agreement or the applicable rules of the Administrator, this *Resolving Claims* section will govern. If there is any conflict between this *Revolving Claims* section and any other dispute provision (whether it be for arbitration, reference or any other form of dispute resolution), this *Resolving Claims* section will prevail for Claims arising out of this deposit agreement or transactions contemplated by this deposit agreement.

Jurisdiction and Venue

Any action or proceeding regarding your account or this deposit agreement must be brought in the state in which the financial center that maintains your account is located. You submit to the personal jurisdiction of that state. Note that any action or proceeding will be governed by and interpreted in accordance with the *Governing Law* section of this agreement.

If a Claim is submitted to arbitration and the state where that financial center is located is not reasonably convenient for you, then you and we will attempt to agree on another location. If you and we are unable to agree on another location, then the location will be determined by the Administrator or arbitrator.

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PCL XL error

        Warning:  IllegalMediaSize

        Warning:  IllegalMediaSize
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Exhibit 2

Exhibit 2

Personal Schedule of Fees

Effective May 18, 2018

Bank of America

bankofamerica.com

Applies in all states.

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91-11-3000B 05/2018
00-14-9299

EQUAL HOUSING LENDER
29918

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Investment products are provided by Merrill Lynch, Pierce, Fenner & Smith Incorporated and:

Are Not FDIC Insured	Are Not Bank Guaranteed	May Lose Value

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Merrill Edge is available through Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPF&S), and consists of the Merrill Edge Advisory Center™ (investment guidance) and self-directed online investing.

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Overview

This schedule lists account fees and also explains how you can avoid some account fees. Please review the account description for details about your account. Other account fees that can apply to your account are listed in the account descriptions and in the Other Account Fees and Services section.

Your account and deposit relationship with us are governed by this schedule of fees and the *Deposit Agreement and Disclosures*. Please read both agreements carefully. These agreements are part of the binding contract between you and us for your account and deposit relationship. You can also find these agreements at bankofamerica.com.

When you open a deposit account, it is located at a financial center and generally remains at that location until it is closed. If your address is in a state where we do not have a financial center at the time, we may open the account at a financial center in Virginia. If state taxes apply to an account or service, taxes are in addition to the fee amount listed.

We may change the accounts and services described in this schedule at any time. We may add new terms and conditions. We may delete or amend existing terms and conditions. We may also add new accounts or services and convert or discontinue existing accounts or services at any time.

You can get information about interest rates and fees for services not covered in this schedule by visiting a financial center or calling us at the number on your statement.

Optional Services

The following optional services are generally available with our checking and savings accounts:

- Debit card (Photo Security® feature available) or ATM card
- Online Banking service
- Online and Mobile Bill Pay service
- Email and Text Alerts
- Direct deposits
- Keep the Change® Savings Service
- Affinity Banking
- Preferred Rewards
- Overdraft Protection Service from another linked account
- Automatic transfers from checking to savings

These optional services can help you manage your account. To learn more about them, please review the agreement for that service. You can also review information on bankofamerica.com or speak to a financial center associate.

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Personal Checking Accounts

Account	Monthly Maintenance Fee for Checking Account and How to Avoid It	Other Important Account Information
Bank of America Core Checking® • Use direct deposit • Non-interest bearing account • Minimum to open - $25.00	Monthly maintenance fee for Bank of America Core Checking - $12.00 To avoid the monthly maintenance fee, meet **one** of the following requirements during each statement cycle: • Have at least one qualifying direct deposit of $250 or more made to your account each statement cycle. Or • Maintain a minimum daily balance of $1,500 or more in your account. Or • Enroll in the Preferred Rewards program and qualify for the Gold, Platinum or Platinum Honors tier (first 4 checking accounts).	**Student waiver.** When this account is owned either individually or jointly by a student, upon your request we waive the monthly maintenance fee for each statement cycle during which the student meets **both** of the following requirements: • The student is enrolled in a high school or a college, university or vocational program, **and** • The student is under 24 years old. College, university and vocation students may be required to show proof of enrollment. This student waiver does not apply when the student turns 24, ceases to be an owner of the account, or is no longer enrolled in school. For information about direct deposits, see page 13. The minimum daily balance is the lowest balance that we determine is in the account during a statement cycle. This means you will need to ensure your account does not fall below $1,500 during your statement cycle.

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Personal Checking Accounts *(cont.)*

Account	Monthly Maintenance Fee for Checking Account and How to Avoid It	Other Important Account Information
Bank of America Interest Checking® • Interest bearing account • Variable rate • Minimum to open - $100.00	Monthly maintenance fee for Bank of America Interest Checking - $25.00 To avoid the monthly maintenance fee, maintain a **combined balance of $10,000** or more during each statement cycle. For each statement cycle, we add the following balances together to determine your combined balance: • The average daily balance in your Interest Checking account and in each checking and savings account that is linked to your Interest Checking account. We determine the average daily balance in a linked account by using the beginning balance in the linked account for each day of the Interest Checking statement cycle. And • The current balance, as of the end of your Interest Checking statement cycle, in each CD and IRA that is linked to your Interest Checking account. And • The current balance, as of two business days before the end of your Interest Checking statement cycle, in each eligible Merrill Edge and Merrill Lynch investment account that is linked to your Interest Checking account. Or • Enroll in the Preferred Rewards program and qualify for the Gold, Platinum or Platinum Honors tier (first 4 checking accounts).	You can also get the following services with this account: • Three additional Bank of America Interest Checking accounts and four savings accounts with no monthly maintenance fee when you link them to your primary Interest Checking account. • Free standard checks or discounts on certain styles. • No transfer fee for Overdraft Protection transfers from your linked Bank of America savings, line of credit or secondary checking account. (Other line of credit fees may apply.) • No fee for incoming domestic wire transfers, cashier's checks, stop payments, and more. *Additional accounts.* For accounts linked to your Interest Checking account, we waive the monthly maintenance fee on the first three linked Interest Checking accounts and on the first four linked savings accounts of any type. The minimum amount you need to open each additional account, and other terms and fees, apply to each linked account. While you can also have us link more accounts, this waiver of the monthly maintenance fee does not apply to them. Transaction limits apply to savings accounts. See "What are the transaction limitations on my savings account?" in the *Frequently Asked Questions About Accounts* section on page 14. *Linking accounts.* You must tell us what accounts you want us to link to your Interest Checking account. You can do so by visiting a financial center or calling us at the number on your statement. We do not automatically link other accounts for pricing. Certain restrictions apply. Please review "What does it mean to link accounts?" on page 13. Employees and Retirees: Bank of America employee and retirees qualify for a waiver of the monthly maintenance fee on up to four Bank of America Interest Checking accounts. When employees or retirees no longer meet the qualifications, standard product terms and pricing apply. See "Which employees and retirees are eligible for a waiver of the Monthly Maintenance Fee?" in the Frequently Asked Questions About Accounts section on page 14.

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Personal Savings Accounts

Account	Monthly Maintenance Fee for Savings Account and How to Avoid It	Other Important Account Information
Rewards Savings • Interest bearing account • Variable interest rate • Potential for Preferred Rewards interest rate booster feature • Minimum amount to open - $100.00	Monthly maintenance fee - $8.00 To avoid the monthly maintenance fee, meet **one** of the following requirements during each statement cycle: • Maintain a minimum daily balance of $500 or more in your account. Or • Link your account to your Bank of America Interest Checking or Advantage account (first 4 savings accounts). Or • Enroll in the Preferred Rewards program and qualify for the Gold, Platinum or Platinum Honors tier (first 4 savings accounts).	• This account is eligible for the interest rate booster feature of the Preferred Rewards program, which may increase your interest rate based on your Preferred Rewards tier. • Each monthly statement cycle, you can make a total of six withdrawals and transfers with no Withdrawal Limit Fee. • If you maintain a minimum daily balance of $20,000 or more in your Rewards Savings account or if you are enrolled in the Preferred Rewards program, you may make additional withdrawals and transfers with no Withdrawal Limit Fee. Otherwise, the Withdrawal Limit Fee is $10.00 for each withdrawal and transfer during the monthly statement cycle above the six. We charge no more than six Withdrawal Limit Fees per monthly statement cycle. This fee applies to all types of withdrawals and transfers, including at ATMs, at financial centers, by telephone, by mail, through Online and Mobile Banking, and by any other electronic means. • Limits apply to some types of withdrawals and transfers from a savings account. See "What are the transaction limitations on my savings account?" in the *Frequently Asked Questions About Accounts* section below. Note that the Withdrawal Limit Fee is separate from the transaction limitations that apply to savings accounts under federal law.
Minor Savings Accounts (Under 18) • Under 18 years old, beginning a savings program • Interest bearing account • Variable interest rate • Minimum amount to open - $25.00 (Use Rewards Savings for custodial ownership, such as UTMA/UGMA)	No monthly maintenance fee	• After you turn 18, we automatically convert your Minor Savings to a Rewards Savings account. • Parents can make automatic transfers from checking. • Each monthly statement cycle, you can make a total of six withdrawals and transfers with no Withdrawal Limit Fee. • If you maintain a minimum daily balance of $300 or more in your Minor Savings account, you may make additional withdrawals and transfers with no Withdrawal Limit Fee. Otherwise, the Withdrawal Limit Fee is $1.00 for each withdrawal and transfer during the monthly statement cycle above the six. We charge no more than six Withdrawal Limit Fees per monthly statement cycle. This fee applies to all types of withdrawals and transfers, including at ATMs, at financial centers, by telephone, by mail, through Online and Mobile Banking, and by any other electronic means. • Limits apply to some types of withdrawals and transfers from a savings account. See "What are the transaction limitations on my savings account?" in the *Frequently Asked Questions About Accounts* section below. Note that the Withdrawal Limit Fee is separate from the transaction limitations that apply to savings accounts under federal law.

Please also review *Other Account Fees and Services* on pages 7-12, *Frequently Asked Questions About Accounts* on page 13 and the *Deposit Agreement and Disclosures*.

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Personal CD/IRA Accounts

Account	Minimum Amount You Need to Open Account	Account Features / Services	Other Important Account Information
Fixed Term CD Terms of 7 Days—27 Days	$15,000	• Interest rate fixed until maturity. • No additional deposits until maturity. • Automatically renews.	• A penalty is imposed for early withdrawal.
Fixed Term CD Terms of 28 Days—10 Years	$1,000	• Interest rate fixed until maturity. • No additional deposits until maturity. • Automatically renews.	• A penalty is imposed for early withdrawal. • For CDs with terms of 30 days or more, we send you a maturity notice prior to renewal. Please read it carefully. We may change the type, term or other feature of your CD by giving you notice. If we make a change, we tell you about the change in the maturity notice.
Featured CD/IRA	See deposit rate sheet for minimum opening amount	• Interest rate fixed until maturity. • No additional deposits until maturity. • Automatically renews. • See deposit rate sheet for available terms.	• A penalty is imposed for early withdrawal. • For CDs with terms of 30 days or more, we send you a maturity notice prior to renewal. Please read it carefully. We may change the type, term or other feature of your CD by giving you notice. If we make a change, we tell you about the change in the maturity notice.
Fixed Term IRA/CESA Terms of 6 Months—10 Years	Fixed Term IRA: $1,000; CESA: $500	• Interest rate fixed until maturity. • No additional deposits until maturity. • Automatically renews.	• A penalty is imposed for early withdrawal. • We send you a maturity notice prior to renewal. Please read it carefully. We may change the type, term or other feature of your CD by giving you notice. If we make a change, we tell you about the change in the maturity notice.

Please also review *Other Account Fees and Services* on pages 7-12 and the *Deposit Agreement and Disclosures*. The *Deposit Agreement and Disclosures* contains information about the early withdrawal penalty and other terms for CDs. Also, see the *Traditional/Roth Individual Retirement Custodial Accounts and Disclosure Statements* and *Coverdell Education Savings Custodial Account and Disclosure Statement* for additional IRA and CESA account information.

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Personal CD/IRA Accounts *(cont.)*

Account	Minimum Amount You Need to Open Account	Account Features / Services	Other Important Account Information
Variable Rate IRA/CESA Terms of 18 Months—23 Months	$100	• Variable interest rate. Your interest rate and annual percentage yield may change. At our discretion, we may change the interest rate and annual percentage yield on your account at any time. • Additional deposits allowed during term. • Automatically renews. • Make saving easier with automatic transfers.	• A penalty is imposed for early withdrawal. • We send you a maturity notice prior to renewal. Please read it carefully. We may change the type, term or other feature of your CD by giving you notice. If we make a change, we tell you about the change in the maturity notice.
Money Market IRA/ CESA	$100	• Variable interest rate. Your interest rate and annual percentage yield may change. At our discretion, we may change the interest rate and annual percentage yield on your account at any time. • Additional deposits allowed at any time. • Make saving easier with automatic transfers.	• This is a savings account. • Pre-authorized transfers and withdrawals are subject to certain limitations. See "What are the transaction limitations on my savings account?" on page 14. Withdrawals by check, draft or debit card are not allowed.

Please also review *Other Account Fees and Services* on pages 7-12 and the *Deposit Agreement and Disclosures*. The *Deposit Agreement and Disclosures* contains information about the early withdrawal penalty and other terms for CDs. Also, see the *Traditional/Roth Individual Retirement Custodial Accounts and Disclosure Statements* and *Coverdell Education Savings Custodial Account and Disclosure Statement* for additional IRA and CESA account information.

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Other Account Fees and Services

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
ATM Card and Debit Card Fees	Replacement ATM or Debit Card Fee	$5.00 per card	• Fee for each requested replacement of a card or other debit access device. • The replacement fee does not apply when we replace a card upon its expiration. • Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee.
	Rush Replacement ATM or Debit Card Fee	$15.00 per card	• Fee for each requested rush delivery of a card or other debit access device. • The Replacement ATM or Debit Card Fee may also apply and would be in addition to the rush delivery fee. • Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee.
	Non-Bank of America Teller Withdrawal Fee	For each transaction, the greater of $5.00 **OR** 3% of the dollar amount of the transaction, up to a maximum of $10.00	• Fee applies when you authorize another financial institution to use your card or card number to conduct a transaction (such as a withdrawal, transfer, or payment) and the other financial institution processes the transaction as a cash disbursement.
	International Transaction Fee	3% of the U.S. dollar amount of the transaction	• Fee applies if you use your card to purchase goods or services in a foreign currency or in U.S. dollars with a foreign merchant (a "Foreign Transaction"). Foreign Transactions include internet transactions made in the U.S. but with a merchant who processes the transaction in a foreign country. • Fee also applies if you use your card to obtain foreign currency from an ATM. Visa® or Mastercard® converts the transaction into a U.S. dollar amount, and the International Transaction Fee applies to that converted U.S. dollar amount. ATM fees may also apply to ATM transactions. See ATM Fees section below. • See disclosure information that accompanied your card for more information about this fee.

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Other Account Fees and Services *(cont.)*

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
ATM Fees ***Bank of America ATM***—*an ATM that prominently displays the Bank of America name and logo on the ATM* ***Non-Bank of America ATM***—*an ATM that does not prominently display the Bank of America name and logo on the ATM*	Withdrawals, deposits, transfers, payments and balance inquiries at a Bank of America ATM	No ATM fee	• Deposits and payments may not be available at some ATMs. Transaction fees may apply to some accounts. See account descriptions in this schedule.
	Non-Bank of America ATM Fee for: Withdrawals, transfers and balance inquiries at a non-Bank of America ATM in the U.S.	$2.50 each	• When you use a non-Bank of America ATM, you may also be charged a fee by the ATM operator or any network used and you may be charged a fee for a balance inquiry even if you do not complete a funds transfer. • The non-Bank of America ATM fees do not apply at some ATMs located outside the United States. Call us before you travel internationally for current information about banks participating in the program. • See the disclosure information that accompanied your card for other fees that may apply. • Non-Bank of America ATM fees are in addition to other account fees that may apply to the transaction, such as a Withdrawal Limit Fee for savings. • Preferred Rewards Platinum customers using a Bank of America Debit or ATM card are not charged the non-Bank of America ATM fee for one withdrawal, transfer and balance inquiry per statement cycle from a non-Bank of America ATM in the U.S., and receive a refund of the ATM operator fee for one withdrawal, transfer and balance inquiry per statement cycle from a non-Bank of America ATM in the U.S. • Preferred Rewards Platinum Honors customers using a Bank of America Debit or ATM card are not charged the non-Bank of America ATM fee for withdrawals, transfers and balance inquiries from non-Bank of America ATMs in the U.S., and receive a refund of the ATM operator fee for withdrawals, transfers and balance inquiries from non-Bank of America ATMs in the U.S.
	Non-Bank of America ATM Fee for: Withdrawals, transfers and balance inquiries at a non-Bank of America ATM in a foreign country	$5.00 each	
Check Cashing—*Bank of America customer*		No Check Cashing Fee	A fee may be assessed to a payee presenting a check that you issued if the payee is not a Bank of America relationship customer. A Bank of America relationship customer is an account owner of a deposit account (checking, savings, CD), Individual Retirement Account (IRA), loan, credit card, mortgage, safe deposit box or a Merrill Edge or Merrill Lynch Investment account.
Check Cashing—*Nonrelationship customer*	Applies to checks drawn on Bank of America personal accounts	$8.00 per check for amounts greater than $50.00.	
Check Image Service	Check Image Service Fee	$3.00 each statement cycle	• Fee to return images of your cancelled checks with your statement. Applies to each statement cycle during which we return one or more images of your checks. • Our Online Banking service allows you to view and print copies of checks that posted to your account within the last 18 months. • Preferred Rewards customers qualify for a waiver of this fee.

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Other Account Fees and Services *(cont.)*

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
Copies	Check Copy Fee	No fee for the first two copies of each request. After two copies, there is a $3.00 fee for each copy up to a maximum of $75.00 per request.	• Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee. • This fee does not apply to accounts opened in Massachusetts and New Hampshire. • You can avoid the fee by viewing and printing your available checks in Online Banking, instead of ordering the copy from us. For information about what checks are available in Online Banking, please review the Activity tab.
	Deposit Slips and other Credit Items	No fee for the first two copies of each request. After two copies, there is a $3.00 fee for each copy up to a maximum of $75.00 per request.	• Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee. • This fee does not apply to accounts opened in Massachusetts and New Hampshire. • You can avoid the fee by viewing and printing your available Deposit Slips and other Credit Items, instead of ordering the copy from us. For information about what Deposit Slips and other Credit Items are available in Online Banking, please review the Activity tab.
	Statement Copy Fee	$5.00 per copy	• Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee. • You can avoid the fee by viewing and printing your available statements in Online Banking, instead of ordering the copy from us. For information about what statements are available in Online Banking, please review the Statements and Documents tab. • This fee does not apply to your monthly statement delivery. It only applies when you request paper copies of your statements.
IRA	IRA and Coverdell ESA Direct Custodian Transfer Processing Fee	$50.00 each plan, each occurrence	• Fee for transferring funds to another institution.

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Other Account Fees and Services *(cont.)*

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
Overdraft Protection Service *This optional service can help you avoid declined transactions as well as overdraft and NSF: returned item fees. To apply for this service, please call the number on your account statement or talk to your local financial center associate.*	Overdraft Protection Transfer Fee - transfer from a linked Bank of America savings or secondary checking account	$12.00 each transfer	• Overdraft Protection transfers are made for the amount required to cover the overdraft and the applicable transfer fee. If your savings or secondary checking account does not have enough available funds to cover the necessary amount, we may decline to make the transfer. • Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee. • Only 1 transfer fee charged per day that a transfer is made. • We will not charge an Overdraft Protection Transfer Fee if all individual items covered by the transfer are $1.00 or less. In addition, we will not charge this fee if your account is overdrawn by a total amount of $1.00 or less before we apply overdraft protection.
	Overdraft Protection Transfer Fee - transfer from a linked Bank of America line of credit	$12.00 each transfer	• Overdraft Protection transfers are advances under the terms of the line of credit agreement and are made in increments of $100. Advances are subject to interest charges or finance charges, as provided in the line of credit agreement. Please see the line of credit agreement. • Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee. • Only 1 transfer fee charged per day that a transfer is made. • We will not charge an Overdraft Protection Transfer Fee if all individual items covered by the transfer are $1.00 or less. In addition, we will not charge this fee if your account is overdrawn by a total amount of $1.00 or less before we apply overdraft protection.
	Overdraft Protection Transfer Fee - transfer from a linked Bank of America credit card	See Credit Card Agreement	• Overdraft Protection transfers are considered cash advances and may be subject to additional Overdraft Protection cash advance fees. See your Credit Card Agreement for applicable rates and fees. • Only 1 transfer fee charged per day that a transfer is made.

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Other Account Fees and Services *(cont.)*

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
Overdraft Items (an overdraft item)	Overdraft Item Fee	$35.00 each item over $1.00	• When we determine that you do not have enough available funds in your account to cover an item, then we either authorize and pay the item and overdraw your account (an overdraft item), or we decline or return the item unpaid (an NSF: returned item). • Some common examples of items are a check or other transaction made using your checking account number, an everyday non-recurring debit card transaction, a recurring debit card transaction, an ATM withdrawal, an ACH transaction, and an Online or automatic bill payment. Please see the *Deposit Agreement and Disclosures* for more information about items, overdrafts, declined or returned items and for information about how we process and post items. • We do not charge you an Overdraft Item fee on an everyday non-recurring debit card transaction. We also do not charge you an Overdraft Item fee on an ATM transaction unless you agreed to our overdraft practices for that particular ATM transaction. We do charge you an Overdraft Item fee each time we authorize and pay any other type of overdraft transaction. These other types of transactions include checks and other transactions made using your checking account number, recurring debit card transactions, Online and automatic bill payments, and ACH transactions. We do not charge you an Overdraft Item fee for any item that is $1.00 or less or any item that overdraws your account by $1.00 or less. • We do not charge you an NSF: Returned Item fee when we decline an ATM transaction or debit card transaction. We do charge you an NSF: Returned Item fee each time we decline or return any other type of transaction unpaid. These other types of transactions include checks and other transactions made using your checking account number, Online and automatic bill payments, and ACH transactions. We do not charge you an NSF: Returned Item fee for any item that is $1.00 or less. • We charge you Overdraft Item fees and NSF: Returned Item fees for no more than 4 items each day. • For information about our Overdraft Protection plans and overdraft practices and overdraft settings, please see our *Deposit Agreement and Disclosures* and our *What You Need to Know about Overdrafts and Overdraft Fees* notice.
NSF: Returned Items (a returned item)	NSF: Returned Item Fee	$35.00 each item over $1.00	

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Other Account Fees and Services *(cont.)*

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
Miscellaneous	Check and Deposit Ticket Orders	Fee varies	• Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers receive free standard checks or discounts on certain designs. • We may change the fees for check and deposit ticket orders at any time. Visit a financial center or call us at the number on your statement for current fees.
	Deposited Item Returned or Cashed Item Returned Fee (Returned Item Chargeback Fee)	$12.00 each domestic item $15.00 each foreign item	• We charge this fee each time a check or other item that we either cashed for you or accepted for deposit to your account is returned to us unpaid.
	Legal Process Fee	$125.00 each occurrence (or such other rate as may be set by law)	• Fee applies to each legal order or process that directs us to freeze, attach or withhold funds or other property, such as an attachment, levy or garnishment.
	Stop Payment Fee	$30.00 each request	• Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee. • There is no charge to place a stop payment on a recurring debit card transaction.
	Wire Transfers and Drafts, Incoming or Outgoing (U.S. or International)	Fee varies	• Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of our standard wire fee for an incoming domestic wire transfer. The standard wire fee for incoming international wire transfers is waived for Preferred Rewards (Platinum and Platinum Honors tiers only) customers. • We may change the fees for wire transfers and drafts at any time. Visit a financial center or call us at the number on your statement for current fees. • For an international wire transfer, other financial institutions involved in the wire transfer may also charge fees and deduct their fees from the amount of the wire transfer.

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Frequently Asked Questions About Accounts

This section covers some of the features and services that may apply to your account.

What other agreements have terms that apply to my deposit account?

In addition to the terms in this *Schedule of Fees*, the terms in the *Deposit Agreement and Disclosures*, the signature card for your account and the other account opening documents govern your account and are part of the binding contract between you and us for your account. Please read these documents carefully.

What are paperless statements?

With the paperless statement option, you get your account statement electronically through Online Banking and you do not get a paper statement. You can enroll in paperless statements at a financial center or through Online Banking. When you enroll at a financial center, you'll need to log into Online Banking from your computer to confirm your choice.

What is a direct deposit?

A direct deposit is an electronic deposit of funds to a checking or savings account.

For Bank of America Core Checking accounts, qualifying direct deposits are deposits of regular monthly income—such as your salary, pension, Social Security benefits—which are made through the automated clearinghouse (ACH) by your employer or other payer.

Other types of transfers and deposits do not qualify for the waiver of the monthly maintenance fee. Examples of non-qualifying transfers and deposits include: teller deposits, wire transfers, non-periodic direct deposits (such as tax refunds or payments for the sale of goods or services), Online Banking transfers, telephone transfers, and ATM transfers and deposits.

What does variable rate mean?

Funds in an interest bearing checking or savings account earn a variable interest rate. This means that your interest rate and annual percentage yield may change after the account is opened. At our discretion, we may change your interest rate and annual percentage yield at any time.

What does it mean to link accounts?

You can link some of your other accounts with us either to your Bank of America Interest Checking, Regular Checking or to your Advantage checking account for pricing. When you link another account for pricing, you can use the balances in the other account to help you meet the balance required to avoid the monthly maintenance fee on your checking account. You must tell us what other accounts you want us to link to your checking account. An account can only be linked for pricing to one checking account at a time. We do not link your other accounts for pricing unless you tell us to do so. You may not link a SafeBalance Banking® account to any other account for pricing.

Please see the checking account descriptions in this schedule of fees for information about what accounts can be linked and applicable balance requirements. Some restrictions apply to what accounts can be linked. See below and the *Combined Balance Service* section in the *Deposit Agreement and Disclosures* for information.

When a new account is opened to replace an existing account, we do not automatically link the new account to your checking account for pricing, even if the existing account was linked. You must tell us to link the new account. As examples, when you refinance your mortgage loan, the refinanced loan is a new account. Whenever we change the account number of your checking account, we close the current checking account and open a new checking account. In both examples, the replacement account is a new account and, if you want us to link it to your checking account for pricing, you need to tell us to link the new account.

For linked accounts, we may send you a monthly statement that reports account information for all of your linked accounts instead of separate statements for each account.

What Bank of America first mortgage loans can qualify for a waiver of the monthly maintenance fee on a Bank of America Advantage account?

We currently service many mortgage loans we make. If we service your Bank of America first mortgage loan, you can have us link the loan to your Bank of America Advantage checking account. Sometimes we sell mortgage loan servicing to other companies. If we sell the servicing on your mortgage loan, then the loan is no longer eligible to be used for this waiver.

What limits apply to linking accounts?

Some restrictions apply to what accounts can be linked to a checking account, including the following. You can generally link savings, Individual Retirement Account (IRA) and CD, and some checking and Merrill Edge or Merrill Lynch investment accounts to your checking account. You may only link an account to one checking account at a time. To link additional accounts to a checking account, at least one of the owners of the linked additional account must also be an owner of the checking account. You may not link personal and business accounts together. You may link a SafeBalance Banking account to another SafeBalance Banking account for some purposes, but not to any other account for pricing.

You may not link custodial accounts, such as UTMA or UGMA accounts, for pricing or other program benefits.

We may in our discretion place other restrictions on what accounts can be linked.

Are the statement cycles for linked accounts the same?

When you link accounts for pricing, the statement cycles are generally different. If you use a combined statement for your checking and savings accounts, the statement cycles for the linked checking and savings accounts are generally the same.

What are combined statements?

A combined statement is one statement that reports activity for your checking account and each deposit account linked to that account, instead of separate statements for each account. In most cases we do not automatically send you a combined statement. You must generally request a combined statement and tell us to link the accounts you want included in the combined statement.

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When linked accounts are reported on the combined statement, you understand and agree that each owner of any linked account can review information about all other linked accounts. You should not link accounts that you do not want others to see. Please read the information about Combined Statements in the *Deposit Agreement and Disclosures.*

What is the transaction date for the savings Withdrawal Limit Fee?

To determine whether a Withdrawal Limit Fee applies to a withdrawal from your savings account, we count the withdrawal on the date we post it to your account. If you are counting the number of withdrawals you make each monthly statement cycle, please note that the date we count the withdrawal may be different than the date you authorize or make the withdrawal. This means that we may not count the withdrawal until a later statement cycle.

What are the transaction limitations on my savings account?

There is no limit on the number of deposits you may make to your account. You can also make any number of withdrawals and transfers to your account through the financial center, by mail or at an ATM or ATM with Teller Assist (ATA).

However, federal regulations (applied to all U.S. Banks) and the *Deposit Agreement and Disclosures* limit the number of certain types of withdrawals and transfers from a savings account to a total of six each monthly statement cycle (each month for savings accounts with a quarterly statement). This transaction limit applies to the following types of withdrawals or transfers: automatic or pre-authorized transfers, telephone transfers, Online and Mobile Banking transfers or payments, or, if checks or debit cards are allowed on the account, check, draft and point of sale transactions.

If you exceed these limits on more than an occasional basis, we may convert your account to another type of account, like a checking account, and your account may no longer earn interest.

Please note that for savings accounts, we charge a Withdrawal Limit Fee for each withdrawal and transfer of any type in excess of six if the applicable balance requirement is not met. The Withdrawal Limit Fee is separate from the federal regulatory requirements. See the information about this fee in the savings account section on page 4.

Which employees and retirees are eligible for a waiver of the Monthly Maintenance Fee?

The fee waiver applies to full-time or part-time employees actively employed by Bank of America and Retirees with at least 10 years of vesting service, and their age plus years of vesting service equal to at least 60 (with no minimum age requirement).

Keep the Change® Savings Service

When you enroll in our Keep the Change savings service, we round up the amount of any Bank of America debit card purchase made by you or a joint owner of your checking account to the next whole dollar amount, and transfer the amount in excess of the purchase price to your savings account.[1]

We aggregate the round-up from purchases that post to your checking account each business day and make a single transfer (the "Keep the Change" transfer) at the end of the business day. If on a business day you do not have sufficient available funds in your checking account, or if any transaction has overdrawn your checking account, we do not round-up purchases posted on that business day and we cancel the Keep the Change transfer for that day.

If your debit card purchase is subsequently cancelled or reversed, the corresponding Keep the Change transfer will remain in the savings account.[1] We may cancel or modify the Keep the Change service at any time.

[1]If your savings account enrolled in Keep the Change is converted to a checking account, Keep the Change transfers will continue to be made into that account. Should you have any questions on the Keep the Change program, please contact your nearest financial center.

Keep the Change® Patent No. US 8,301,530B2.

Preferred Rewards

You are eligible for the Preferred Rewards program when you (i) have an active, eligible personal checking account with Bank of America, and (ii) maintain the balance required for one of the balance tiers in any combination of eligible deposit accounts with Bank of America and/or eligible investment balances with Merrill Edge® or Merrill Lynch. Once you are eligible, you can enroll for program benefits. Enrollment is generally available within three or more business days of eligibility.

The combined balance requirement is calculated based on your average daily balance maintained for a three calendar month period.

Your benefits become effective within one month of your enrollment, or for new accounts within one month of account opening, unless we indicate otherwise. Some benefits are automatically activated upon the effective date of your enrollment and require no action on your part. Some benefits may require you to open a new account or take other action. Some benefits are available based on balances and other requirements without the need to enroll. Read carefully the terms of any offer to understand the action required.

Different benefits are available at different balance tiers. The balance tiers are: Gold, for qualifying combined balances at and above $20,000; Platinum, for qualifying combined balances at and above $50,000; and Platinum Honors, for qualifying combined balances at or above $100,000.

You will qualify for the next higher balance tier when your three-month average combined balances meet or exceed the minimum amount for that balance tier. You will be moved to a higher balance tier starting in the month after the month in which you satisfy the combined balance requirement.

We will perform an annual review of your qualifying balances in the month following the anniversary date of your initial enrollment in the program. The annual review will calculate your three-month average combined balance as of the end of your anniversary month and place you in the balance tier for which you meet the qualification requirements. If the result of the annual review calculation would be to move you to a lower tier, you will have a three-month period from your anniversary month in which to restore your qualifying balance before you are moved to that lower balance tier. If you are moved to a lower balance tier, your benefits may be changed to those of the balance tier for which you qualify without further notice. Please note that while you can be moved to a higher balance tier after any month in which you satisfy the three-month average combined balance requirement for that tier, you will only be moved to a lower balance tier as a result of the annual review.

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At the annual review, we will also confirm that you still have an active, eligible personal checking account with Bank of America. If as a result of the annual review you do not qualify for any balance tier, or you no longer have an eligible checking account, and you do not sufficiently restore your balances or open an eligible checking account in the three months after your anniversary month, your qualification will discontinue. Your benefits may then be discontinued immediately without further notice.

You or we may terminate your enrollment at any time. We may change or terminate program benefits at any time, without prior notice.

Only personal accounts that you own, and that in our determination are in good standing, count toward your balance requirements and receive benefits. Accounts on which you are a signer but not an owner, or accounts included in your periodic statement on which you are not an owner, are not eligible. SafeBalance Banking® accounts do not count towards the checking account requirement or balance requirements for Preferred Rewards, and SafeBalance Banking accounts do not receive the fee waivers and other benefits of the Preferred Rewards program.

Business accounts do not count towards the checking account requirement or balance requirements for the program, and will not be eligible to receive program benefits. Business Advantage Relationship Rewards is Bank of America's rewards program for business accounts. Your business accounts may qualify separately for the Business Advantage Relationship Rewards program.

See the chart below for examples of accounts that do and do not qualify for the combined balance calculation:

Qualify
• Accounts on which you are an owner or co-owner, including - • Bank of America deposit accounts: Checking, Savings, CD, and IRA accounts • Merrill Edge and Merrill Lynch investment accounts, such as the Cash Management Account (CMA) and IRA accounts (Traditional, Roth, Rollover, SEP, Simple) • 529 plans appearing on your Merrill Edge or Merrill Lynch statement (except 529 plans owned in Uniform Transfers to Minors Act (UTMA)/Uniform Gifts to Minors Act (UGMA) form) • Revocable grantor trust accounts
Does Not Qualify
• Accounts on which you're not an owner or co-owner. For example, accounts on which your role is Custodian, Administrator, Power of Attorney, Beneficiary, Guardian, or Executor • Uniform Transfers to Minor Act (UTMA) and Uniform Gifts to Minors Act (UGMA) accounts • Business accounts or commercial accounts • SafeBalance Banking accounts • Irrevocable trust accounts • Employee Benefit plans (such as 401(k) plans) • Annuities

Bank of America employees and retirees are eligible for additional Preferred Rewards program benefits. If you no longer meet the requirements for employee status, standard program terms apply.

Merrill Edge® is available through Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPF&S), and consists of the Merrill Edge Advisory Center™ (investment guidance) and self-directed online investing.

Notice for Maine Deposit Account Customers:

If you have a dispute with us regarding your deposit account, you may contact us and attempt to resolve the problem directly. If you feel we failed to resolve the problem, communicate the problem and the resolution you are seeking to:

Bureau of Financial Institutions
36 State House Station
Augusta, ME 04333-0036

To file a complaint electronically, you may contact the Bureau of Financial Institutions at the following internet address: http://www.state.me.us/pfr/bkg/bkg_consumer.htm

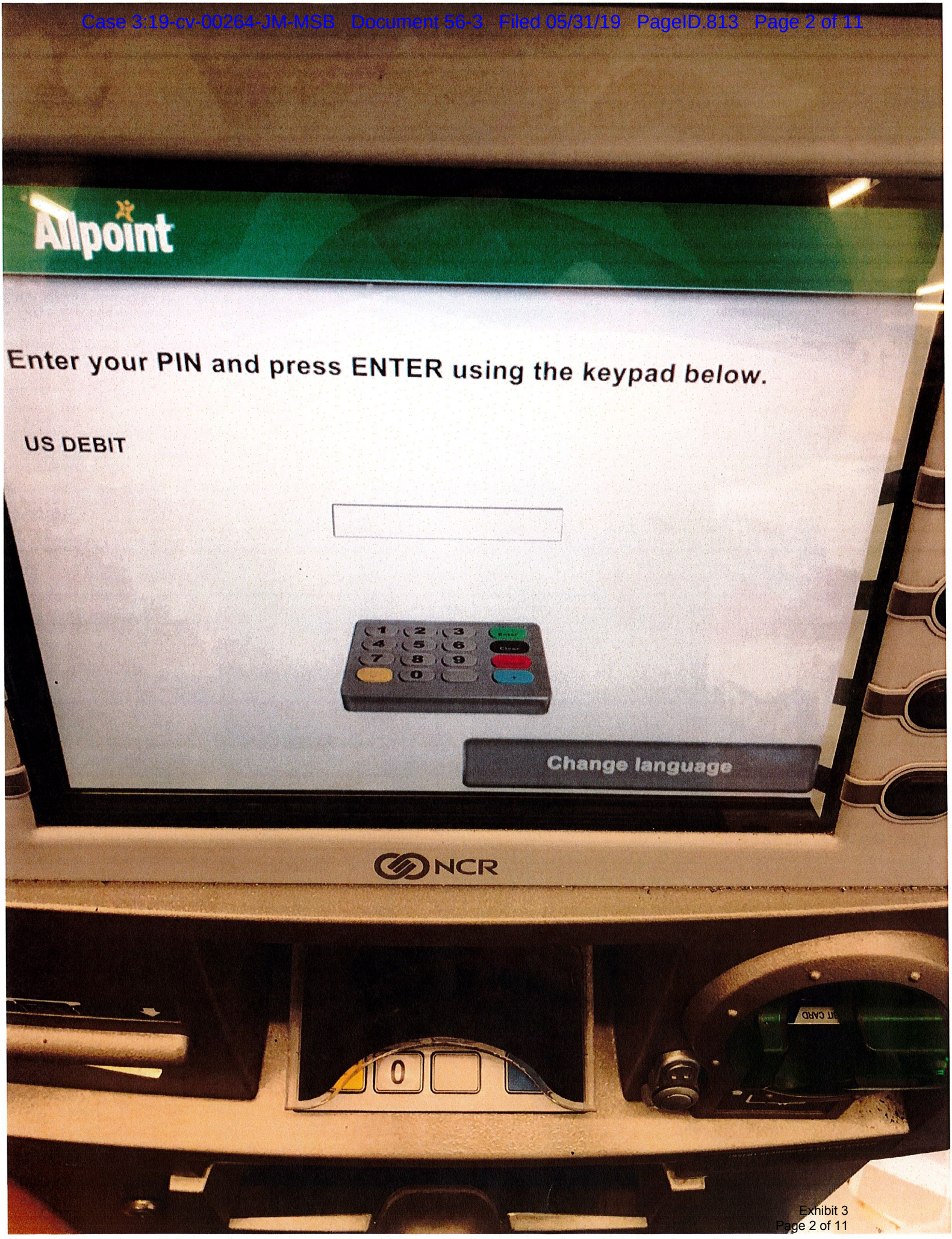
The Bureau of Financial Institutions will acknowledge receipt of your complaint promptly and investigate your claim. You will be informed of the results of the investigation.

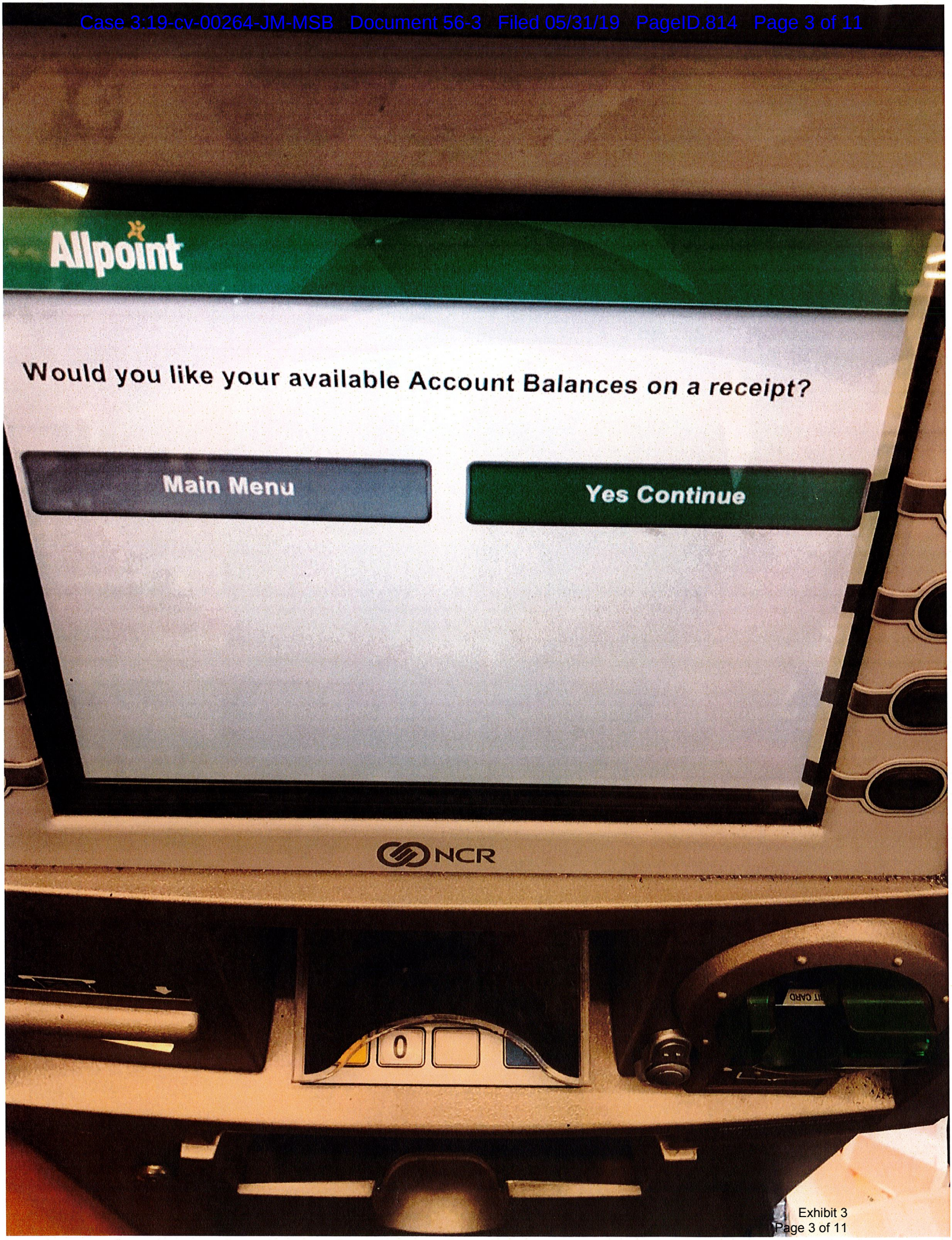
When your complaint involves a federally-chartered financial institution, such as Bank of America, the Bureau of Financial Institutions will refer it to the appropriate federal supervisory agency and inform you to whom it has been referred.

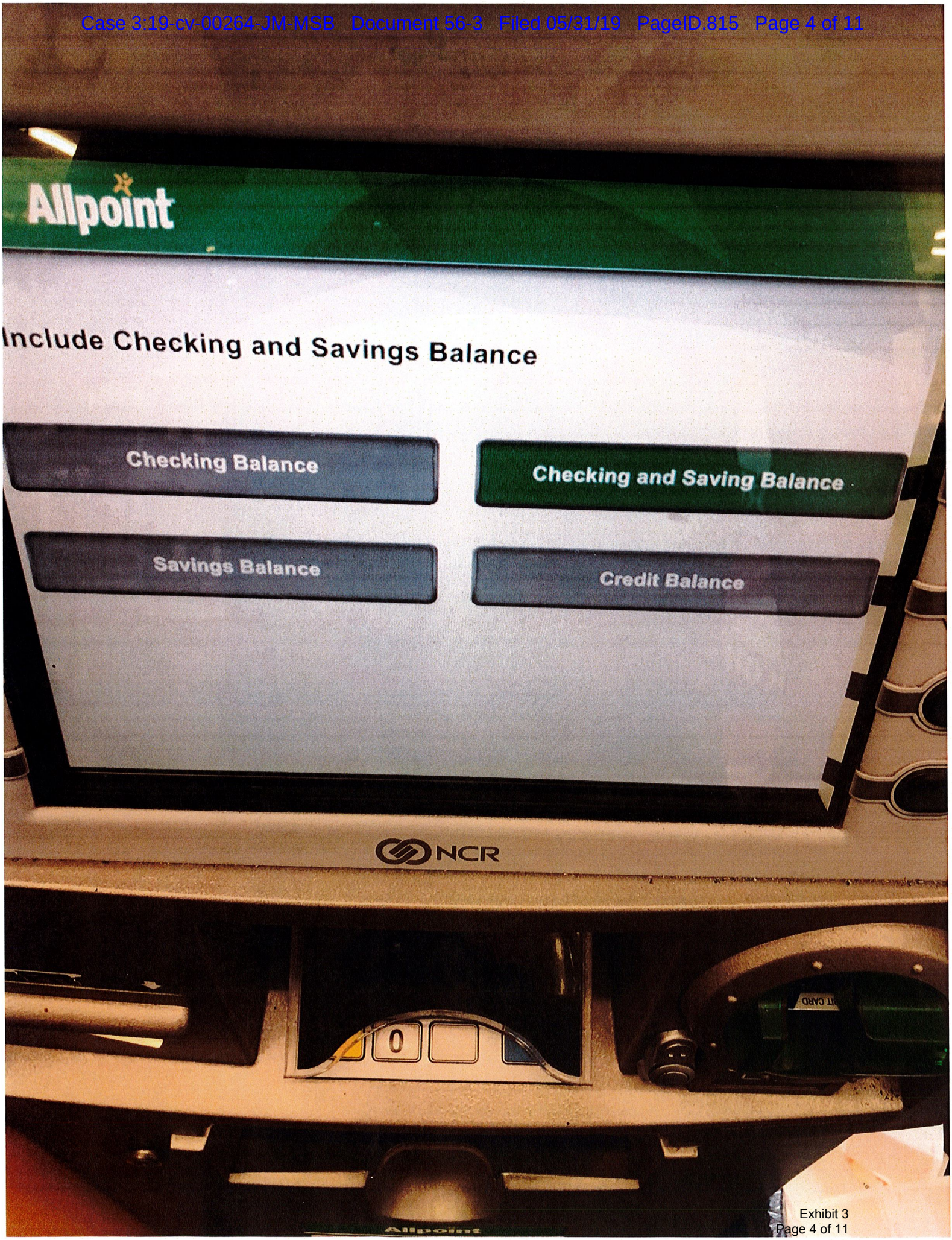
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Exhibit 3

Exhibit 3

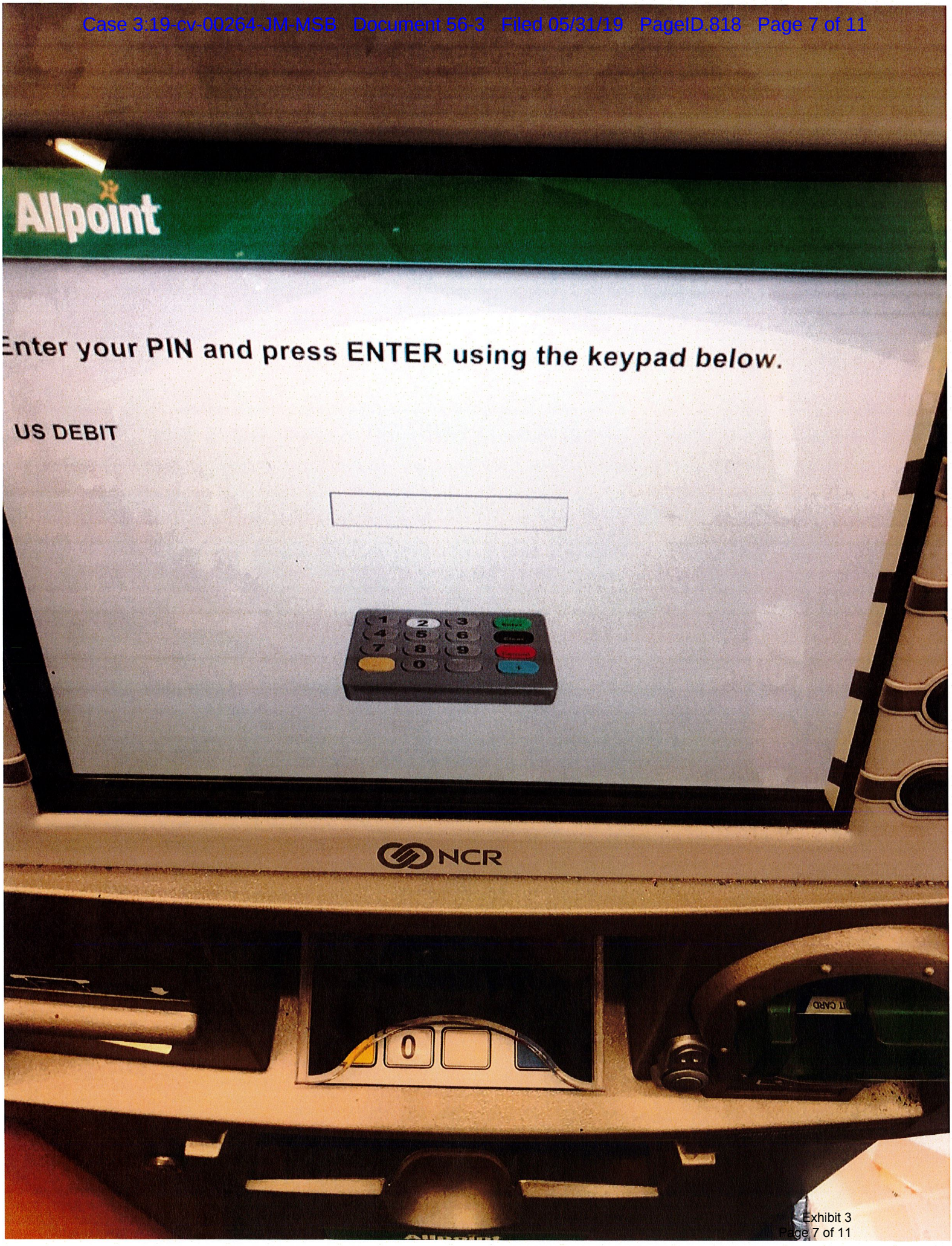

Allpoint
Enter your PIN and press ENTER using the keypad below.
US DEBIT
Change language
NCR

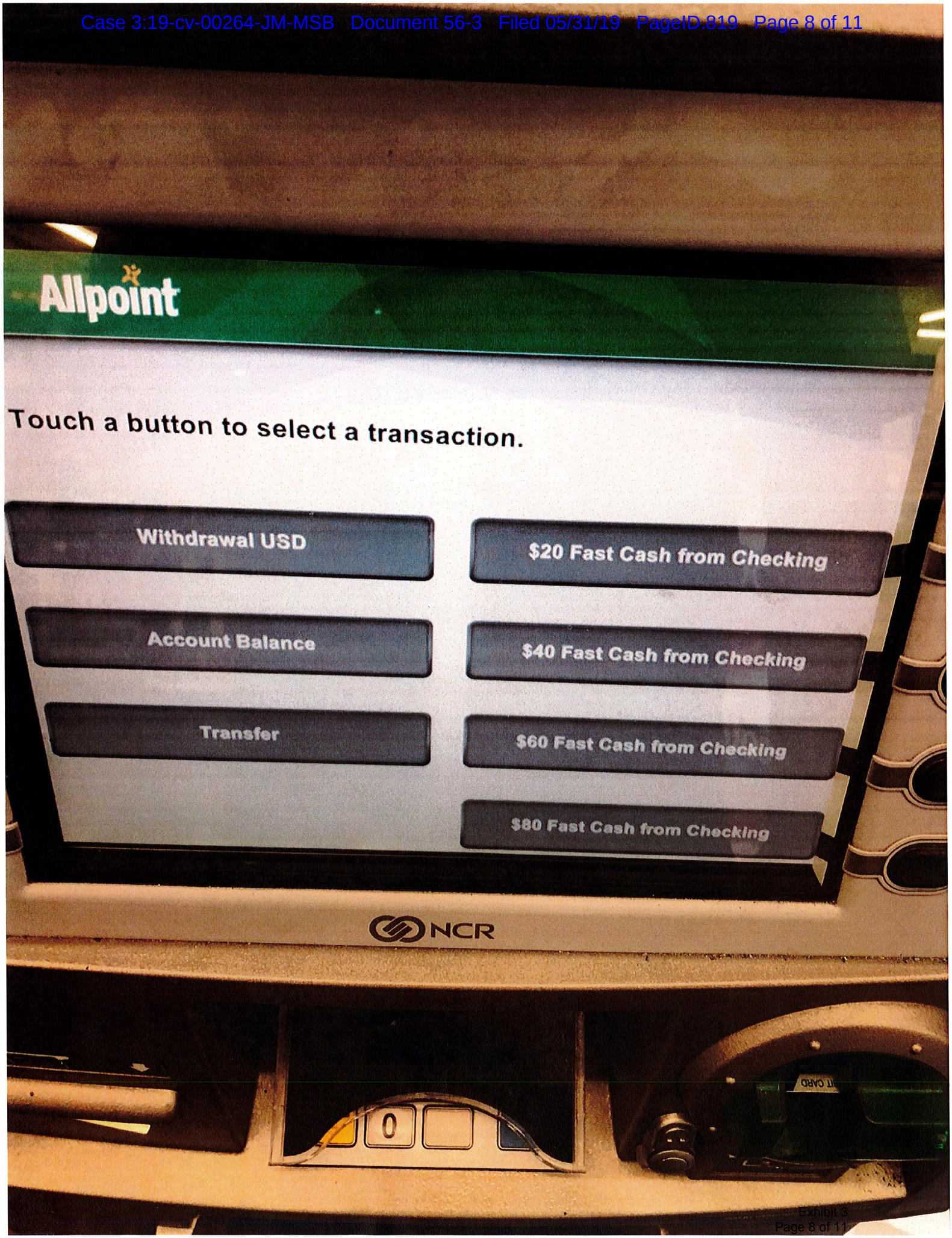

Allpoint
Would you like your available Account Balances on a receipt?
Main Menu
Yes Continue
NCR

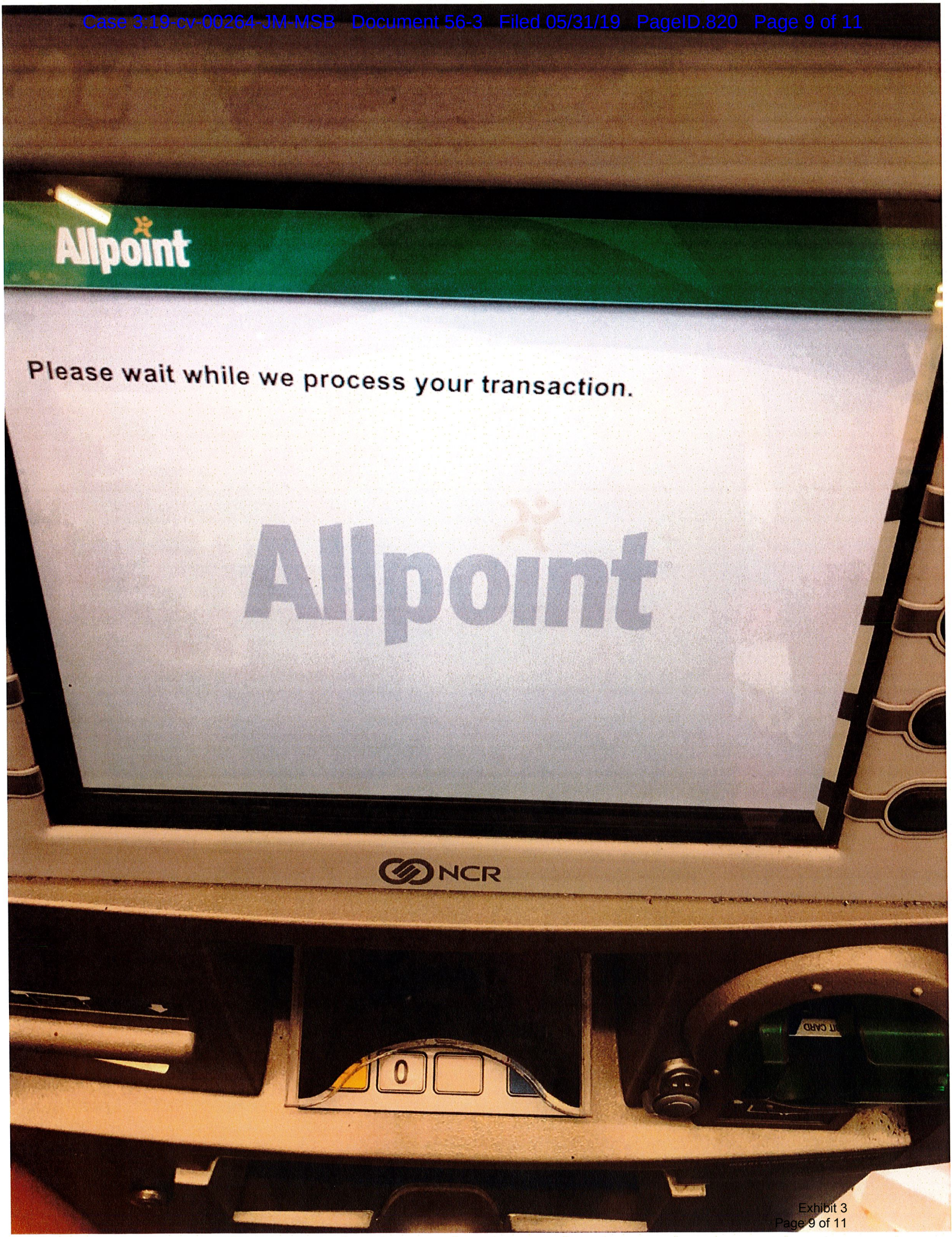

Allpoint
Include Checking and Savings Balance
Checking Balance
Checking and Saving Balance
Savings Balance
Credit Balance
NCR
Allpoint

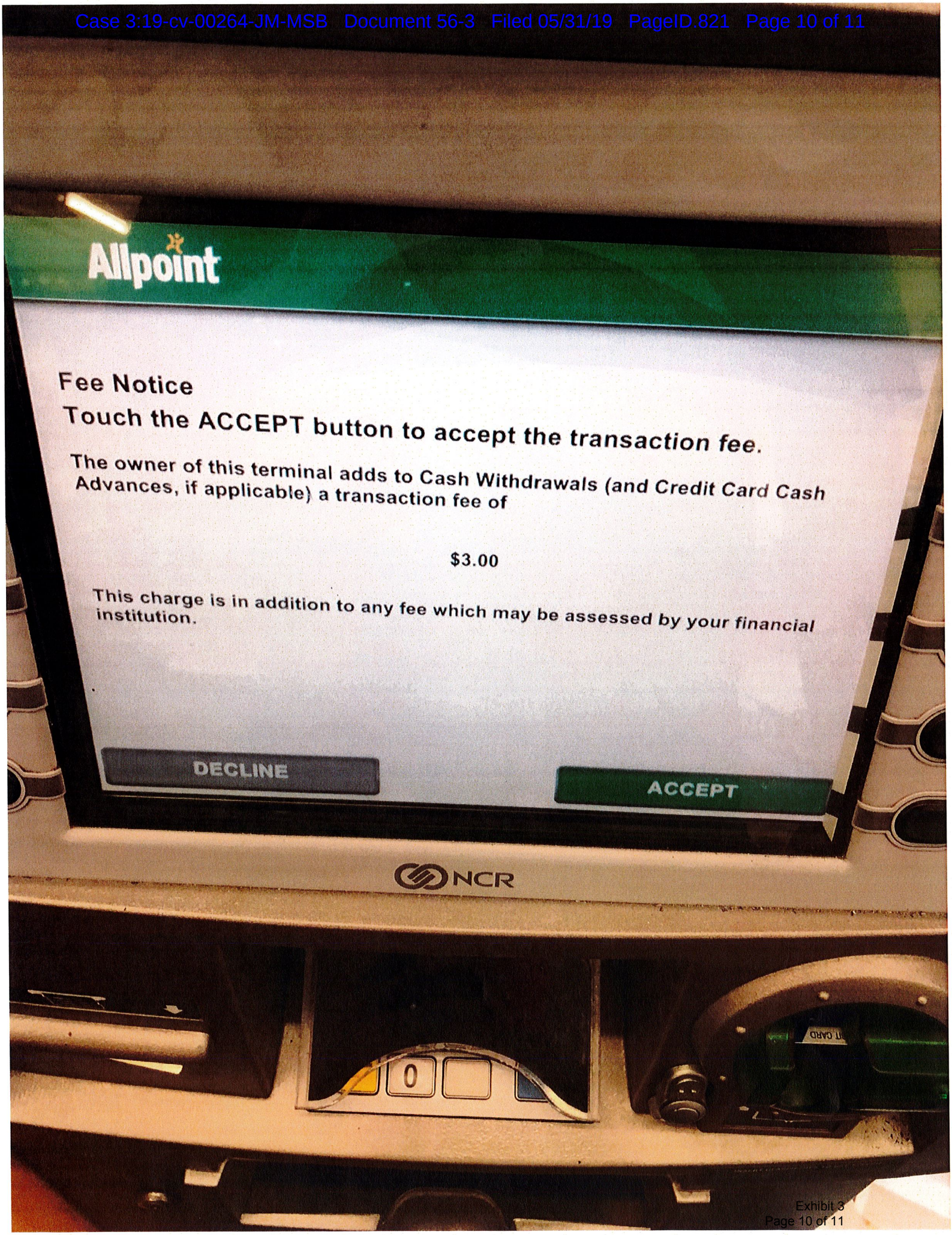

Allpoint
Please wait while we process your transaction.
Allpoint
NCR


Allpoint
Transaction Complete. Do you want another transaction?
Allpoint
NO
YES
NCR


Allpoint
Enter your PIN and press ENTER using the keypad below.
US DEBIT
NCR


Allpoint
Touch a button to select a transaction.
Withdrawal USD
Account Balance
Transfer
$20 Fast Cash from Checking
$40 Fast Cash from Checking
$60 Fast Cash from Checking
$80 Fast Cash from Checking
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Please wait while we process your transaction.
Allpoint
NCR

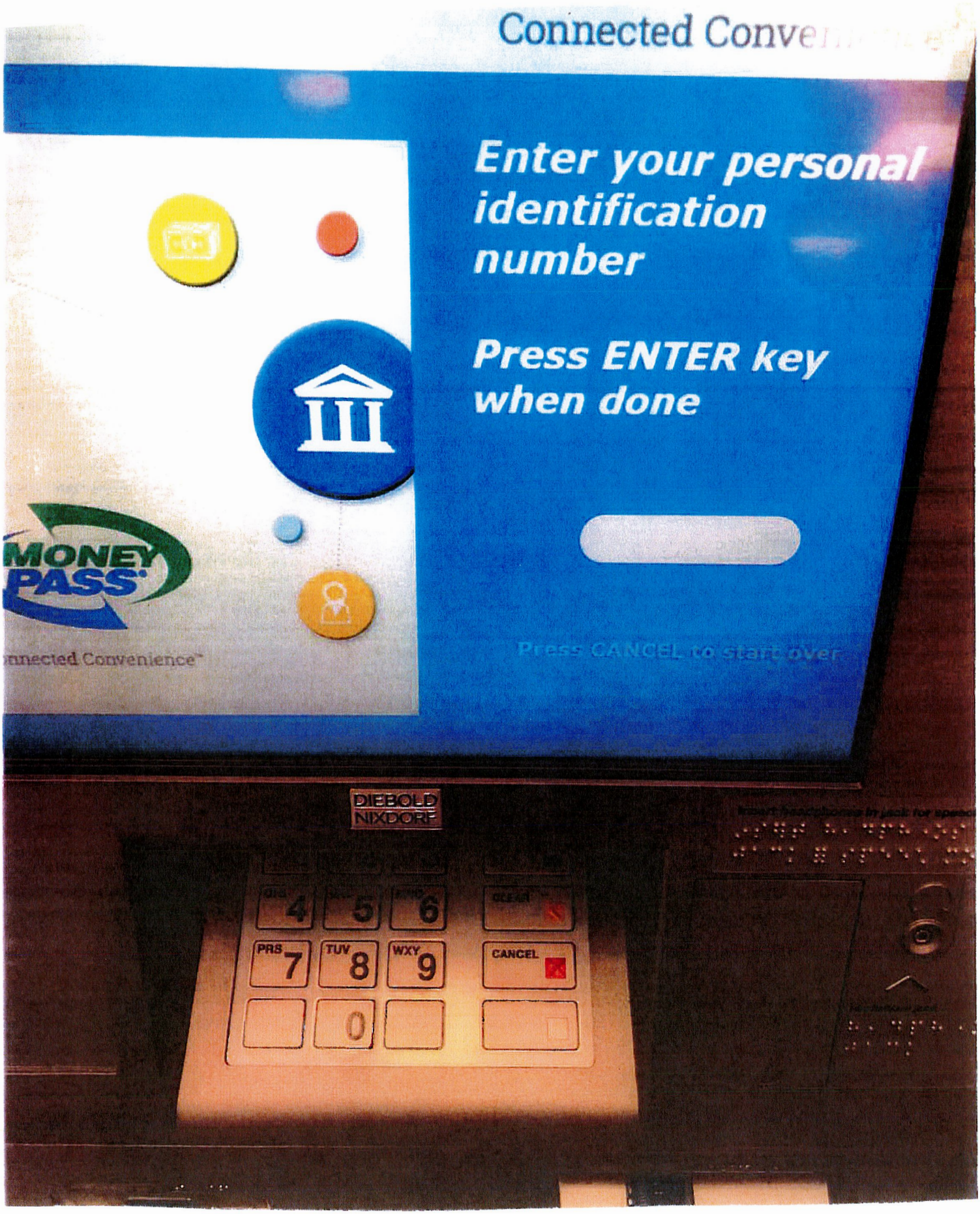

Allpoint
Fee Notice
Touch the ACCEPT button to accept the transaction fee.
The owner of this terminal adds to Cash Withdrawals (and Credit Card Cash Advances, if applicable) a transaction fee of
$3.00
This charge is in addition to any fee which may be assessed by your financial institution.
DECLINE
ACCEPT
NCR

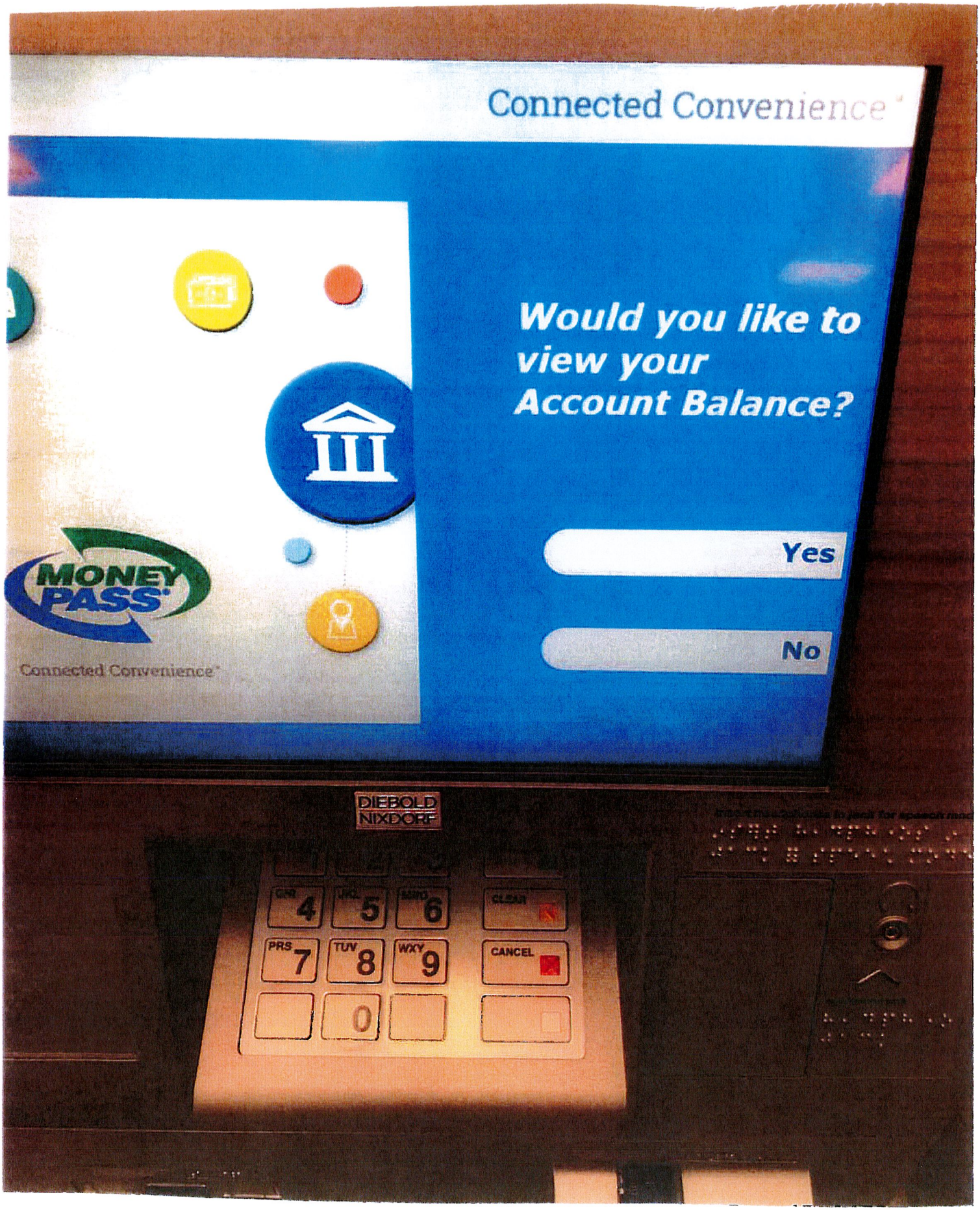

Allpoint
Please take your card.
NCR

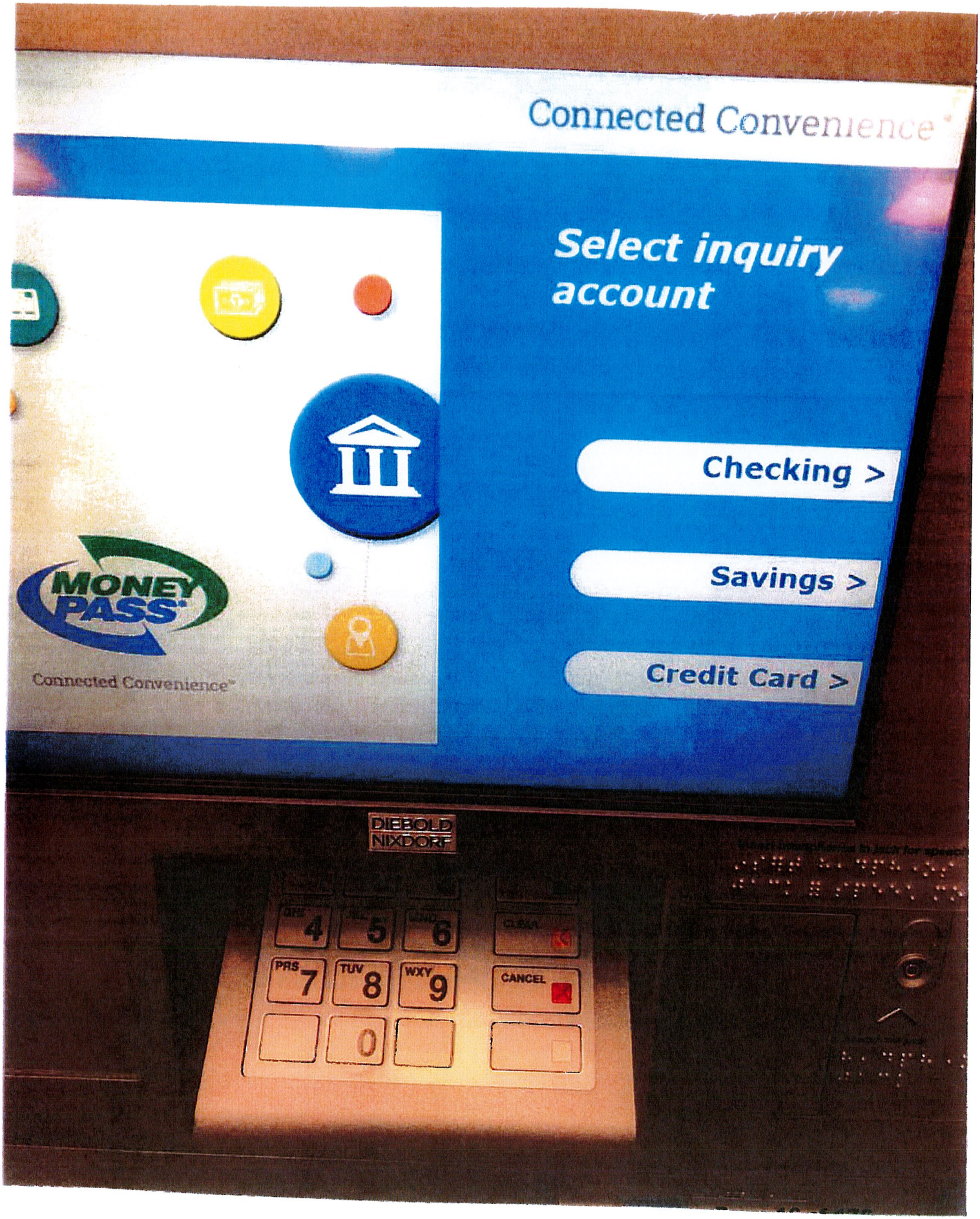
Exhibit 4

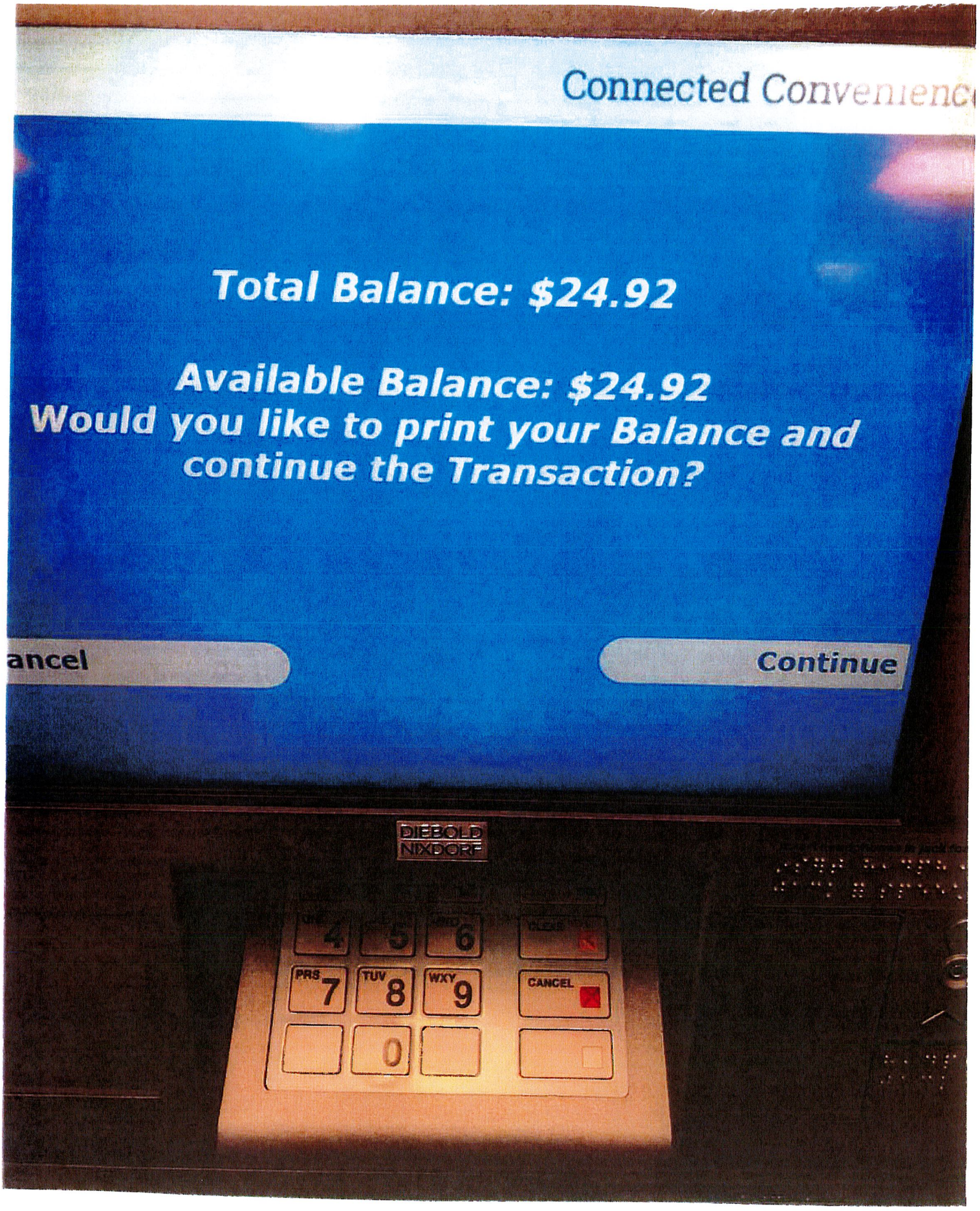
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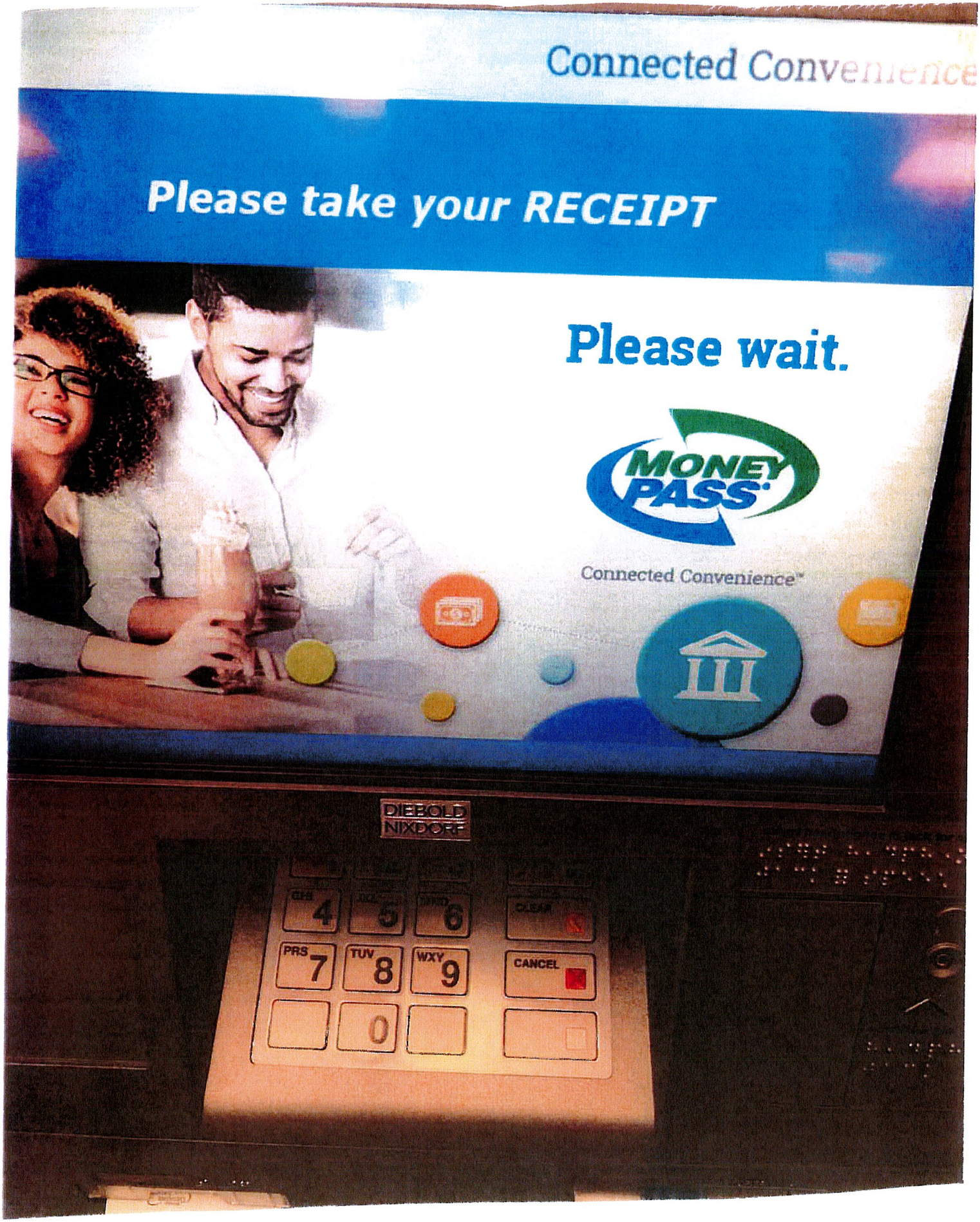

7 ELEVEN
SCORE FREE
FOOD & DRINKS
REGISTER
in the 7-Eleven
app or at
7Rewards.com
EARN
points on
every
$1 you spent
REDEEM
points for
free food
& drinks
7REWARDS
Language
Preference
English ---------->
Español ---------->
DIEBOLD
NIXDORF
Insert headphones in jack
4
5
6
CLEAR
PRS 7
TUV 8
WXY 9
CANCEL
0

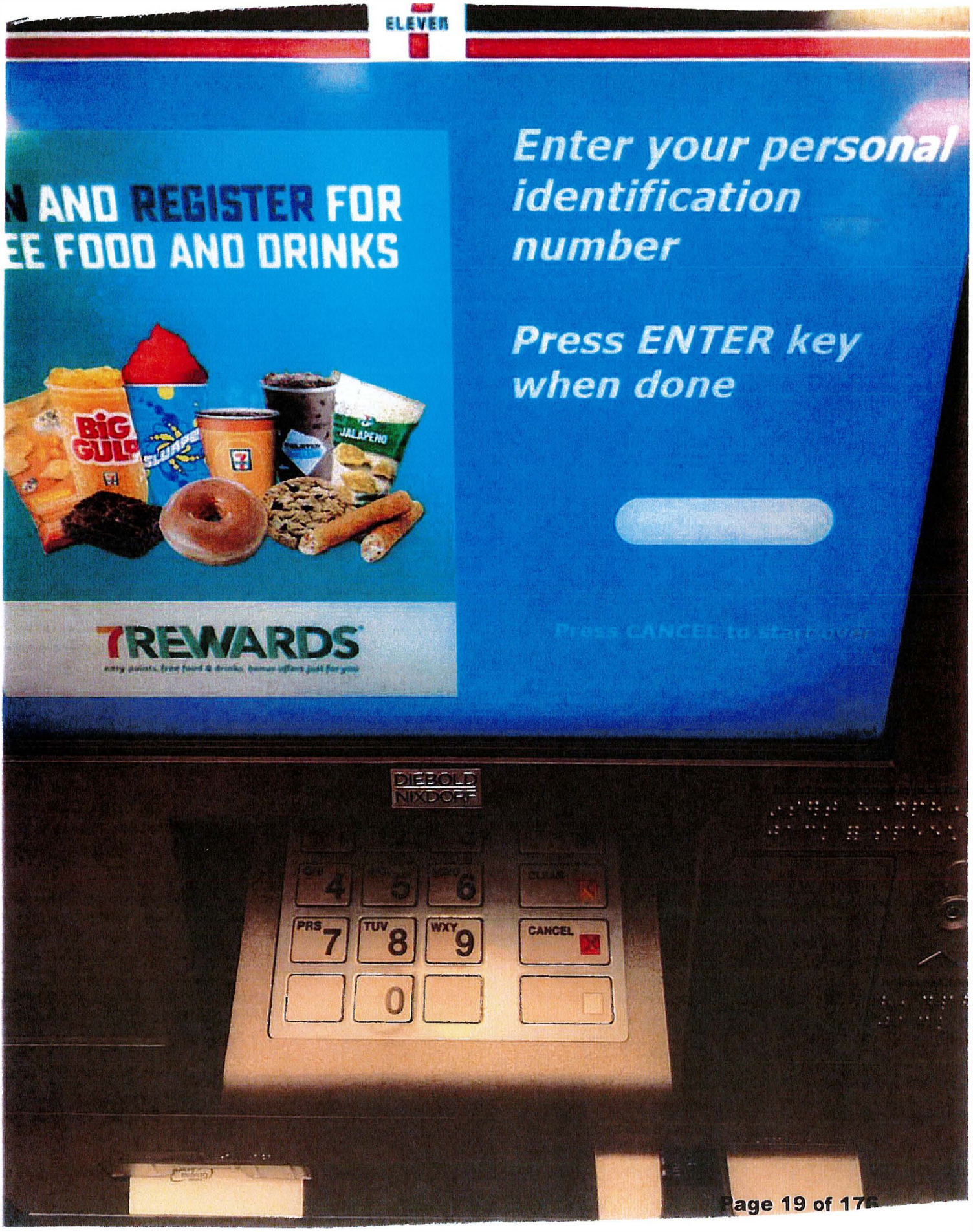

Connected Conve
Enter your personal identification number
Press ENTER key when done
MONEY PASS
nnected Convenience
DIEBOLD NIXDORF
4
5
6
PRS 7
TUV 8
WXY 9
0
CANCEL


Connected Convenience
Would you like to view your Account Balance?
Yes
No
MONEY PASS
Connected Convenience
DIEBOLD NIXDORF
4
5
6
CLEAR
7
8
9
CANCEL
0


Connected Convenience
Select inquiry account
Checking >
Savings >
Credit Card >
MONEY PASS
Connected Convenience
DIEBOLD NIXDORF
CLEAR
CANCEL

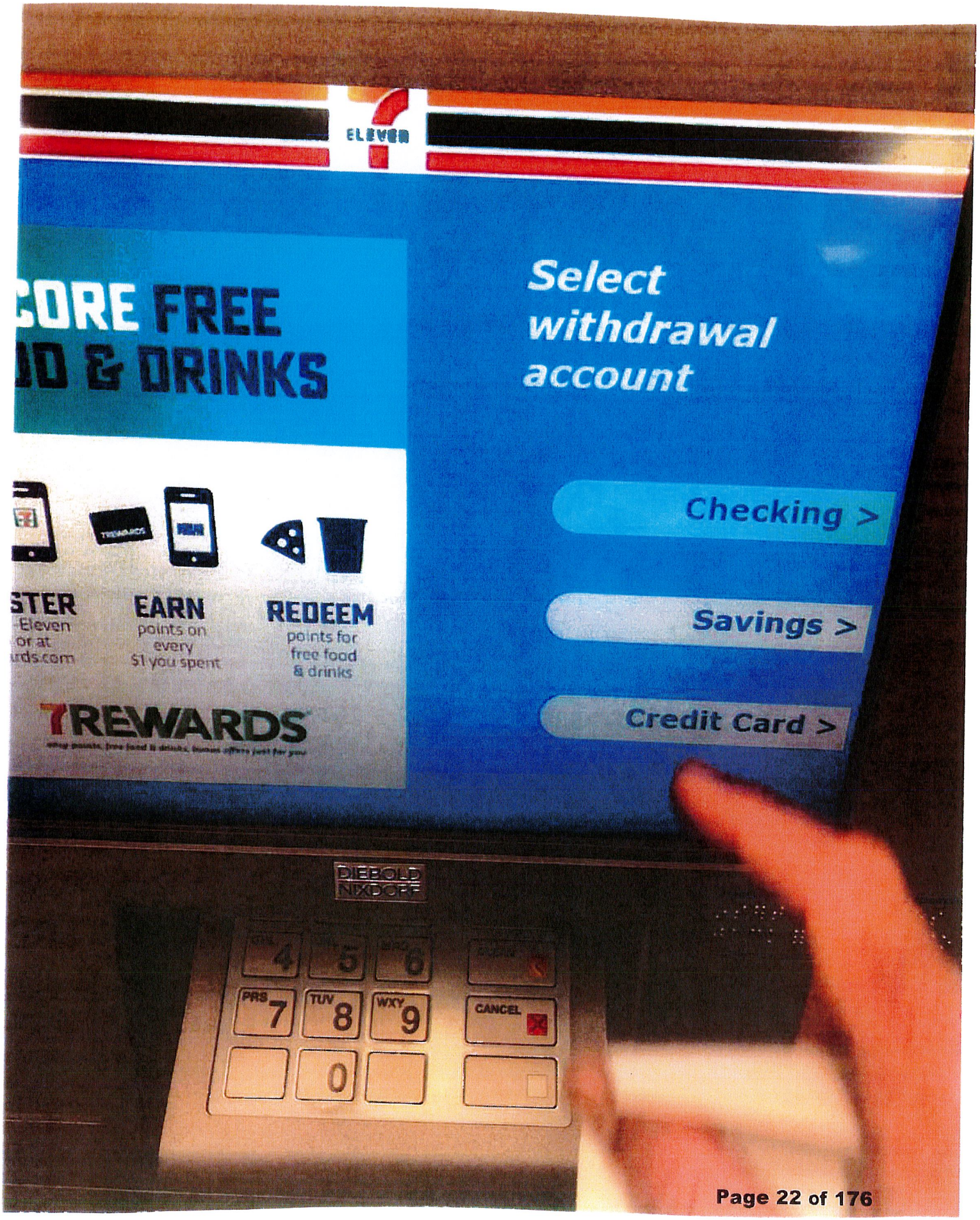

Connected Convenienc
Total Balance: $24.92
Available Balance: $24.92
Would you like to print your Balance and continue the Transaction?
ancel
Continue
DIEBOLD NIXDORF
4
5
6
PRS 7
TUV 8
WXY 9
CANCEL
0

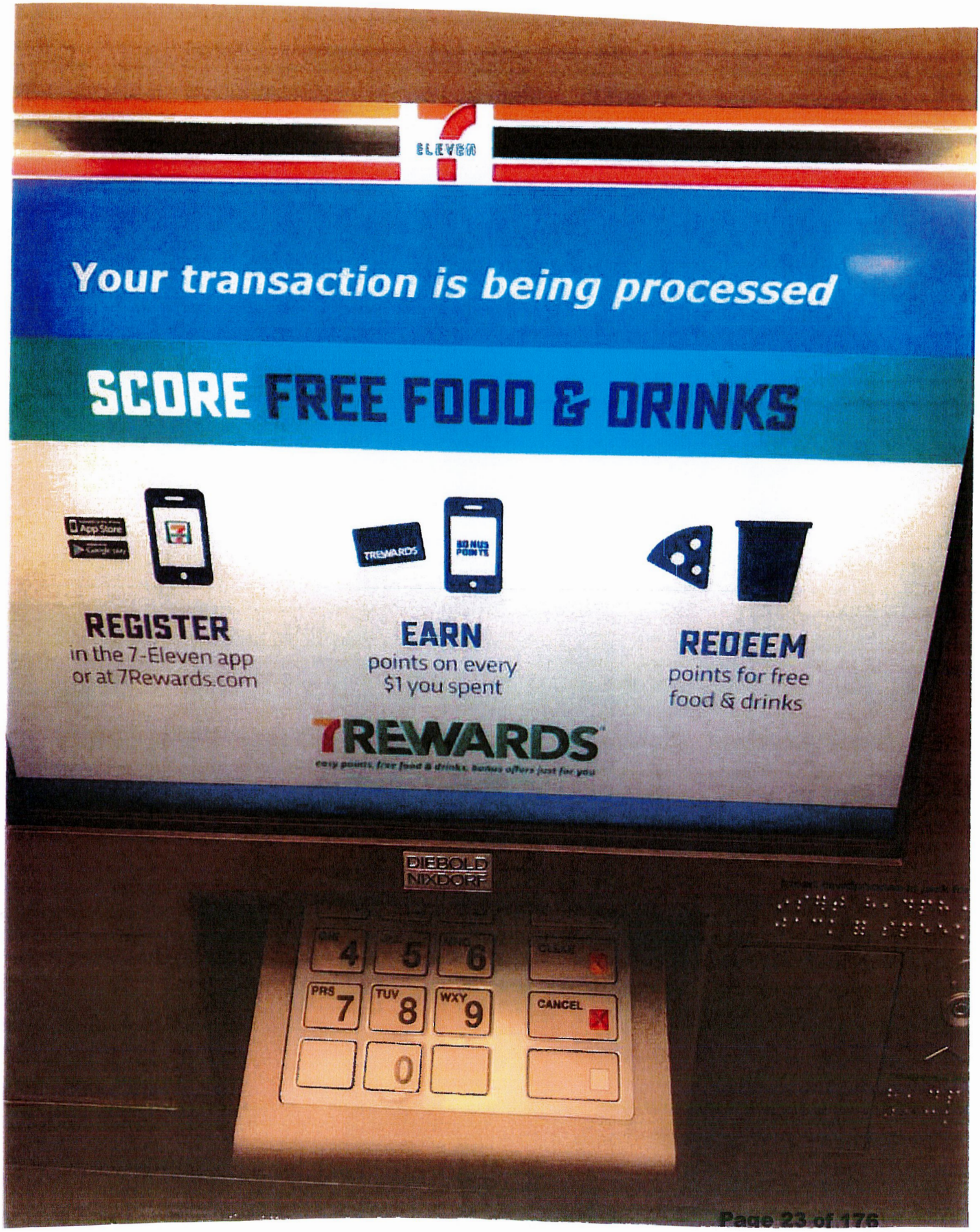

Connected Convenience
Please take your RECEIPT
Please wait.
MONEY PASS
Connected Convenience™
DIEBOLD NIXDORF
CLEAR
CANCEL


ELEVEN
N AND REGISTER FOR
EE FOOD AND DRINKS
BIG GULP
JALAPEÑO
7REWARDS
Enter your personal identification number
Press ENTER key when done
DIEBOLD NIXDORF
4
5
6
CLEAR
PRS 7
TUV 8
WXY 9
CANCEL
0
Page 19 of 176

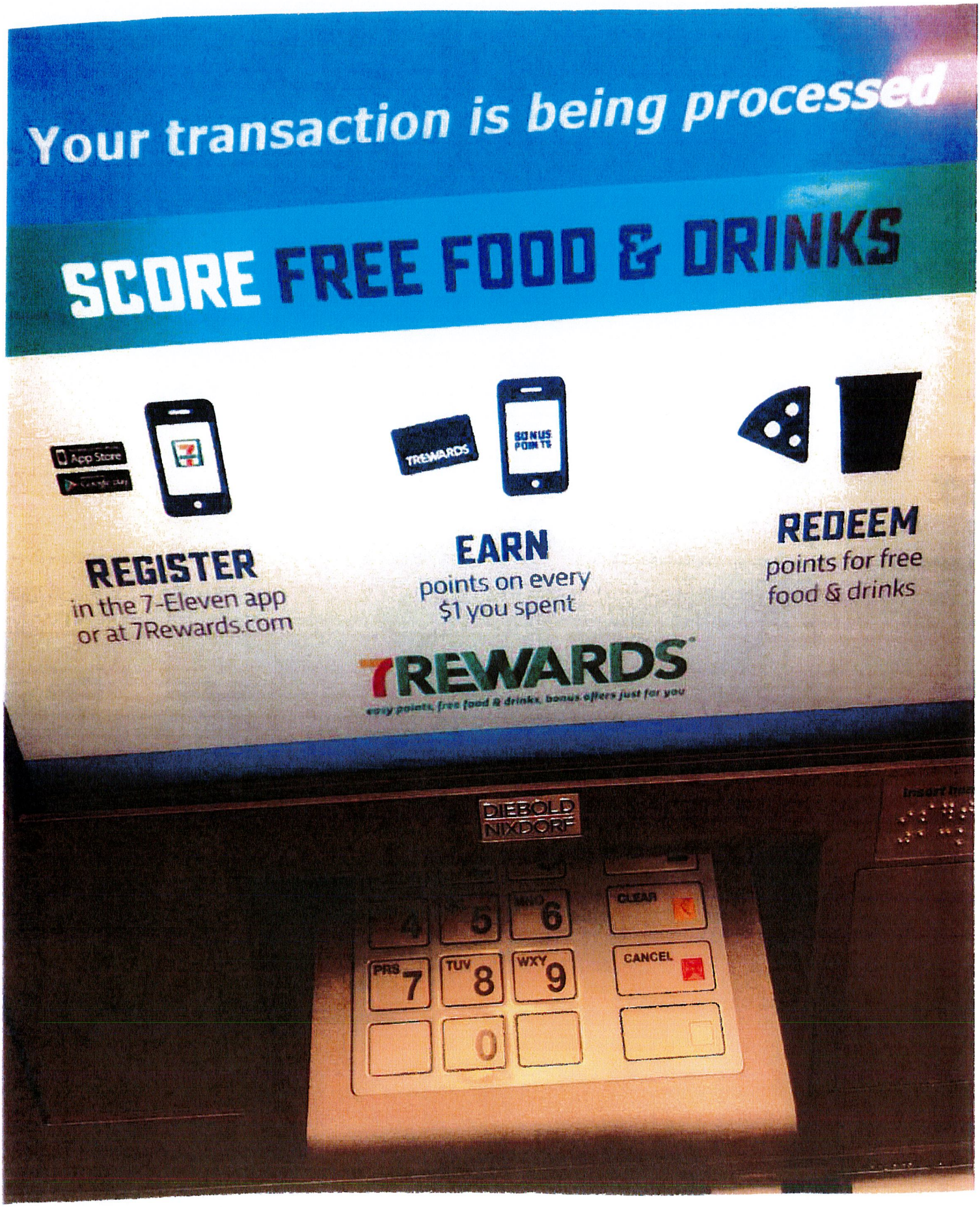

ELEVEN
ORE FREE
D & DRINKS
EARN
points on
every
$1 you spent
REDEEM
points for
free food
& drinks
REWARDS
Would you like a
receipt for this
transaction?
Yes >
No >
DIEBOLD
NIXDORF
CANCEL
Page 20 of 176

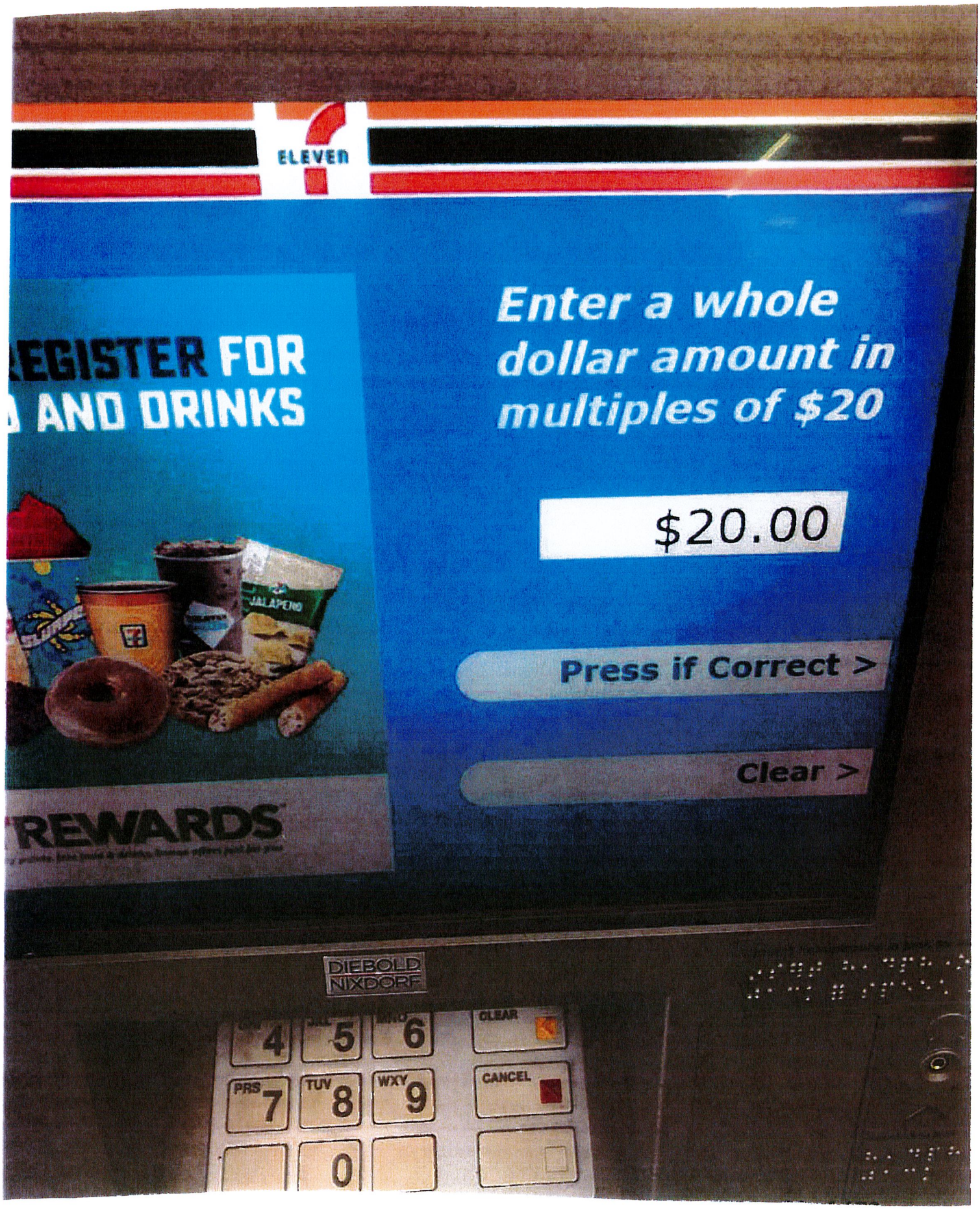

ELEVEN
ND REGISTER FOR
FOOD AND DRINKS
BIG GULP
JALAPENO
7REWARDS
Select transaction
Withdrawal >
Inquiry >
Transfer >
Fast Cash >
DIEBOLD NIXDORF
4
5
6
CLEAR
PRS 7
TUV 8
WXY 9
CANCEL
0
Page 21 of 175

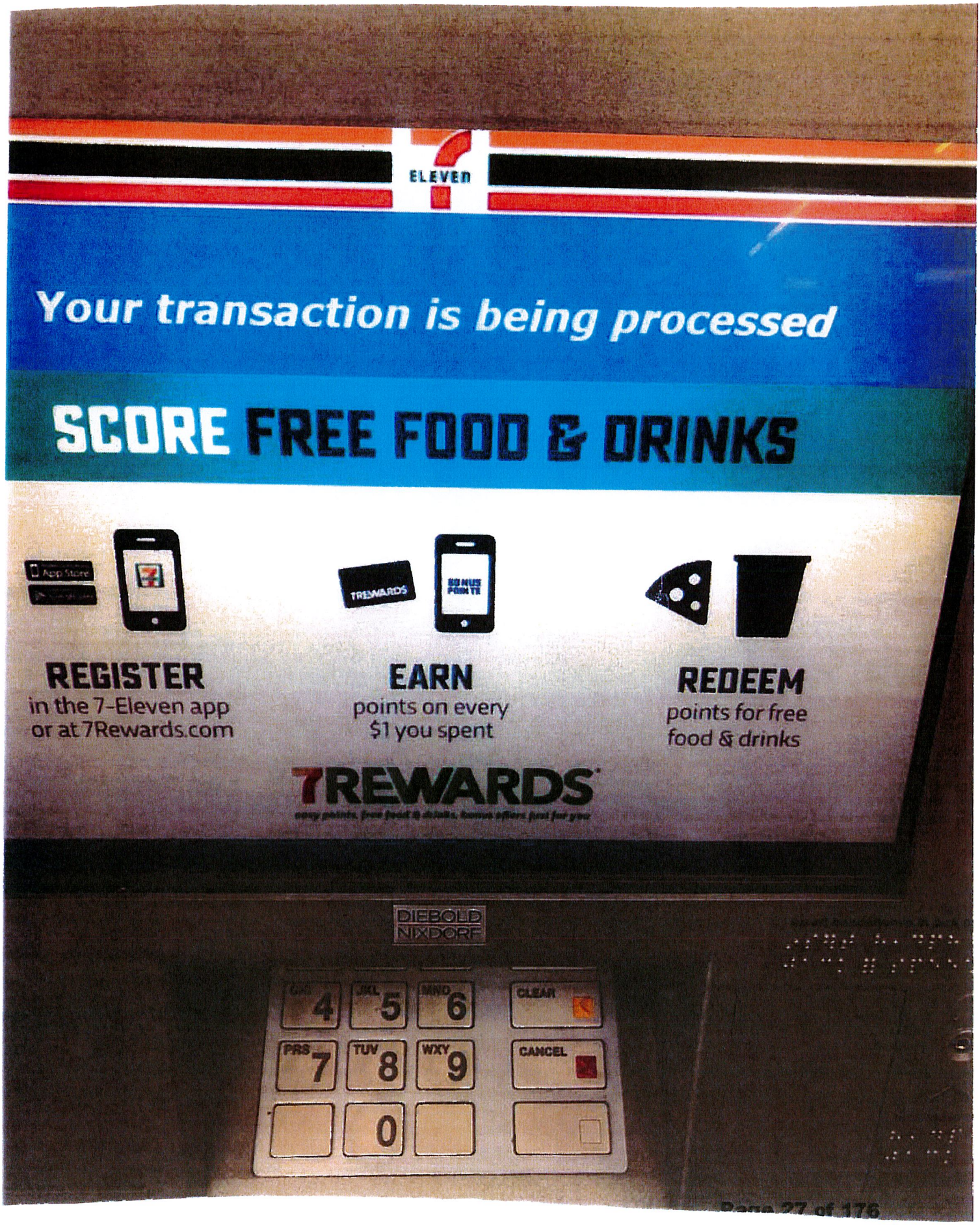

ELEVEN
CORE FREE
D & DRINKS
STER
Eleven
or at
rds.com
EARN
points on
every
$1 you spent
REDEEM
points for
free food
& drinks
7REWARDS
Select
withdrawal
account
Checking >
Savings >
Credit Card >
DIEBOLD
NIXDORF
4
5
6
PRS 7
TUV 8
WXY 9
CANCEL
0
Page 22 of 176


ELEVEN
Your transaction is being processed
SCORE FREE FOOD & DRINKS
App Store
REGISTER
in the 7-Eleven app
or at 7Rewards.com
7REWARDS
EARN
points on every
$1 you spent
REDEEM
points for free
food & drinks
7REWARDS
DIEBOLD
NIXDORF
4
5
6
PRS 7
TUV 8
WXY 9
CANCEL
0
Page 23 of 176


he sponsor of this atm
charges a fee of $2.95 For
cash withdrawals.
This fee is added to your
transaction amount and is
in addition to any fees that
may be charged by your
institution.
Accept this fee >
Cancel >
DIEBOLD
NIXDORF
CANCEL


Your transaction is being processed
SCORE FREE FOOD & DRINKS
App Store
REGISTER
in the 7-Eleven app
or at 7Rewards.com
EARN
points on every
$1 you spent
REDEEM
points for free
food & drinks
7REWARDS
DIEBOLD NIXDORF
CLEAR
CANCEL


ELEVEN
REGISTER FOR
AND DRINKS
REWARDS
Enter a whole dollar amount in multiples of $20
$20.00
Press if Correct >
Clear >
DIEBOLD NIXDORF
CLEAR
CANCEL


ELEVEN
Your transaction is being processed
SCORE FREE FOOD & DRINKS
REGISTER
in the 7-Eleven app
or at 7Rewards.com
EARN
points on every
$1 you spent
REDEEM
points for free
food & drinks
7REWARDS
DIEBOLD
NIXDORF
CLEAR
CANCEL


ELEVEN
Please take your CARD
DIEBOLD
NIXDORF
4
5
6
CLEAR
7
8
9
CANCEL
0
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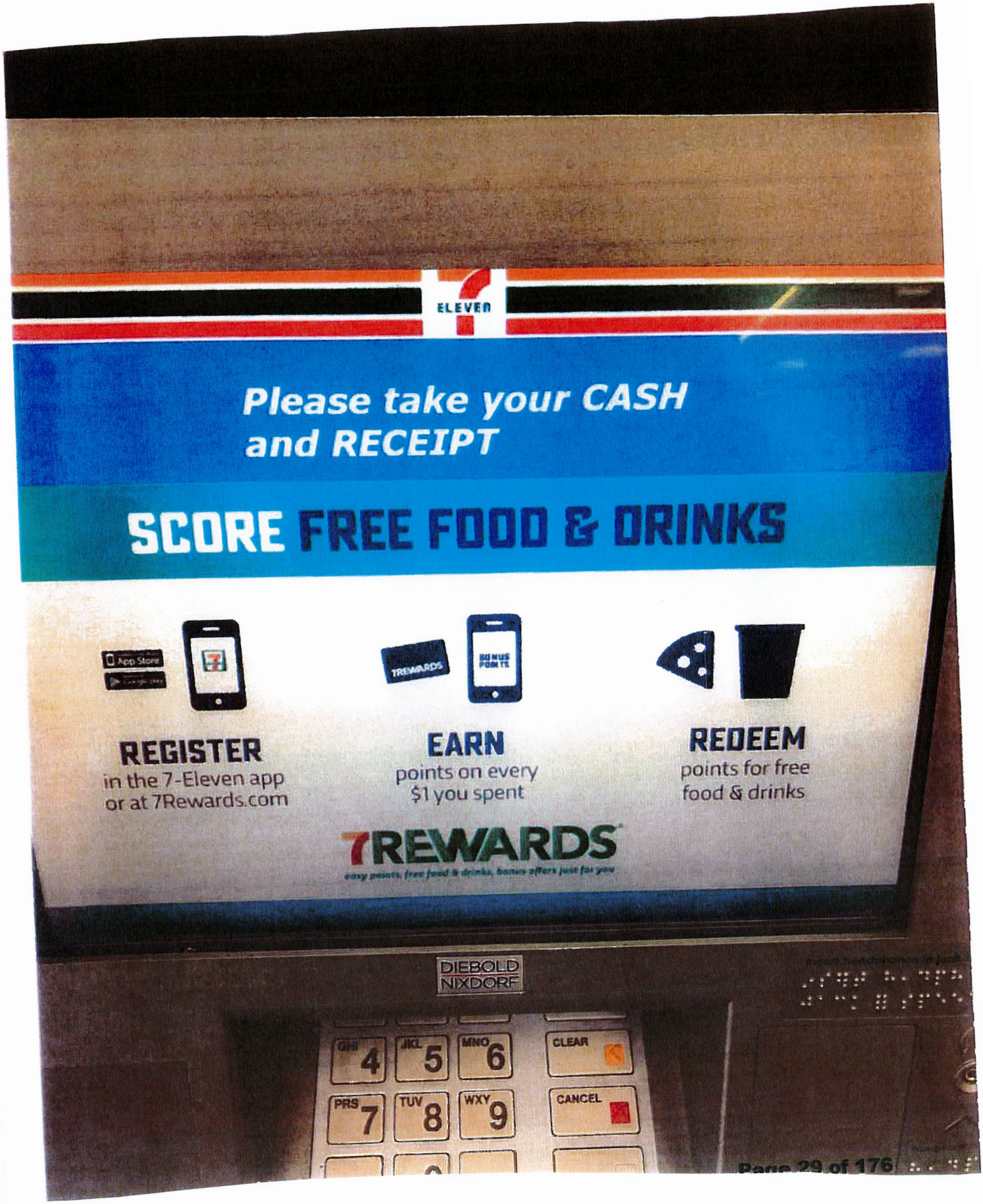

ELEVEN
Please take your CASH and RECEIPT
SCORE FREE FOOD & DRINKS
App Store
REGISTER
in the 7-Eleven app
or at 7Rewards.com
7REWARDS
BONUS POINTS
EARN
points on every
$1 you spent
REDEEM
points for free
food & drinks
7REWARDS
DIEBOLD NIXDORF
GHI 4
JKL 5
MNO 6
CLEAR
PRS 7
TUV 8
WXY 9
CANCEL
Page 29 of 176

Exhibit 5

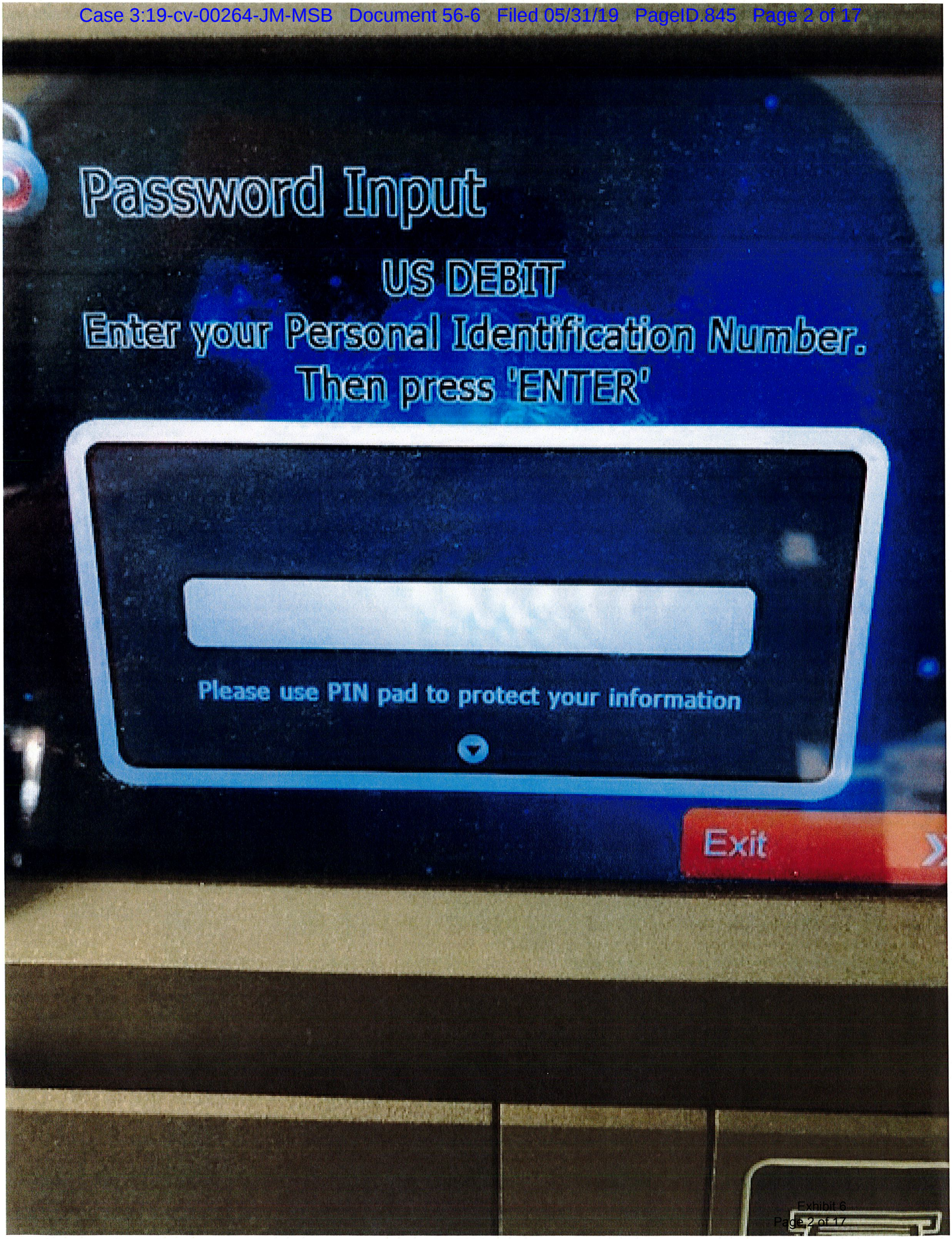
Exhibit 5

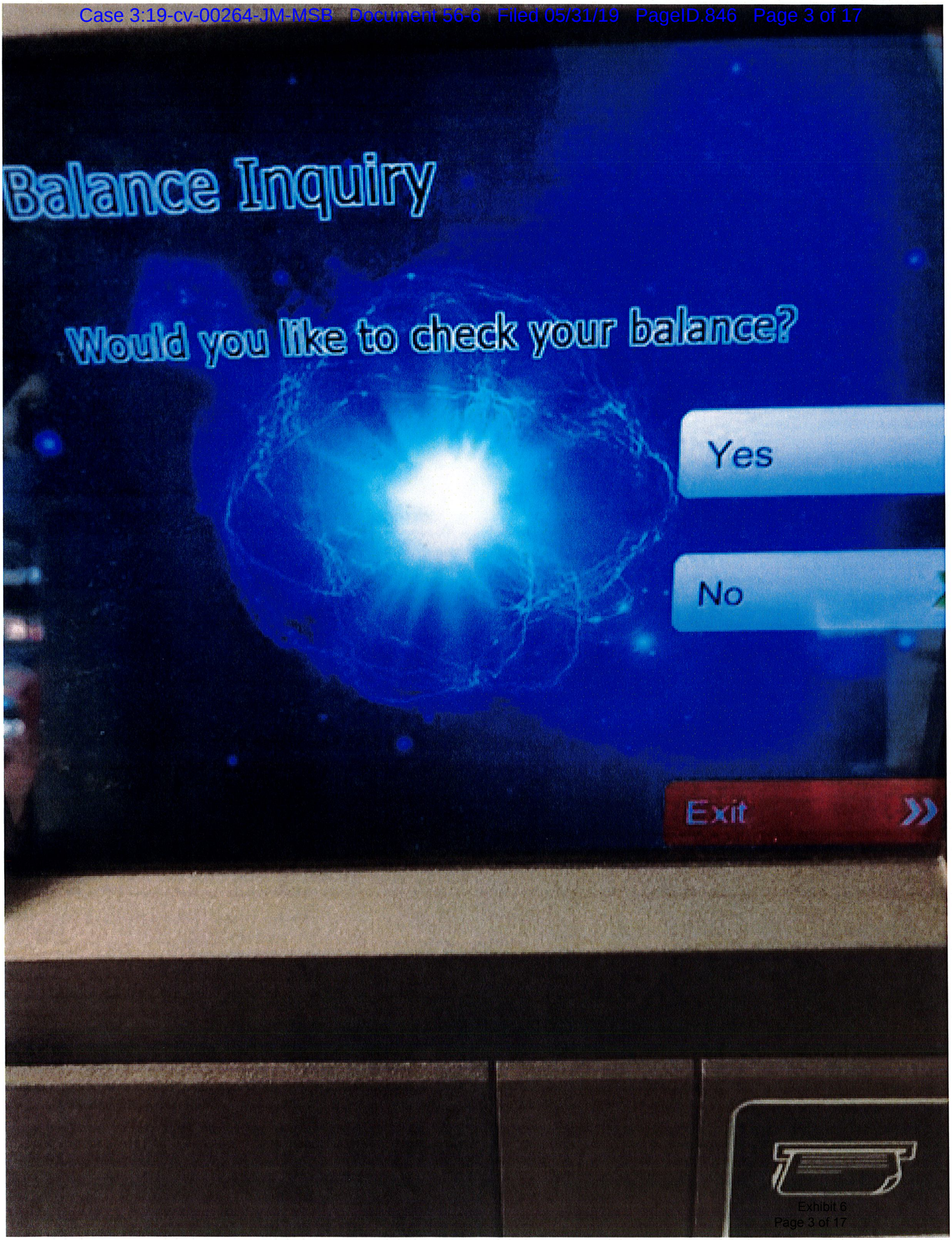

ATM
EBT card users must comply with state and federal regulations for use of card.
CASH DEPOT
PREVENT OVERDRAFT FEES
CHECK YOUR BALANCE FOR FREE
ATM


Walmart
ATM
PREVENT OVERDRAFT FEES
CHECK YOUR BALANCE FOR FREE
Coinstar
ATM

Exhibit 6

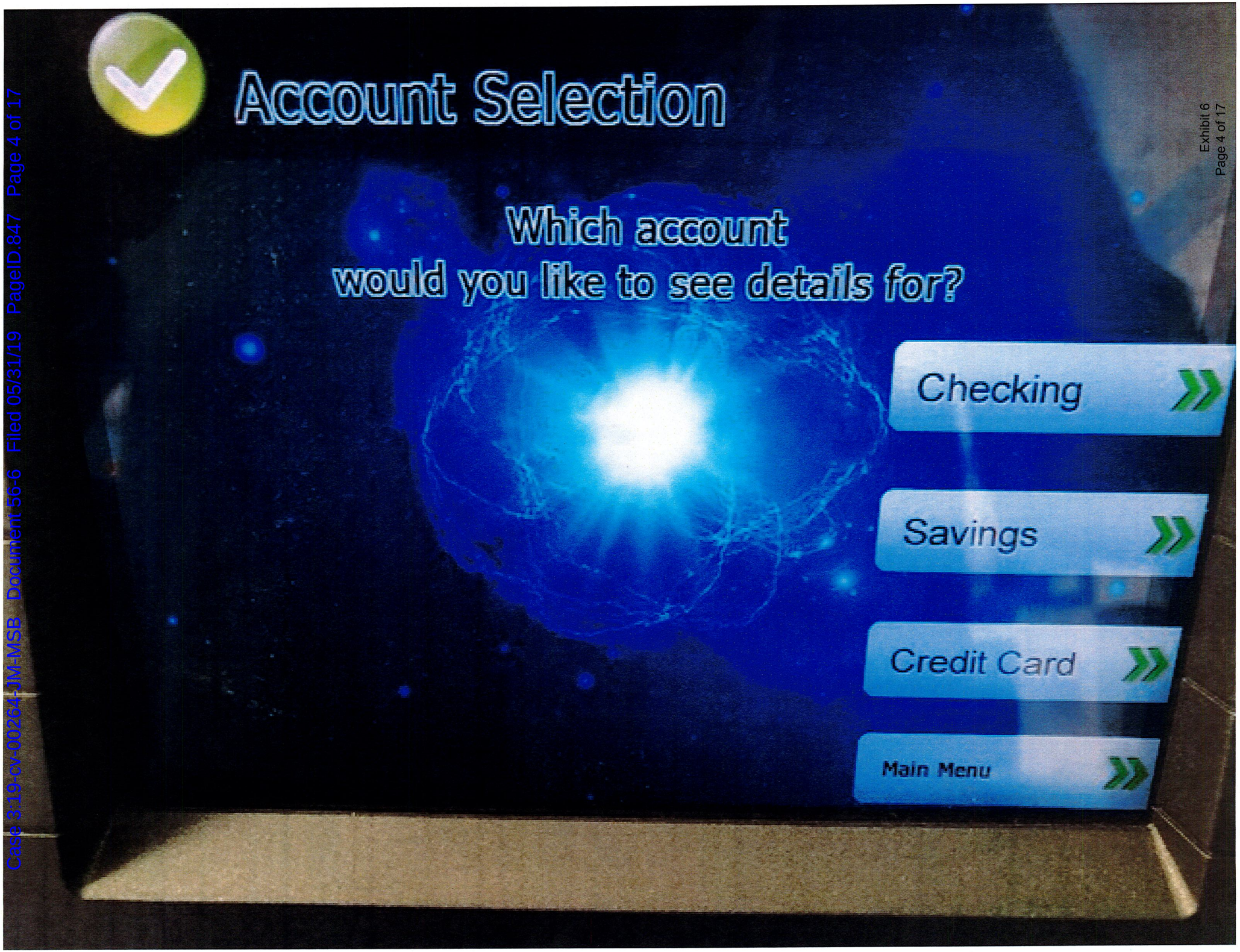
Exhibit 6


Password Input
US DEBIT
Enter your Personal Identification Number.
Then press 'ENTER'
Please use PIN pad to protect your information
Exit


Balance Inquiry
Would you like to check your balance?
Yes
No
Exit

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Exhibit 6
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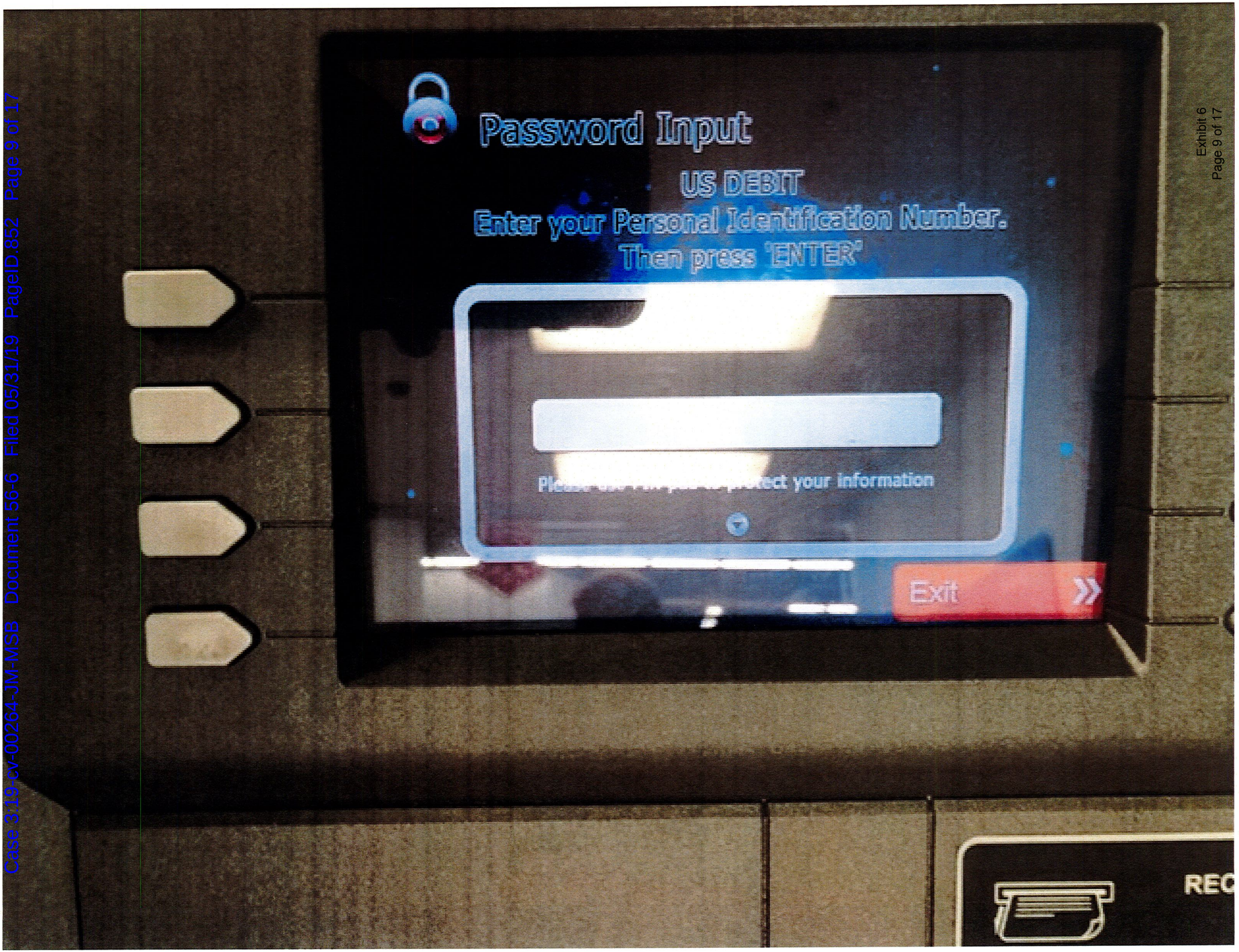


Receipt Selection
Would you like to receive a receipt?
Introducing the Hyosung
MoniPlus DigitalReceipt.
View your secure transactions on your
mobile device
Download the app from your
iPhone or Android device.
Paper
Receipt
Digital
Receipt
Exit

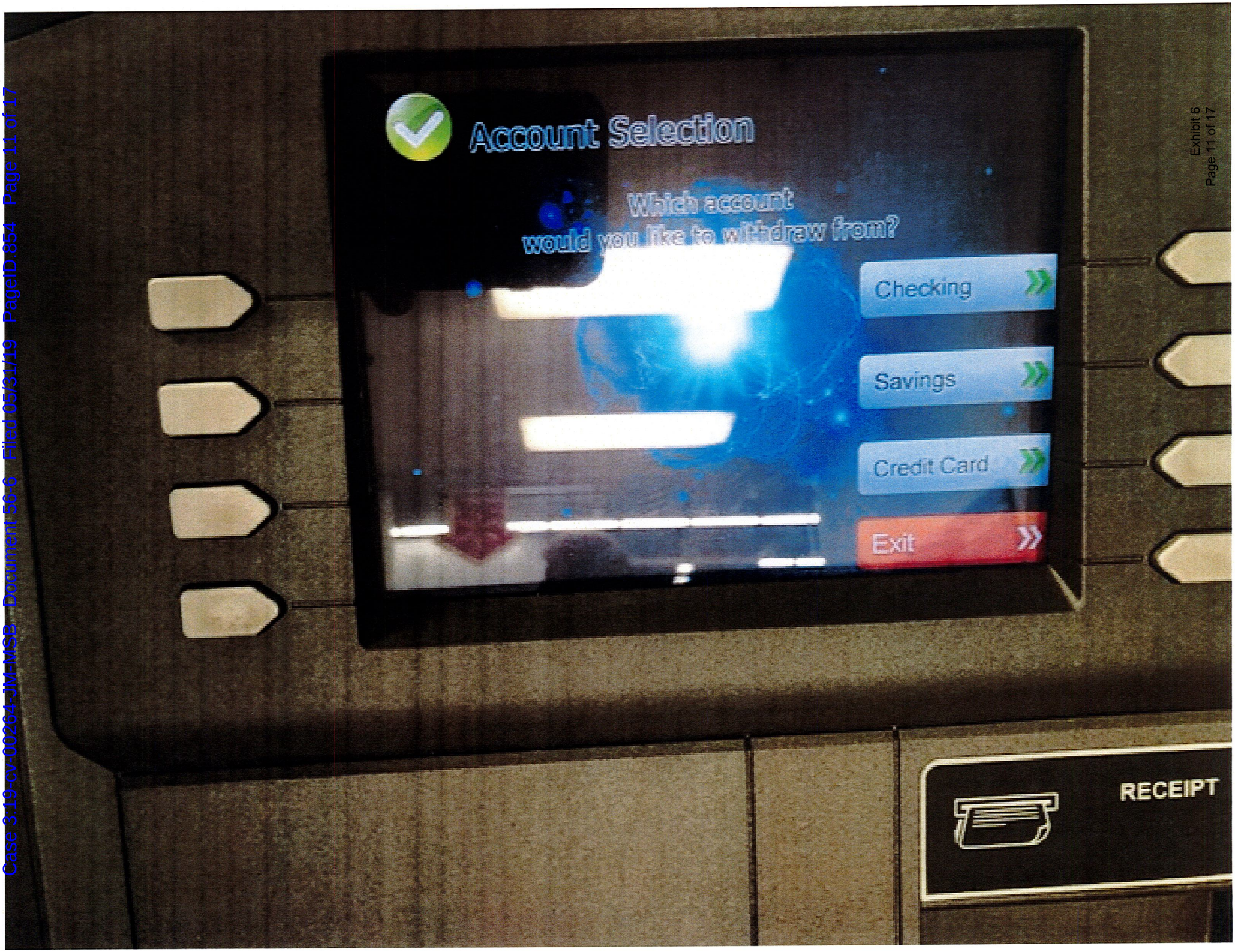

Connecting to the host
(Transaction)
Please wait

Printing your transaction record

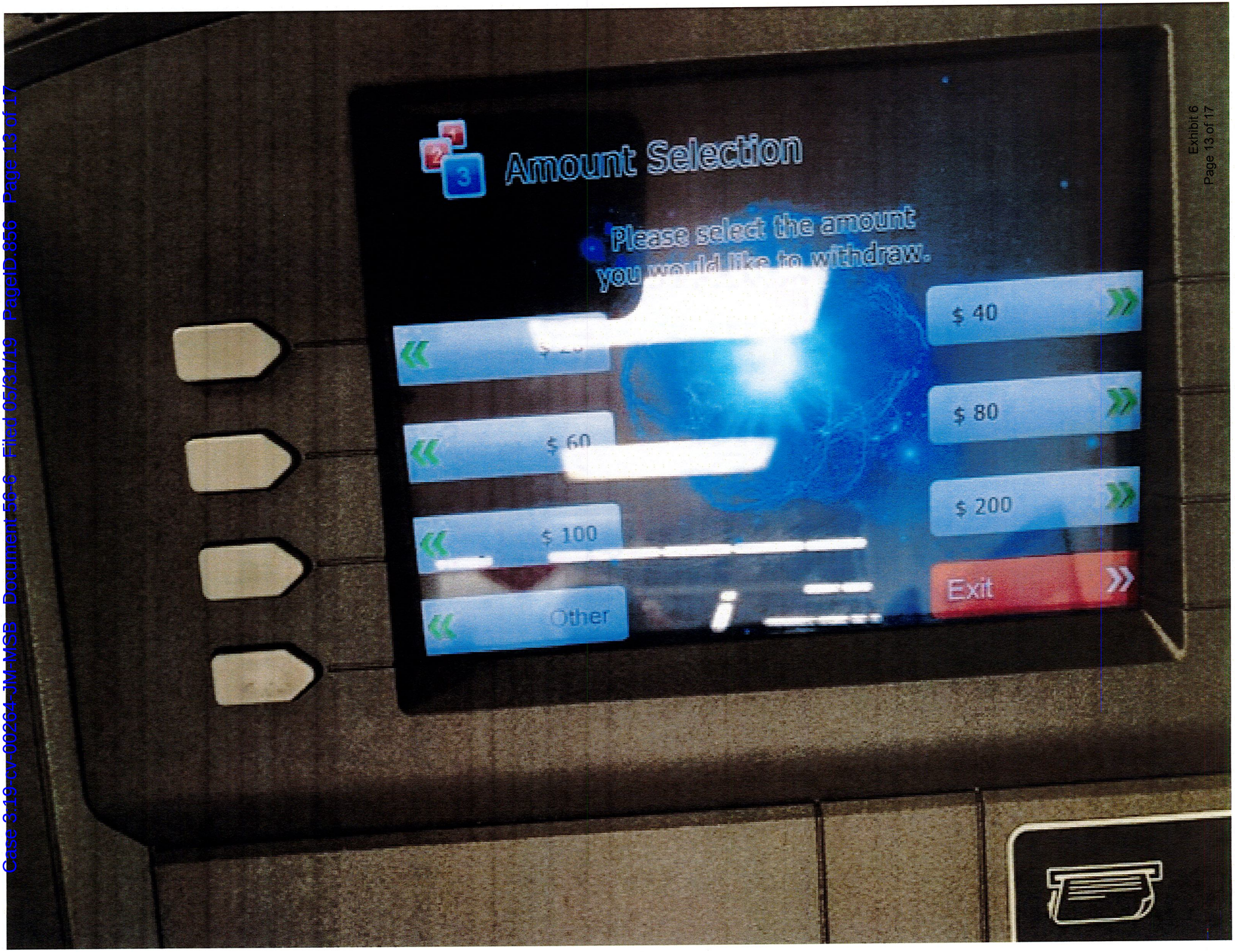

Another Transaction
to perform
nsaction?
Yes
No
Exit
RECEIPT

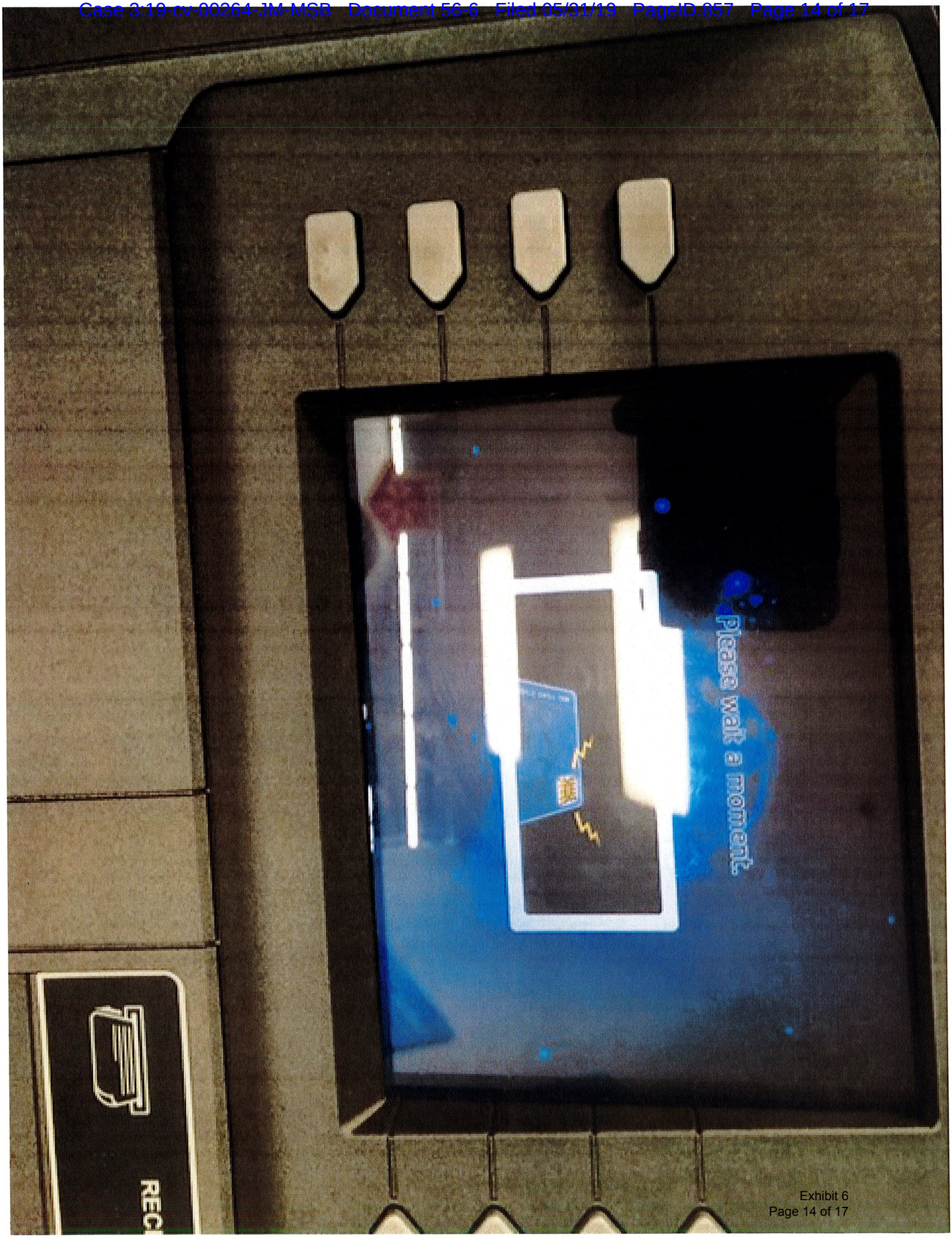

Password Input
US DEBIT
Enter your Personal Identification Number.
Then press 'ENTER'
Exit

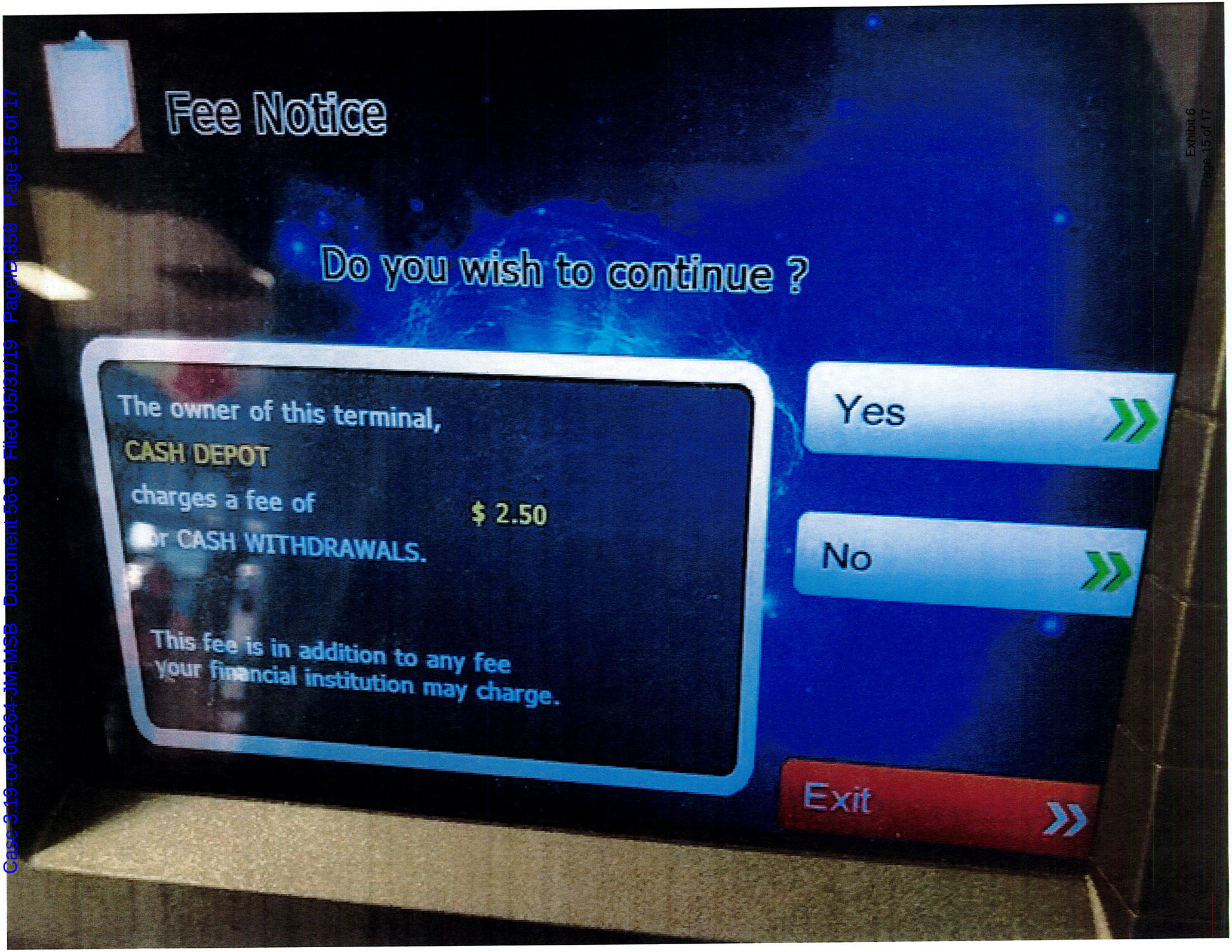

Transaction Selection
What would you like to do?
Withdrawal
Balance Inquiry
Transfer
Exit
RECEIPT


Account Selection
Which account
would you like to withdraw from?
Checking
Savings
Credit Card
Exit
RECEIPT


Receipt Selection
Would you like to receive a receipt?
Introducing the Hyosung
MoniPlus DigitalReceipt.
Paper Receipt
Digital Receipt
No Receipt
Exit
RECEIP


Amount Selection
Please select the amount
you would like to withdraw.
$ 40
$ 80
$ 200
$ 60
$ 100
Other
Exit


Please wait a moment.


Fee Notice
Do you wish to continue ?
The owner of this terminal,
CASH DEPOT
charges a fee of
$ 2.50
or CASH WITHDRAWALS.
This fee is in addition to any fee
your financial institution may charge.
Yes
No
Exit


Connecting to the host
(Transaction)
Please wait

Transaction is approved.
Please remove your card.

CERTIFICATE OF SERVICE

The undersigned certifies that on May 31, 2019, a true and correct copy of the following documents were electronically filed and served on all counsel of record who are deemed to have consented to electronic service via the Court's CM-ECF system:

SECOND AMENDED CLASS ACTION COMPLAINT

EXHIBITS 1-6

Pursuant to the CM-ECF system, registration as a CM-EC user constitutes consent to electronic service through the Court's transmission facilities. Any other counsel of record will be served by electronic mail and U.S. mail.

Dated: May 31, 2019

CARLSON LYNCH LLP

By: */s/ Todd D. Carpenter*

Todd D. Carpenter