

Exhibit B

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

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

Plaintiffs,

v.

BANK OF AMERICA, N.A.,
CARDTRONICS, INC., FCTI, INC.,
CASH DEPOT, LTD., N.A., and DOES
1–50, inclusive,

Defendants.

Case No. 3:19-cv-00264-DMS-MSB

**[PROPOSED] ORDER GRANTING
PLAINTIFF COVELL’S MOTION
FOR PRELIMINARY APPROVAL
OF CLASS SETTLEMENT**

Courtroom: 13A
Judge: Hon. Dana M. Sabraw

1 The Court, having heard Plaintiff Covell’s Motion for Preliminary Approval of
2 Class Settlement, reviewed the Settlement Agreement and Release (“Settlement
3 Agreement”),¹ and good cause appearing, hereby **GRANTS** the motion and **ORDERS**
4 as follows:

5 1. The Settlement Agreement appears to be the product of serious, informed,
6 non-collusive negotiations with Defendant Bank of America, N.A. (“BANA”) and falls
7 within the range of possible approval as fair, reasonable, and adequate.

8 2. The Email Notice, Postcard Notice, Long Form Notice, and Claim Form:
9 (a) constitute the best such forms and notice practicable under the circumstances; (b)
10 the method for providing notice to Settlement Class Members set forth in the Settlement
11 Agreement constitutes valid, due, and sufficient notice to all Settlement Class Members;
12 and (c) the Notice Program complies fully with the requirements of Federal Rule of
13 Civil Procedure 23, the United States Constitution, and other applicable law.

14 3. For purposes of the Settlement only, the Settlement Class is so numerous
15 that joinder of all Settlement Class Members is impracticable.

16 4. For purposes of the Settlement only, Plaintiff’s claims are typical of the
17 Settlement Class’s claims.

18 5. For purposes of the Settlement only, there are questions of law and fact
19 common to the Settlement Class, which predominate over any questions affecting only
20 individual Settlement Class Members.

21 6. For purposes of the Settlement only, class adjudication is superior to other
22 available methods for the fair and efficient adjudication of the controversy.

23 **IT IS ORDERED THAT:**

24 1. **Settlement Approval.** The Settlement Agreement, including the Notice
25 Program, is preliminarily approved.

26 _____
27 ¹ All undefined, capitalized terms have the same meaning as set forth in the Settlement
28 Agreement.

1 2. **Provision of Notice.** Class Counsel, through the Settlement Administrator,
2 will notify Settlement Class Members of the Settlement in the manner specified in the
3 Settlement Agreement.

4 3. **Settlement Class Payment.** Each Settlement Class Member will be
5 entitled to receive a pro-rata distribution of the Net Settlement Fund based on the
6 number of Current Accountholders and Past Accountholders who submitted a Valid
7 Claim.

8 4. **Objections to the Settlement.** To object to the Settlement, a Settlement
9 Class Member must submit their objection no later than the Objection Deadline, as
10 specified in the Long Form Notice. The objection must be filed with or mailed to the
11 Clerk of the Court and mailed to the Settlement Administrator. If submitted by mail, a
12 written objection shall be deemed to have been submitted when posted if received with
13 a postmark date indicated on the envelope if mailed first-class postage prepaid and
14 addressed in accordance with the instructions. If submitted by private courier (e.g.,
15 Federal Express), an objection shall be deemed to have been submitted on the shipping
16 date reflected on the shipping label.

17 For an objection to be considered by the Court, the objection must also set forth:
18 (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii)
19 information identifying the objector as a Settlement Class Member in this Action,
20 including evidence that the objector is a member of the Settlement Class; (iii) a written
21 statement of all grounds for the objection, accompanied by any legal support for the
22 objection the objector believes applicable; (iv) the identity of all counsel representing
23 or assisting the objector, if any; (v) the identity of all counsel representing the objector
24 who will appear at the Final Fairness Hearing, if any; (vi) a list of all persons who will
25 be called to testify at the Final Fairness Hearing in support of the objection, if any; (vii)
26 a statement confirming whether the objector intends to personally appear and/or testify
27 at the Final Fairness Hearing; (viii) the objector's signature and the signature of the
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1 objector's duly authorized attorney or other duly authorized representative (along with
2 documentation setting forth such representation), if any; (ix) a list, by case name, court,
3 and docket number, of all other cases in which the objector (directly or through counsel)
4 has filed an objection to any proposed class action settlement within the last three (3)
5 years; (x) a list, by case name, court, and docket number, of all other cases in which the
6 objector's counsel (on behalf of any person or entity) has filed an objection to any
7 proposed class action settlement within the last 3 years; and (xi) a list, by case name,
8 court, and docket number, of all other cases in which the objector has been a named
9 plaintiff in any class action or served as a lead plaintiff or class representative.

10 **5. Failure to Object to the Settlement.** Settlement Class Members who fail
11 to timely object to the Settlement in the manner specified will: (a) be deemed to have
12 waived their right to object to the Settlement; (b) be foreclosed from objecting (whether
13 by a subsequent objection, intervention, appeal, or any other process) to the Settlement;
14 and (c) not be entitled to speak at the Final Approval Hearing.

15 **6. Requesting Exclusion from the Settlement.** To be excluded, a member
16 of the Settlement Classes must send an opt-out request by U.S. Mail or private courier
17 (e.g., Federal Express) to the Settlement Administrator, stating the wish to be excluded
18 from the Settlement Classes. The opt- out request must be personally signed by them
19 and contain their name, postal address, and a statement that indicates a desire to be
20 excluded from the Settlement Class. The opt-out request must be postmarked by the last
21 day of the Opt-Out Period. If submitted by mail, the opt-out request shall be deemed to
22 have been submitted when posted if received with a postmark date indicated on the
23 envelope if mailed first-class postage prepaid and addressed in accordance with the
24 instructions. If submitted by private courier (e.g., Federal Express), an exclusion request
25 shall be deemed to have been submitted on the shipping date reflected on the shipping
26 label.

1 7. **Claims Provision.** Past Accountholders may submit a Claim Form online
2 through the Settlement Website or in paper copy through U.S. mail by sending them to
3 the Settlement Administrator at the post office box mailing address designated in the
4 Notice no later than the Claims Deadline. Past Accountholders have 75 days after the
5 entry of this order to submit a Claim through the procedures outlined in the Settlement
6 Agreement, but the parties may agree to extend the deadline to provide additional time
7 for Past Accountholders to submit Claims.

8 8. **Provisional Certification.** The Settlement Class is provisionally certified
9 as: all BANA Accountholders in the United States who were assessed more than one
10 out-of-network (“OON”) balance inquiry fee during the same visit to a FCTI, Inc.-
11 owned ATM located in a 7-Eleven store from May 1, 2018, to November 16, 2021, and
12 who did not make a valid claim and receive payment in Weiss. Excluded are BANA’s
13 Counsel, Defendant’s officers and directors, and the judges presiding over the Action.

14 9. **Conditional Appointment of Class Representatives and Class Counsel.**
15 Plaintiff is conditionally certified as the Class Representative to implement the
16 Settlement in accordance with the Agreement. Todd D. Carpenter, Jae K. Kim, and
17 Tiffine E. Malamphy of Lynch Carpenter, LLP, are conditionally appointed as Class
18 Counsel. Plaintiff and Class Counsel must fairly and adequately protect the interests of
19 the Settlement Classes.

20 10. **Termination.** In the event of termination, the Agreement shall be
21 considered null and void; all of Plaintiff’s, Class Counsel’s, and BANA’s obligations
22 under the Settlement shall cease to be of any force and effect; and the Parties shall return
23 to the status quo ante in the Action as if the Parties had not entered into this Settlement
24 Agreement. In addition, in the event of such a termination, all of the Parties’ respective
25 pre-Settlement rights, claims and defenses will be retained and preserved. If this
26 Settlement Agreement terminates or is nullified, the provisional Settlement Class
27 certification shall be vacated by its terms, and the Action shall revert to the status that
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1 existed before execution of this Settlement Agreement. Thereafter, Plaintiff shall be free
 2 to pursue any claims available to her, and BANA shall be free to assert any defenses
 3 available to it. Nothing in this Settlement Agreement shall be argued or deemed to estop
 4 any party from the assertion of such claims and defenses.

5 11. **No Admission.** Nothing in this Order is, or may be construed as, an
 6 admission or concession on any point of fact or law by or against any party.

7 12. **Stay of Proceedings.** All discovery and pre-trial proceedings, and
 8 deadlines, are stayed and suspended until further notice from the Court, except for such
 9 actions as are necessary to implement the Settlement Agreement and this Order.

10 13. **Further Procedures.** Counsel for the parties are hereby authorized to
 11 agree to utilize all reasonable procedures in connection with the administration of the
 12 Settlement which are not materially inconsistent with either this Order or the terms of
 13 the Settlement Agreement.

14 14. **Final Approval Hearing.** On _____, 2026, at _____, [at
 15 least 120 days after entry of this Order] this Court will hold a Final Approval Hearing
 16 to determine whether the Agreement should be finally approved as fair, reasonable, and
 17 adequate. Based on the date of this Order and the date of the Final Approval Hearing,
 18 the following are certain associated deadlines in this Settlement.

Event	Proposed Date
Last day to issue Notice and publish the Settlement Website	40 days after entry of this Order
Claim deadline	75 days after entry of this Order
Last day for Plaintiff to file Application for Attorneys' Fees, Costs, and Service Award	30 days before the Opt-Out Deadline
Last day for Plaintiff to file Motion for Final Approval	45 days before the Final Approval Hearing
Last day for Settlement Class Members to file an objection or opt out of the Settlement	45 days before the Final Approval Hearing

1 This Court may order the Final Approval Hearing to be postponed, adjourned, or
2 continued. If that occurs, the updated hearing date shall be posted on the Settlement
3 Website, but other than the website posting, Plaintiff will not be required to provide any
4 additional notice to Settlement Class Members.

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6 **IT IS SO ORDERED.**

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9 DATED: _____

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11 Hon. Dana M. Sabraw
12 United States District Judge
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