

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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: ROBERT ROSS, et al.,  
: Plaintiffs, 05 Civ. 7116 (WHP)  
: -against- Judge William H. Pauley, III  
: BANK OF AMERICA, N.A. (USA), et al.,  
: Defendants.  
: ----- X

**DECLARATION OF JEFFREY COONEY**

I, Jeffrey Cooney, declare, under penalty of perjury, as follows:

1. My name is Jeffrey Cooney. I am over the age of 18, and am competent to make this Declaration. I submit this Declaration on behalf of FIA Card Services, N.A., and Bank of America, N.A. (collectively, "Bank of America"). I am a senior vice president for marketing for U.S. consumer credit cards at Bank of America. In this role, I have direct responsibility for the preparation and distribution of notices to cardholders regarding changes in term to their consumer credit card agreements with Bank of America. Consequently, I have personal knowledge of the matters set forth herein.

2. Pursuant to the schedule set forth more fully below, Bank of America is in the process of mailing a notice to its U.S. consumer credit card cardholders (hereafter, "Cardholders") regarding amendments to their consumer credit card agreements with Bank of America. The notice will include a cover letter which sets forth a summary of the agreement amendments. (The notice and the cover letter thereto are collectively referred to hereafter as the


“CIT Notice”). The CIT Notice informs Cardholders that Bank of America is removing the arbitration provision from its consumer credit card agreements. In addition, the CIT Notice states that “[a]rbitration will no longer be used to resolve new disputes arising under your Agreement, or any claim or dispute related to benefits or services provided in connection with this account.” Attached hereto at Exhibit A is an exemplar of the most common version of the CIT Notice.

3. Under current plans, the CIT Notice will be distributed to approximately 47,000,000 Cardholders in the following three separate mailings:
  - a. The first mailing (“Mailing No. 1”) will be sent to Cardholders with a consumer credit card account opened as of December 31, 2009. Mailing No. 1 began on May 14, 2010 and will be completed by June 15, 2010. Mailing No. 1 will account for 98.7% of the CIT Notice distribution.
  - b. The second mailing (“Mailing No. 2”) will be sent to Cardholders with a consumer credit card account opened, or that will be opened, between January 1, 2010 and May 31, 2010. Mailing No. 2 will be completed by June 23, 2010. Based upon current estimations, Mailing No. 2 will account for approximately 1.1% of the CIT Notice distribution.
  - c. The third mailing (“Mailing No. 3”) will be sent to Cardholders with a consumer credit card account that will be opened between June 1, 2010 and June 19, 2010. Mailing No. 3 will be completed by July 15, 2010. Based upon current estimations, Mailing No. 3 will account for approximately 0.2% of the CIT Notice distribution.

4. All consumer credit card agreements for accounts opened after June 19, 2010 will not include an arbitration provision.

5. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED: May 21, 2010

  
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Jeffrey Cooney

# **EXHIBIT A**



June 2010

RE: Your credit card account ending in XXXX

Dear [Customer]:

At Bank of America<sup>®</sup>, we are committed to providing you with clear, timely information you can use to make decisions about your account. You have asked for more clarity in our communications, and we want to ensure you understand the enclosed changes we are making to your Credit Card Agreement. These changes are referred to as Amendments.

Please carefully review the second page titled *Amendments to Your Credit Card Agreement* for complete details and the dates these changes go into effect. We have also included a summary paragraph ("What Is Happening") directly above each Amendment.

Below is a brief summary of the changes to your Credit Card Agreement:

- **Cash Advance Fees for overdraft amounts less than \$10 will be eliminated:** If your credit card is linked to a Bank of America checking account for overdraft protection, we will no longer charge a fee if the overdrawn amount is less than \$10.
- **Arbitration will no longer be used to resolve new disputes:** We are removing the Arbitration section from your Credit Card Agreement. This does not affect your rights if you think there is an error on your statement; please refer to the section titled *Your Billing Rights* included in this notice.

You will also find enclosed the following information:

- **Your Billing Rights:** This annual notice explains your rights and our responsibilities if you choose to dispute a charge on your bill. Information about disputing a charge is also available on the back of your statement.
- **Annual Privacy Notice:** This enclosed insert entitled "*Bank of America Privacy Policy for U.S. Consumers 2010*" explains how we collect and manage information about you and how you can limit the sharing of that information.
- **As a reminder, for your security, safeguards against illegal transactions are in place:** Transactions in countries that are subject to certain economic sanctions or other restrictive measures (such as Iran and Sudan) will be blocked. Additional information and a full list of countries can be found at [www.treas.gov/ofac](http://www.treas.gov/ofac).

For each account you have with us (including closed or inactive accounts), you will receive a copy of the privacy policy and other relevant notices.

We're here to answer your questions—day and night. If you have any questions or need assistance with your account, please contact us by calling the toll-free number on the back of your credit card. Our experienced associates are ready to assist you 24 hours a day, seven days a week. To access your account online, please visit [bankofamerica.com/onlinebanking](http://bankofamerica.com/onlinebanking).

We truly appreciate your business and look forward to continuing to meet your credit needs. Thank you for being a valued Bank of America customer.

Sincerely,

Beverly B. Ladley  
Borrowing Products Executive  
Bank of America

June 2010

## AMENDMENT(S) TO YOUR CREDIT CARD AGREEMENT

Please read this document carefully and keep it with your Credit Card Agreement. Except as amended below, the terms of your Credit Card Agreement remain in effect. If there is a conflict, the terms in this Amendment will prevail.

### OVERDRAFT PROTECTION AMENDMENT

**What Is Happening:**

Cash Advance Fees for overdraft amounts less than \$10 will be eliminated. If your account is linked to a Bank of America checking account for overdraft protection, we will no longer charge a fee if the overdrawn amount is less than \$10.

**Amendment to Your Credit Card Agreement:**

Effective as of August 7, 2010, we will not assess an Overdraft Protection Cash Advance fee for any overdraft protection transfer from this account to a linked Bank of America checking account, if we determine that your checking account is overdrawn by a total amount less than \$10.00, after we finish processing for the day.

**Please note:** Overdraft transactions of \$10.00 or more will continue to be assessed the Overdraft Protection Cash Advance fee for each such Cash Advance. This change does not affect how we otherwise process overdraft protection transfers, as described in your Agreement.

### ARBITRATION AMENDMENT

**What Is Happening:**

Arbitration will no longer be used to resolve new disputes arising under your Agreement, or any claim or dispute related to benefits or services provided in connection with this account. As a result, we are amending your Agreement to remove the section titled *Arbitration and Litigation* and to remove references to Arbitration and Litigation in the sections titled *When We May Require Immediate Repayment and Benefits*.

**Amendment to Your Credit Card Agreement:**

Effective immediately, we are removing the section of your Agreement titled *Arbitration and Litigation* and the references to Arbitration and Litigation in the sections titled *When We May Require Immediate Repayment and Benefits*. Those sections are reprinted below, as amended:

#### WHEN WE MAY REQUIRE IMMEDIATE REPAYMENT

If you are in default, then in addition to our other remedies under this Agreement, we can require immediate payment of all or any portion of your total outstanding balance and, unless prohibited by applicable law, we can also require you to pay the costs we incur in any collection proceeding, as well as reasonable attorneys' fees if we refer your Account for collection to an attorney who is not our salaried employee. Our failure to exercise any of our rights when you default does not mean that we are unable to exercise those rights upon later or continued default.

#### BENEFITS

We may offer you certain benefits and services with your Account. Unless expressly made a part of this Agreement, any such benefits or services are not part of this Agreement, but are subject to the terms and restrictions outlined in the benefits brochure and other official documents provided to you from time to time by or on behalf of Bank of America. We may adjust, add, or delete benefits and services at any time and without notice to you.

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**Notice regarding limitations on permissible use of your account:**

You may not use your account to conduct transactions in any country or territory, or with any individual or entity that is subject to economic sanctions administered and enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"). Use of your card in those countries, or other jurisdictions as may be determined by *FIA Card Services*, will be blocked.

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### EQUAL CREDIT OPPORTUNITY ACT NOTICE

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this bank is the Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, TX 77010-9050.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us in writing at:

Bank of America Corporation  
P.O. Box 15026  
Wilmington, DE 19850

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

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