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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOANNE FARRELL,  
Plaintiff,  
v.  
BANK OF AMERICA, N.A.,  
Defendant.

Case No.: 3:16-cv-00492-L-WVG

**ORDER CONDITIONALLY  
GRANTING PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

This case comes before the Court on the motion of Plaintiff, Joanne Farrell, and putative plaintiffs, Ronald Dinkins, Larice Addamo, and Tia Little (“Plaintiffs”), on behalf of themselves and the Settlement Class they seek to represent, for an order granting Preliminary Approval of the class action Settlement between Plaintiffs and Defendant Bank of America, N.A. (“BANA”). The definitions and capitalized terms in the Settlement Agreement (“Agreement”) and Memorandum in Support of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class are hereby incorporated as though fully set forth in this Order, and shall have the same meanings attributed to them in those documents.

Having considered the matter, Plaintiffs’ motion, the proposed Agreement and the Joint Declaration of Class Counsel for the proposed Settlement Class and good cause appearing therefore,

1 IT IS HEREBY ORDERED THAT:

2 1. The Agreement is preliminarily approved as fair, reasonable, and adequate.  
3 Plaintiffs and the Settlement Class, by and through their counsel, have investigated the  
4 facts and law relating to the matters alleged in the Complaint, including through dispositive  
5 motion practice, legal research as to the sufficiency of the claims, an evaluation of the risks  
6 associated with continued litigation, trial, and/or appeal, including risks associated with the  
7 currently pending interlocutory appeal, and confirmatory discovery. The Settlement  
8 appears to be the product of arm's length negotiations between Class Counsel and counsel  
9 for BANA, which occurred following mediation before the Honorable Layn R. Phillips  
10 (Ret.). The Settlement confers substantial benefits upon the Settlement Class, without the  
11 costs, uncertainties, delays, and other risks associated with continued litigation, trial, and/or  
12 appeal and is fair, adequate, and reasonable.

13 2. The Court conditionally certifies, for settlement purposes only, the  
14 following Settlement Class:

15 All holders of BANA consumer checking accounts who, during  
16 the period between February 25, 2014 and December 30, 2017,  
17 were assessed at least one Extended Overdrawn Balance Charge  
18 that was not refunded.

19 3. The Court finds, for settlement purposes only, that the prerequisites for a  
20 class action under Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure  
21 have been satisfied in that: (a) the number of Settlement Class members is so numerous  
22 that joinder of all members thereof is impracticable; (b) there are questions of law and fact  
23 common to the Settlement Class; (c) the claims of the Plaintiffs are typical of the claims of  
24 the Settlement Class they seek to represent for purposes of settlement; (d) Plaintiffs have  
25 fairly and adequately represented the interests of the Settlement Class and will continue to  
26 do so, and Plaintiffs have retained experienced counsel to represent them; (e) for purposes  
27 of settlement, the questions of law and fact common to the Settlement Class members  
28 predominate over any questions affecting any individual Settlement Class member; and (f)

1 for purposes of settlement, a class action is superior to the other available methods for the  
2 fair and efficient adjudication of the controversy. The Court also concludes that, because  
3 this Action is being settled rather than litigated, the Court need not consider manageability  
4 issues that might be presented by the trial of a nationwide class action involving the issues  
5 in this case. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Additionally,  
6 for purposes of settlement only, the Court finds that BANA has acted on grounds that apply  
7 generally to the Settlement Class, so that the final injunctive relief to which the Parties  
8 have agreed is appropriate respecting the Settlement Class as a whole.

9 4. The Court conditionally approves, as to form and content, the Class  
10 Notices attached to the Agreement as Exhibits B, C, and D. The conditions for approval  
11 are as follows:

- 12 a. The long form notice, currently lodged as Exhibit C, requires an overly  
13 complex and onerous procedure for filing objections. See 4 Newberg  
14 on Class Actions §13:30 (5th ed.) (stating objection procedures such as  
15 the ones proposed here can have the effect of unduly chilling  
16 objections). The parties shall modify the long form notice to include  
17 only the following requirements:
- 18 i. Inclusion of the case name and case number; the objector's name,  
19 address, telephone number, and signature.
  - 20 ii. Explanation of the nature of the objection and citation to any  
21 relevant legal authority.
  - 22 iii. The number of times the objector has objected to a class action  
23 settlement in the past five years and the caption for any such  
24 case(s).
  - 25 iv. The identity of any counsel representing the objector.
  - 26 v. Indication as to whether the objector (whether *pro se* or through  
27 representation) intends to testify at the final approval hearing.
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- 1 vi. Submission of objections, by first class mail postmarked no later  
2 than the objection deadline, to the Clerk of Court, class counsel,  
3 and defense counsel. The notice shall designate service of only  
4 one address for class counsel and one address for defense  
5 counsel, such that an objector needs to send a total of only three  
6 envelopes.
- 7 b. In section 5 of the long form notice, include an estimate as to the size  
8 of the Settlement Class.
- 9 c. In section 8, line 8 of the long form notice, insert the word “or” between  
10 the words “acting” and “purporting.”
- 11 d. In section 9 of the long form notice:
  - 12 i. Delete the first use of the word “receive” from bullet 2, line 3.
  - 13 ii. Omit the requirement that a class member provide the last four  
14 digits of their social security number.
- 15 e. Section 18 of the long form notice shall consist of only the following  
16 sentence: “You may speak at the Final Approval Hearing if you have  
17 filed and served a timely objection to the Settlement according to the  
18 procedures set out in Section 14 above.”
- 19 f. Plaintiffs shall format the email notice, currently lodged as Exhibit D,  
20 in a manner designed to escape email inbox spam filters. Plaintiffs shall  
21 file a declaration explaining what steps they took to this end. If the  
22 email notice is already thus formatted, the parties need only file the  
23 above described declaration.
- 24 g. The words “and speak” shall be added to the second to last sentence of  
25 the email notice after the word “appear.”
- 26 h. The words “and speak” shall be added to the second to last sentence of  
27 the postcard notice, currently lodged as Exhibit B, after the word  
28 “appear.”

- 1 i. In both the email and postcard notices, indicate the Administrator will
- 2 mail paper copies of the long form notice to any class member who
- 3 requests a copy.
- 4 j. Section 2.4(c) of the Agreement incorrectly indicates that the email
- 5 notice is appended as Exhibit B (actually D), the postcard notice as
- 6 Exhibit C (actually B), and the long form notice as Exhibit D (actually
- 7 C). Plaintiffs shall ensure that the various notices are properly
- 8 referenced in the Agreement that posts to the settlement website.

9 5. The parties shall file a motion for approval of amended notices compliant  
10 with paragraph 4 above within ten days of the entry of this order. The Court will provide  
11 expedited review of the revised notice forms. Failure to comply with this paragraph will  
12 result in denial of preliminary approval.

13 6. As soon as possible after the entry of this order, but not later than 70 days  
14 after the entry of this Order, the Administrator will complete notice to the Settlement Class  
15 as provided in the Agreement. The Court finds that the Settlement Class Notice Program,  
16 modified in accordance with this order, is reasonable, that it constitutes due, adequate, and  
17 sufficient notice to all persons entitled to receive notice, and that it meets the requirements  
18 of due process and Rule 23 of the Federal Rules of Civil Procedure. Specifically, the Court  
19 finds that the modified Notice Program complies with Rule 23(e) of the Federal Rules of  
20 Civil Procedure as it is a reasonable manner of providing notice to those Settlement Class  
21 members who would be bound by the Agreement. The Court also finds that the manner of  
22 dissemination of notice complies with Rule 23(c)(2), as it is also the most practicable notice  
23 under the circumstances, provides individual notice to all Settlement Class members who  
24 can be identified through a reasonable effort, and is reasonably calculated, under all the  
25 circumstances, to apprise Settlement Class members of the pendency of this Action, the  
26 terms of the Settlement, and their right to object to the Settlement or exclude themselves  
27 from the Settlement Class.

1           7. The Class Notices will identify the opt-out and objection deadline of 130 days  
2 after the entry of this Order.

3           8. The Court hereby sets the following schedule of events:

<b>Event</b>	<b>Calendar Days After Entry of this Order</b>
<b>Notice Complete</b>	<b>70 Days</b>
<b>Motion for Class Representatives' Service Awards and Attorneys' Fee and Expense Awards</b>	<b>70 Days</b>
<b>Opt-Out Deadline</b>	<b>130 Days</b>
<b>Objection Deadline</b>	<b>130 Days</b>
<b>Motion for Final Approval</b>	<b>170 Days</b>

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13           9. Any person falling within the definition of the Settlement Class may, upon  
14 request, be excluded from the Settlement by submitting to the Administrator at the physical  
15 address listed in the Class Notices, a written, signed, and dated statement that he or she is  
16 opting-out of the Settlement Class and understands that he or she will receive no money  
17 from the Settlement of this Action. To be effective, this opt-out statement (i) must be  
18 postmarked no later than the opt-out deadline; (ii) include the Settlement Class member's  
19 name address, telephone number, and BANA checking account number(s); and (iii) be  
20 personally signed and dated by the Settlement Class member. All persons who timely  
21 submit properly completed requests for exclusion shall have no rights under the Agreement  
22 and shall not share in the benefits of the Settlement Agreement and shall not be bound by  
23 the Settlement Agreement.

24           10. Any person falling within the definition of the Settlement Class, and who  
25 does not opt-out from the Settlement, may object to the terms of the proposed Settlement  
26 as reflected in the Agreement, the certification of the Settlement Class, the entry of the  
27 Final Approval Order, the amount of attorneys' fees and expenses requested by Class  
28 Counsel, and/or the amount of the Service Awards requested by the named Plaintiffs. To

1 be valid and considered by the Court, an objection must include the information listed in  
2 paragraph 4(a) of this order.

3 11. Plaintiffs and BANA may file responses to any objections that are  
4 submitted. Any Settlement Class Member who timely files and serves an objection in  
5 accordance with this order may appear at the Final Approval Hearing, either in person or  
6 through an attorney.

7 12. The Court designates Joanne Farrell, Ronald Dinkins, Larice Addamo, and  
8 Tia Little as the Class Representatives of the Settlement Class.

9 13. The Court designates Epiq Systems as Administrator.

10 14. The Court appoints Jeffrey Kaliel, Jeff Ostrow, Bryan Gowdy, and  
11 Christina M. Pierson as Class Counsel.

12 15. Papers in support of Final Approval of the Agreement, in response to  
13 objections to the Agreement, Class Representative Service Awards, and/or Class Counsel's  
14 Fee & Expense Award shall be filed with the Court on or before 170 days after the entry  
15 of this Order.

16 16. The dates of performance contained herein may be extended by order of  
17 the Court, for good cause shown, without further notice to the Settlement Class.

18 17. The Settlement will not become effective unless the Court enters an order  
19 finally approving the Settlement. If the Agreement does not become effective in  
20 accordance with the terms of the Agreement, or if the Agreement is not finally approved,  
21 then the Agreement shall become null and void, and this Order shall be null and void and  
22 shall be vacated.

23 18. Plaintiffs' motion for final approval of the settlement must include the  
24 required and customary filings. In addition, the motion papers shall include

- 25 a. An affidavit evidencing Defendant's compliance with the Class Action  
26 Fairness Act notice requirement under 28 U.S.C. § 1715, including  
27 responses from any government officials to the notice.  
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