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FILED
San Francisco County Superior Court

SEP 22 2008

GORDON PARK-LI, Clerk
BY: Diana K. Li
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

RHONDA J. CLOSSON and ARIANA NASH on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

BANK OF AMERICA N.A., BANK OF AMERICA CALIFORNIA N.A., BANK OF AMERICA CORP., and DOES 1-50,

Defendants.

Case No. CGC 04436877
Assigned to The Hon. Richard A. Kramer

CLASS ACTION

[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR NOTICE TO THE CLASS

The Plaintiff has made an application pursuant to California Code of Civil Procedure § 382, California Civil Code § 1781, and California Rule of Court 3.769 for an order preliminarily approving the settlement of this Action pursuant to the Settlement Agreement dated July 30, 2008 (the "Settlement"), which, together with the exhibits appended thereto, sets forth the terms and conditions for a proposed settlement of the Action and dismissal of the Action with prejudice.

The Court has read and considered the Settlement and the exhibits appended thereto, as well as all papers filed in connection with such application, and has heard the oral argument of counsel. Based thereon, and good cause appearing therefor,

ORIGINAL

1 IT IS HEREBY ORDERED that:

2 1. This Order incorporates by reference the definitions in the Settlement, and all terms
3 used herein shall have the same meanings as set forth in the Settlement.

4 2. The Court has subject matter and personal jurisdiction over the Parties, including all
5 Settlement Class Members.

6 3. The Court preliminarily approves the Settlement as being within the range of
7 possible approval to warrant the provisional certification of the Settlement Class, subject to further
8 consideration at the Final Hearing described below.

9 4. Pursuant to California Code of Civil Procedure § 382, California Civil Code § 1781,
10 and California Rule of Court 3.769, the Court hereby provisionally certifies, solely for purposes of
11 effectuating the Settlement, a Settlement Class as follows:

12 Any person who, at any time between December 6, 2000 and
13 December 31, 2007, resided in the United States and had an account
14 at Bank of America accessible through a Bank of America debit card,
15 and either (i) paid at least one insufficient funds fee, overdraft fee,
16 returned item fee, or similar fee, that was assessed to the person's
17 account within five business days after a Bank of America debit card
18 transaction either occurred or posted to the account, or (ii) paid at
19 least one overlimit fee, or similar fee, that was assessed for an account
20 cycle in which a Bank of America debit card transaction either
21 occurred or posted to the person's account.

18 ("Bank of America debit card" means a debit card, check card or any
19 other bank card used for debit purchases bearing the Bank of America
20 logo or brand, including such cards bearing the Bank of America logo
21 or brand issued by any subsidiary or affiliate of Bank of America, and
22 such cards bearing the logo or brand of another financial institution
23 acquired by or merged into Bank of America, including Fleet Bank,
24 N.A., LaSalle Bank N.A., LaSalle Bank Midwest N.A., and United
25 States Trust Company, N.A., but only after April 1, 2004, for Fleet
26 Bank, N.A., only after July 1, 2007, for United States Trust Company,
27 N.A., and only after October 1, 2007, for LaSalle Bank N.A. and
28 LaSalle Bank Midwest N.A.)

24 Excluded from the Settlement Class are Bank of America, any parent,
25 subsidiary, affiliate or sister company of Bank of America, and all
26 officers or directors of Bank of America or any parent, subsidiary,
27 affiliate or sister company at any time during the Class Period, and the
28 legal representatives, heirs, successors, and assigns of any of the
foregoing. Also excluded from the Settlement Class is any person who
timely submits a valid request to be excluded from the Settlement Class.

1 5. The Court finds and concludes that: (a) the Settlement Class is so numerous that
2 joinder of all Settlement Class Members in the Action is impracticable; (b) questions of law and fact
3 common to the Settlement Class predominate over any individual questions; (c) the claims of the
4 Plaintiff are typical of the claims of the Settlement Class Members; (d) the Plaintiff and Class
5 Counsel will fairly and adequately represent and protect the interests of the Settlement Class; and
6 (e) a class action is superior to other available methods for a fair and efficient adjudication of the
7 controversy.

8 6. The Court approves, as to form and content, the Mailed Notice, the Electronic
9 Notice, and the Published Notice attached as Exhibits B-1, B-2, and D, respectively, to the
10 Settlement. The Court finds that the mailing of the Mailed Notice, the transmittal of the Electronic
11 Notice, and the publication of the Published Notice substantially in the manner and form set forth in
12 this Order meet the requirements of California Code of Civil Procedure § 382, California Civil
13 Code § 1781, and California Rules of Court 3.766 and 3.769, and federal and state due process; are
14 reasonably calculated to reach all or a substantial percentage of the class members who would be
15 bound by the proposed settlement and to apprise them of this action, the terms of the settlement and
16 their options; and therefore constitute due and sufficient notice to all persons entitled to such
17 Notice.

18 7. (a) Commencing no later than 45 days after the filing of this Order, the Claims
19 Administrator shall post on the Settlement Website a copy of the Settlement, the Electronic Notice,
20 the Web Claim Form in .html and .pdf format that can be completed and submitted online, and any
21 other documents agreed to by the Parties. These documents shall remain available on the
22 Settlement Website until at least the date set for the Final Hearing.

23 (b) On or before February 16, 2009, Bank of America shall mail the Mailed
24 Notice, substantially in the form attached as Exhibit B-1 to the Settlement, to all persons having a
25 Bank of America account for which a debit card has been issued and who, as of the time of such
26 mailing, have mailing addresses in the United States for purposes of communicating with Bank of
27 America and receive their periodic account statements from Bank of America by mail.

1 (c) On or before February 16, 2009, Bank of America shall give the Electronic
2 Notice, substantially in the form attached as Exhibit B-2 to the Settlement, to all persons having a
3 Bank of America account for which a debit card has been issued and who, as of the time of giving
4 such notice, receive their periodic account statements from Bank of America electronically on-line.

5 (d) In addition to the Mailed Notice and the Electronic Notice, Bank of America
6 shall provide Notice of this Settlement by publishing a 1/4 page Published Notice, substantially in
7 the form attached as Exhibit D to the Settlement, in a national edition of USA Today on the first
8 available Friday and then again on a Monday, Tuesday, Wednesday, or Thursday at least ten days
9 after the first notice was published. Both instances of publication of the Published Notice shall
10 occur during the same account statement mailing cycle in which Mailed Notice is provided.

11 (e) At least 15 days before the Final Hearing, Bank of America shall file or cause
12 to be filed with the Court, and serve on all counsel of record, one or more declarations confirming
13 that notice was provided in accordance with the requirements of this Order.

14 8. Any Settlement Class Member who does not wish to participate in the Settlement
15 Class may exclude himself or herself from the Settlement by filing a timely request for exclusion.
16 To be valid, all requests by class members to be excluded from the Settlement Class must be in
17 writing and received by the Claims Administrator not later than May 1, 2009. The Settlement Class
18 Member's written request for exclusion from the Settlement Class must refer to *Closson v. Bank of*
19 *America N.A.* and must list the account number(s) of the Settlement Class Member's Bank of
20 America account(s) linked to a Bank of America debit card. In addition, the written request for
21 exclusion must include, for each account listed: (1) the full names and current addresses of all
22 persons whose names are on the account; (2) a statement that each person whose name is on the
23 account satisfies the criteria set forth in Paragraph 8 of the Settlement to be a Settlement Class
24 Member; (3) a statement of intention to exclude each person whose name is on the account from the
25 Settlement Class; and (4) the signature of each person whose name is on the account. Requests for
26 exclusion that do not include all required information and/or are not transmitted pursuant to the
27 instructions set forth in the Mailed, Electronic, or Published Notice will not be honored. The
28 originals of all requests for exclusion shall be maintained by the Class Administrator and shall be

1 made available to counsel for the Parties for copying. All requests for exclusion filed with the
2 Court shall be redacted to delete the requesting class member's Bank of America account number(s)
3 and street (but not city) address. All Settlement Class Members who do not exclude themselves
4 from the Settlement Class in accordance with the terms of the Settlement and this Order shall be
5 bound by all determinations and judgments in this Action concerning the Settlement, including, but
6 not limited to, the releases provided for in the Settlement, whether favorable or unfavorable to the
7 Settlement Class.

8 9. Any Settlement Class Member may enter an appearance in the Action, at his or her
9 own expense, individually or through counsel of his or her own choice. If a Settlement Class
10 Member does not enter an appearance, the Settlement Class Member will be represented by Class
11 Counsel.

12 10. The Final Hearing on the Settlement shall be held on June 16, 2009, at 9:30 A.M., in
13 Department 304 of the San Francisco Superior Court, 400 McAllister Street, San Francisco,
14 California 94102, to determine whether the proposed Settlement should be approved as fair,
15 reasonable and adequate, whether a judgment should be entered approving such Settlement,
16 whether attorneys' fees and costs should be awarded to Class Counsel and, if so, in what amount,
17 and whether a service award of \$10,000 shall be awarded to the Plaintiff. The Court may continue
18 the Final Hearing without further notice to the Settlement Class Members.

19 11. Any Settlement Class Member may appear and be heard at the Final Hearing as to
20 any reason why the proposed Settlement should or should not be approved as fair, reasonable and
21 adequate or why a judgment should or should not be entered approving such Settlement or why
22 Class Counsel should or should not be awarded the requested attorneys' fees and costs, or why the
23 Plaintiff should or should not be awarded a service award; provided, however, that no Settlement
24 Class Member shall be entitled to object to the approval of the terms and conditions of the proposed
25 Settlement, or, if approved, to the judgment to be entered approving the Settlement, unless that class
26 member has filed with the Clerk of the Court for the San Francisco Superior Court a written
27 statement of objection, no later than May 1, 2009, together with information showing that he or she
28 is a Settlement Class Member, in that he or she meets all of the criteria for a Settlement Class

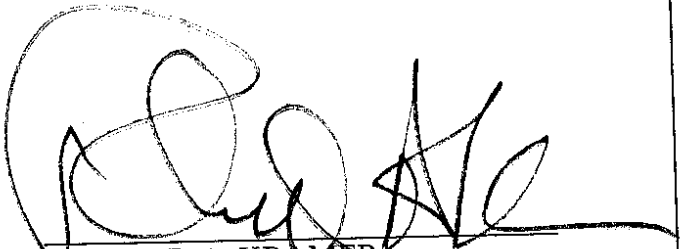
1 Member as set forth in paragraph 4 of this Order. The written statement of objection must also set
2 forth (i) the name of this Action; (ii) the Settlement Class Member's full name, address, telephone
3 number, and (iii) the specific reasons for the objection. Any written statement of objection and the
4 information showing class membership must be served on the following counsel for the Parties such
5 that they are received by counsel within five days of the filing of such objections and proof:
6 Mitchell M. Breit, Whatley, Drake & Kallas, LLC, 1540 Broadway, 37th Floor, New York, New
7 York 10036; and Laurence J. Hutt, Arnold & Porter LLP, 777 South Figueroa Street, 44th Floor, Los
8 Angeles, California 90017-5844. All Settlement Class Members or their attorneys who intend to
9 appear at the Final Hearing must also file with the Court and serve upon Class Counsel and
10 Defendant's Counsel, not later than May 1, 2009 (unless such time is extended for such Settlement
11 Class Member in a writing signed by Class Counsel and Defendant's Counsel), a notice of their
12 intention to appear. Any Settlement Class Member who does not make his or her objection in the
13 manner provided for in this Order shall be deemed to have waived such objections and shall forever
14 be foreclosed from making any objections to the fairness, reasonableness or adequacy of the
15 proposed Settlement and the judgment approving the Settlement.

16 12. All motions and papers filed in support of the Settlement shall be filed no later than
17 seven calendar days prior to the Final Hearing.

18 13. The Court retains jurisdiction to consider all further applications arising out of or
19 connected with the proposed Settlement. The Court may approve the Settlement with such
20 modifications as may be agreed to by the Parties, if appropriate, without further notice to the
21 Settlement Class.
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1 IT IS SO ORDERED.

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3 DATED: 9-22-08



4 RICHARD A. KRAMER
5 Superior Court Judge

6 Submitted by:

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