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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DONALD M. LUSNAK, on behalf
of himself and all others similarly
situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.; and
DOES 1 through 10, inclusive,

Defendant.

Case No. CV 14-1855-GW-GJSx

**ORDER AND FINAL JUDGMENT
GRANTING FINAL APPROVAL OF
CLASS SETTLEMENT**

Judge: Hon. George Wu

This matter came before the Court for hearing on August 10, 2020, pursuant to the Court’s Preliminary Approval Order dated January 30, 2020 (Dkt. No. 117), and on the motion (“Motion”) for final approval of the Class Action Settlement Agreement and Release, dated December 27, 2019 entered into by the Parties (the “Settlement Agreement”), as well as Settlement Class Counsel’s motion for an award of attorneys’ fees and expenses and for a Plaintiff service award (“Fee Motion”). Due and adequate notice having been given to the Settlement Class Members of the proposed Settlement and the pending motions, as directed by the Court’s Preliminary Approval Order, and upon consideration of all papers filed and proceedings had herein, and good cause appearing, **IT IS HEREBY ORDERED,**

1 **ADJUDGED AND DECREED** as follows:

2 1. Capitalized terms not otherwise defined herein have the meanings set
3 forth in the Settlement Agreement.

4 2. This Court has subject matter jurisdiction over this matter pursuant to
5 28 U.S.C. § 1332(d), and has personal jurisdiction over the Parties and the
6 Settlement Class Members. Venue is proper in this District.

7 3. The “Settlement Class” for purposes of this Final Order and Judgment
8 means:

9 All mortgage loan customers of Bank of America—including any
10 customers whose loans were originated by Bank of America, whose
11 loans Bank of America later acquired an ownership interest in, or
12 whose loans Bank of America serviced—whose mortgage loan is for
13 a one- to four-family residence located in California, and who paid
14 Bank of America money in advance for payment of taxes and
15 assessments on the property, for insurance, or for other purposes
16 relating to the property, and did not receive at least 2 percent simple
17 interest per annum on the amounts so held by Bank of America from
18 July 1, 2008 to December 31, 2018. “Bank of America” as used in this
19 definition includes Bank of America Corp., Bank of America, N.A.,
20 and their subsidiaries or predecessors. Excluded from the Settlement
21 Class will be those persons who submitted a timely and valid Request
22 for Exclusion in accordance with the procedures set forth in the
23 Settlement Agreement and in this Court’s Preliminary Approval Order.

24 4. The Court finds that the notice provisions set forth under the Class
25 Action Fairness Act, 28 U.S.C. § 1715, were complied with in this matter.

26 5. The Court finds that the Notice program for disseminating notice to the
27 Settlement Class, provided for in the Settlement Agreement and previously
28 approved and directed by the Court, has been implemented by the Settlement

1 Administrator and the Parties. The Court finds that such Notice program, including
2 the approved forms of notice: (a) constituted the best notice that is practicable under
3 the circumstances; (b) included direct individual notice to all Settlement Class
4 Members who could be identified through reasonable effort; (c) constituted notice
5 that was reasonably calculated, under the circumstances, to apprise Settlement
6 Class Members of the nature of the Lawsuit, the definition of the Settlement Class
7 certified, the class claims and issues, the opportunity to enter an appearance through
8 an attorney if the member so desires; the opportunity, the time, and manner for
9 requesting exclusion from the Settlement Class, and the binding effect of a class
10 judgment; (d) constituted due, adequate and sufficient notice to all persons entitled
11 to notice; and (e) met all applicable requirements of Federal Rule of Civil
12 Procedure 23, due process under the U.S. Constitution, and any other applicable
13 law.

14 6. The Court hereby finds that all Settlement Class Members and all persons
15 who fall within the definition of the Settlement Class have been adequately provided
16 with an opportunity to exclude themselves from the Settlement Class by submitting a
17 Request for Exclusion in conformance with the terms of the Settlement Agreement and
18 this Court's Preliminary Approval Order. All persons who submitted timely and valid
19 Requests for Exclusion are not bound by this Final Order and Judgment. A list of those
20 persons who submitted timely and valid Requests for Exclusion is attached as
21 Attachment 1 to the Supplemental Declaration of Cameron R. Azari, Esq. on
22 Implementation of Settlement Notice Plan, on file in this case at Dkt. No. 126-1. All
23 other persons who fall within the definition of the Settlement Class are Settlement Class
24 Members and part of the Settlement Class, and shall be bound by this Final Order and
25 Judgment and the Settlement Agreement.

26 7. The Court reaffirms that this Lawsuit is properly maintained as a class
27 action, for settlement purposes only, pursuant to Federal Rules of Civil Procedure
28 23(a) and 23(b)(3).

1 8. The Court finds that, for settlement purposes, the Settlement Class, as
2 defined above, meets the requirements for class certification under Federal Rules of
3 Civil Procedure 23(a) and 23(b)(3)— namely, that (1) the Settlement Class
4 Members are sufficiently numerous such that joinder is impracticable; (2) there are
5 common questions of law and fact; (3) Plaintiff’s claims are typical of those of the
6 Settlement Class Members; (4) Plaintiff and Class Counsel have adequately
7 represented, and will continue to adequately represent, the interests of the
8 Settlement Class Members; and (5) for purposes of settlement, the Settlement Class
9 meets the predominance and superiority requirements of Rule 23(b)(3).

10 9. The Court reaffirms its appointment of Plaintiff Donald M. Lusnak as
11 Settlement Class Representative to represent the Settlement Class, and reaffirms its
12 appointment of Settlement Class Counsel to represent the Settlement Class.

13 10. The Court finds that the Settlement Agreement warrants final
14 approval pursuant to Rule 23(e)(2) because, the Court finds, the Settlement
15 Agreement is fair, reasonable, and adequate and is in the best interest of the
16 Settlement Class, after weighing the relevant considerations. First, the Court finds
17 that Plaintiff and Settlement Class Counsel have adequately represented the
18 Settlement Class, and will continue to do so through settlement implementation.
19 Second, the proposed Settlement Agreement was reached as a result of arms-length
20 negotiations through an experienced mediator, Eric Green of Resolutions LLC, and
21 comes after years of litigation, significant discovery, and full briefing on class
22 certification. Third, the Court finds that the relief proposed to be provided for the
23 Settlement Class is fair, reasonable, and adequate, taking into account: (i) the costs,
24 risks, and delay of trial and appeal; (ii) the effectiveness of the proposed method of
25 distributing relief to the Settlement Class, which, under the Settlement Agreement,
26 will occur via direct distribution without the need for Settlement Class Members to
27 submit claims; and (iii) the terms of the requested award of attorneys’ fees and
28 costs. Fourth, the Court finds that the Settlement Agreement treats Settlement

1 Class Members equitably relative to each other. Under the terms of the Settlement
2 Agreement, Settlement Class Members will be sent a settlement payment, which
3 will be based on the unpaid escrow interest each of them is allegedly owed.

4 Specifically, each Settlement Class Member will receive a minimum payment of
5 \$5.00, plus a portion of remaining settlement payment funds (after payment of
6 attorney's fees and costs, service award, and notice and administration costs) in
7 amounts directly proportionate to the alleged unpaid escrow interest for their loan.

8 11. In granting final approval of the Settlement Agreement, the Court has
9 also considered the factors that courts in this Circuit consider in evaluating
10 proposed class settlements—which overlap considerably with the factors to be
11 considered under Rule 23(e)(2)—including the strength of Plaintiff's case; the risk,
12 expense, complexity, and likely duration of further litigation; the risk of
13 maintaining class action status throughout the trial; the amount offered in the
14 settlement; the extent of discovery completed and the stage of the proceedings; the
15 experience and views of counsel; the lack of any objection from any governmental
16 participant following notice pursuant to 28 U.S.C. § 1715; and the reaction of the
17 class members to the proposed settlement. *See Churchill Village LLC v. General*
18 *Electric Corp.*, 361 F.3d 566, 575 (9th Cir. 2004). With respect to the reaction of
19 the class members, the Court notes direct notice was sent to the Settlement Class,
20 there were no objections submitted to the Settlement, and only 25 requests for
21 exclusion from the Settlement Class were submitted.

22 12. The Motion is hereby GRANTED, and the Settlement Agreement and
23 its terms are hereby found to be and APPROVED as fair, reasonable, and adequate
24 and in the best interest of the Settlement Class. The Parties and Settlement
25 Administrator are directed to consummate and implement the Settlement
26 Agreement in accordance with its terms, including distributing settlement payments
27 to the Settlement Class Members and other disbursements from the Settlement
28 Consideration as provided by the Settlement Agreement.

1 13. The Lawsuit is hereby dismissed with prejudice and without costs to
2 any Party, other than as specified in the Settlement Agreement, this Final Order and
3 Judgment, and any order(s) by this Court regarding Settlement Class Counsel's
4 motion for attorneys' fees, expenses, and service award.

5 14. In consideration of the benefits provided under the Settlement
6 Agreement, and for other good and valuable consideration set forth in the
7 Settlement Agreement, each of the Settlement Class Members and Releasing Parties
8 shall, by operation of this Final Order and Judgment, have fully, finally, and forever
9 released, relinquished, acquitted, and discharged all Released Claims against all
10 Released Parties in accordance with Section 3.8 of the Settlement, the terms of
11 which section are incorporated herein by reference. The terms of the Settlement
12 Agreement, which are incorporated by reference into this Order, shall have *res*
13 *judicata* and other preclusive effects as to the Released Claims as against the
14 Released Parties. The Released Parties may file the Settlement Agreement and/or
15 this Order in any other litigation to support a defense or counterclaim based on
16 principles of *res judicata*, collateral estoppel, release, good-faith settlement,
17 judgment bar or reduction, or any similar defense or counterclaim.

18 15. All Settlement Class Members and Releasing Parties have covenanted
19 not to sue any Released Party with respect to any Released Claim and shall be
20 permanently barred and enjoined from instituting, commencing, prosecuting,
21 continuing, or asserting any Released Claim against any Released Party. This
22 permanent bar and injunction is necessary to protect and effectuate the Settlement
23 Agreement and this Order, and this Court's authority to effectuate the Settlement,
24 and is ordered in aid of this Court's jurisdiction and to protect its judgments.
25 Notwithstanding the foregoing, nothing in this Order and judgment shall preclude
26 an action to enforce the terms of the Settlement Agreement.

27 16. Pursuant to the terms of the Settlement Agreement, Plaintiff,
28 Settlement Class Counsel, Bank of America, and Bank of America's Counsel have,

1 and shall be deemed to have, released each other from any and all Claims relating
2 in any way to any Party or counsel's conduct in this Lawsuit, including but not
3 limited to any Claims of abuse of process, malicious prosecution, or any other
4 claims arising out of the institution, prosecution, assertion or resolution of this
5 Lawsuit, including Claims for attorneys' fees, costs of suit, or sanctions of any kind
6 except as otherwise expressly set forth in Section 3.7 of the Settlement Agreement.

7 17. This Final Judgment and Order is the final, appealable judgment in the
8 Lawsuit as to all Released Claims.

9 18. Without affecting the finality of this Final Order and Judgment in any
10 way, this Court retains jurisdiction over (a) implementation of the Settlement
11 Agreement and the terms of the Settlement Agreement; (b) Settlement Class
12 Counsel's motion for attorneys' fees, expenses, and service award; (c) distribution
13 of the Settlement Consideration, Settlement Class Counsel attorneys' fees and
14 expenses, and any Plaintiff service award; and (d) all other proceedings related to
15 the implementation, interpretation, validity, administration, consummation, and
16 enforcement of the terms of the Settlement Agreement. The time to appeal from
17 this Final Order and Judgment shall commence upon its entry.

18 19. In the event that the Settlement Agreement Effective Date does not
19 occur, this Final Order and Judgment shall be rendered null and void and shall be
20 vacated, nunc pro tunc, except insofar as expressly provided to the contrary in the
21 Settlement Agreement, and without prejudice to the status quo ante rights of
22 Plaintiff, Settlement Class Members, and Bank of America.

23 20. This Final Order and Judgment, the Preliminary Approval Order, the
24 Settlement Agreement, and all negotiations, statements, agreements, and
25 proceedings relating to the Settlement Agreement, and any matters arising in
26 connection with settlement negotiations, proceedings, or agreements shall not
27 constitute, be described as, construed as, offered or received against Bank of
28 America or the other Released Parties as evidence or an admission of: (a) the truth

1 of any fact alleged by Plaintiff in the Lawsuit; (b) any liability, negligence, fault, or
2 wrongdoing of Bank of America or the Released Parties; or (c) that this Lawsuit or
3 any other action may be properly certified as a class action for litigation, non-
4 settlement purposes.

5 21. The Fee Motion is also hereby GRANTED. The Court APPROVES:
6 (a) payment to Settlement Class Counsel of attorneys' fees and expenses in the total
7 amount of \$8,750,000.00 (consisting of \$8,511,043.66 in attorneys' fees, plus
8 \$238,956.34 in reimbursement of litigation expenses); and (b) payment of a service
9 award in the amount \$10,000.00 to Plaintiff, to compensate him for his
10 commitment and effort on behalf of the Settlement Class, with such attorneys' fees,
11 expenses, and service award to be paid from the \$35 million common Settlement
12 Consideration pursuant to the terms of the Settlement Agreement.

13 22. The Court finds that the fee requested by Settlement Class Counsel is
14 reasonable and appropriate under applicable standards and justified by the
15 circumstances of this case. The Court finds that the fee requested is reasonable
16 under the percentage-of-the-fund approach and under a lodestar-multiplier cross-
17 check. *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1296 (9th
18 Cir. 1994); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 & n.5 (9th Cir. 2002).

19 23. With respect to Settlement Class Counsel's request for reimbursement
20 of their litigation expenses, the Court finds that the expenses incurred are
21 reasonable and should be reimbursed. *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th
22 Cir. 2003).

23 24. With respect to the requested service award for Plaintiff, the Court
24 finds that such an award is appropriate, *Staton*, 327 F.3d at 977; *Rodriguez v. West*
25 *Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), and that the amount requested is
26 within the range regularly awarded by Ninth Circuit courts and justified by the
27 circumstances in this case.

28 25. The Court also notes that no Settlement Class Member objected to the

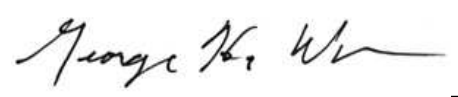
1 Settlement or to the requested attorneys' fees, expenses, or service awards—the
2 amounts of which were included in the class notice.

3 26. Pursuant to Rule 54, the Court finds that there is no just reason for
4 delay and expressly directs this Final Order and Judgment and immediate entry by
5 the Clerk of the Court.

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8 **IT IS SO ORDERED.**

9 DATED: August 10, 2020



Hon. George H. Wu
United States District Judge

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