

1 Scott Maurer, C.S.B. #180830
 2 KATHARINE & GEORGE ALEXANDER
 3 COMMUNITY LAW CENTER
 4 1030 The Alameda
 5 San Jose CA 95126
 6 (408) 288-7030 – Tel.
 7 (408) 288-3581 – Fax

8 William E. Kennedy, C.S.B. #158214
 9 LAW OFFICE OF WILLIAM E. KENNEDY
 10 2797 Park Ave #201
 11 Santa Clara, CA 95050
 12 (408) 241-1000 – Tel.
 13 (408) 241-1500 – Fax

14 Eric W. Wright, C.S.B. #41197
 15 LAW OFFICE OF ERIC W. WRIGHT
 16 19910 Wright Drive
 17 Los Gatos, CA 95033
 18 Phone: (408) 554-4353
 19 Fax: (408) 554-4426

20 Attorneys for Plaintiff Juanita Swain
 21 and others similarly situated

22
 23 IN THE UNITED STATES DISTRICT COURT
 24 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 25 SAN JOSE DIVISION

26 JUANITA SWAIN, on behalf of herself) Case No.: C-08-05562 JW
 27 and all others similarly situated,)
 28 Plaintiff,) AMENDED [PROPOSED] ORDER (1)
 vs.) CONDITIONALLY CERTIFYING A
) SETTLEMENT CLASS; (2) GRANTING
) PRELIMINARY APPROVAL OF SETTLEMENT
 CACH, LLC, HOLLINS SCHECHTER,) AGREEMENT; (3) PROVIDING FOR THE
 LLP, RUDY GABA, JR. and) DISTRIBUTION OF CLASS NOTICE; AND, (4)
 VANESSA MARTINEZ,) SETTING A HEARING FOR FINAL APPROVAL
)
 Defendant.) Date: April 12, 2010
) Time: 9:00 a.m.
) Dept.: Hon. James Ware
)

1 On April 12, 2010, Plaintiff and Defendant CACH, LLC submitted an application for
2 an Order (1) Conditionally Certifying a Settlement Class; (2) Granting Preliminary Approval
3 of Settlement Agreement; (3) Providing for Distribution of Class Notice; (4) approving the
4 form of such Notice in both English and Spanish; and (5) Setting a Hearing for Final
5 Approval. In support of the Application, Plaintiff filed the Proposed Settlement Agreement
6 and the Declaration of Scott Maurer. There was no opposition to the application.
7

8 At the hearing the court expressed reservations regarding the provision in the original
9 settlement agreement stating that CACH would serve as class administrator. However, the
10 parties have since submitted a stipulation to the court whereby the settlement agreement is
11 deemed amended to provide that First Class, Inc. shall serve as class administrator.
12

13 Having read and considered all papers provided, and having reviewed the Proposed
14 Settlement Agreement,

15 THE COURT HEREBY GRANTS THE JOINT MOTION OF PLAINTIFF AND
16 CACH, LLC AND ORDERS AS FOLLOWS:
17

18 (1) The Court certifies a Settlement Class, conditioned on final approval of the settlement.

19 The Court further finds (a) that this action may be maintained as a class action pursuant to
20 Federal Rules of Civil Procedure Rule 23(b)(3), (b) that the named plaintiff is an
21 adequate representative of the settlement class, and (c) that class counsel is competent;
22

23 (2) The court preliminarily approves the Settlement Agreement entered into by all parties to
24 this action as amended to provide that First Class Inc. shall serve as administrator, with
25 the first \$10,000 in costs to be paid out of the settlement funds, and any additional costs
26 to effectuate the settlement agreement to be paid by CACH;
27
28

- 1 (3) The Court orders Class Notice be provided as set forth in ¶4.03 of the Settlement
2 Agreement. Notice will be in the form attached to this order as Exhibit A, and the
3 Spanish translation thereof (Exhibit B), and be mailed by the settlement administrator to
4 affected persons within 35 days of the date of Preliminary Approval. The settlement
5 administrator will take actions required pursuant to ¶4.06 of the Settlement Agreement if
6 the Notice is returned, in order to provide adequate notice to the Class;
7
- 8 (4) The Court orders a Final Fairness Hearing before this Court to take place on September
9 27, 2010 at 9:00 a.m.;
- 10
11 (5) The Court orders that any request by a Class Member to opt out of the settlement must be
12 served on Class Counsel and counsel for Defendants by no later than September 13,
13 2010.
- 14 (6) The Court further orders that no person shall be heard at the final Fairness Hearing in
15 opposition to class certification, class settlement, Class Counsel's proposed attorneys' fees
16 and expenses or the proposed Class Representatives' award unless not later than 5:00 p.m.
17 on September 13, 2010, which is two weeks prior to the date of the final Fairness
18 Hearing, such person files with the Clerk of the Court and serves upon all attorneys of
19 record a written objection containing, at a minimum, the following information: a
20 statement of each objection being made, which shall contain a detailed description of the
21 facts underlying each objection and a detailed description of the legal authorities
22 underlying such objection; (ii) a statement of whether the objector intends to appear at the
23 Fairness Hearing; (iii) a list of witnesses whom the objector may call by live testimony,
24 oral deposition testimony or affidavit during the Fairness Hearing; and (iv) a list of the
25 exhibits which the objector may offer during the Fairness Hearing, along with copies of
26
27
28

1 all of the exhibits. These requirements are necessary to preserve the orderly functions of
2 the Court and to ensure that any objections are not conducted as a trial by ambush.

3 (7) The Court further orders that any person objecting to the proposed settlement
4 must file any such notices and objections with the Court and serve their
5 notice of objections upon Class Counsel and counsel for Defendant no
6 later than September 13, 2010. Any persons who fail to properly or
7 timely file their notices and objections with the Court or fail to timely
8 serve such notices and objections on Class Counsel and Counsel for
9 Defendants shall not be heard during the Fairness Hearing and the
10 Court will not consider their objections. Any notice required by this
11 paragraph shall be served on all attorneys of record by email, certified
12 mail, hand-delivery, or facsimile transmission at the addresses reflected
13 in the PACER docket. No objection shall be heard by the Court which
14 does not comply with these requirements, which is not timely filed with
15 the Court, or which is not timely served on listed counsel.

16 (8) The Court further orders that until the Fairness Hearing described above, or further order
17 of this Court, all Class Members are hereby preliminarily enjoined and ordered not to file,
18 institute or prosecute any lawsuit or claim against Defendants, Bank of America, N.A.,
19 or any of their respective officers, directors, shareholders, members, employees, agents,
20 attorneys, and insurers arising out of or related to the same or similar circumstances,
21 transactions or occurrences as are alleged in this case, such as Defendants' pursuit of
22 deficiency balances on automobile loans previously owned by Bank of America, N.A.
23
24
25
26
27
28

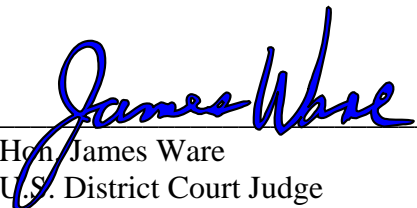
1 (9) The Court orders First Class, Inc, be appointed as the Class Administrator, which shall
2 mail Class Notice and perform all other acts required of it under the terms of the
3 Settlement Agreement.
4

5 (10) This Order shall not be construed or deemed to be a finding of this Court or evidence
6 of a presumption, implication, concession, or admission by Defendants concerning (1)
7 any alleged liability, fault, or wrongdoing by any Defendant; (2) the appropriateness of
8 any measure of alleged loss or damages; or (3) the appropriateness of class certification
9 for any purposes other than Settlement. If the Settlement Agreement is terminated
10 pursuant to its terms, or if the Settlement is not approved or consummated for any reason
11 whatsoever, the Settlement and all proceedings had in connection therewith shall be
12 without prejudice to the *status quo ante* rights of the parties to this action.
13

14 (11) The settlement agreement is deemed amended so that the release will accurately name
15 the following defendants: Hollins • Schecther, a Professional Corporation; and Rodolfo
16 Gaba, Jr., aka Rudy Gaba, Jr.
17

18 (12) The settlement agreement is deemed amended so that in the event that there are no
19 objections to the settlement and final approval is granted, payment shall be made to the
20 class representative and class counsel within ten days of final approval.
21
22

23
24
25 DATED: April 23, 2010



Hon. James Ware
U.S. District Court Judge