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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

JOHN DIFLAURO, and BRIAN  
MARTIN individually and on behalf of  
a class of other similarly situated  
individuals,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., a North  
Carolina Corporation,

Defendant.

CASE NO: 2:20-cv-05692 DSF(SKx)

**ORDER PRELIMINARILY  
APPROVING SETTLEMENT AND  
PROVIDING FOR NOTICE**

WHEREAS, the above-entitled action is pending before this Court (the  
“Action”);

WHEREAS, the parties having made a motion, pursuant to Federal Rule of  
Civil Procedure 23(e), for an order approving settlement of this Action, in accordance

1 with the Revised Settlement Agreement and Release (the “Agreement”), effective as  
2 of May 26, 2022, which, together with the attached exhibits, sets forth the terms and  
3 conditions for a proposed settlement of the Action and for dismissal of the Action  
4 with prejudice upon the terms and conditions set forth therein; and the Court having  
5 read and considered the Agreement and the attached exhibits;

6 WHEREAS, all defined terms herein have the same meanings as set forth in  
7 the Agreement;

8 WHEREAS, on April 4, 2022, a hearing was held on motion of Plaintiffs John  
9 DiFlauro and Brian Martin to (1) conditionally certify the Settlement Class; (2)  
10 preliminarily approve the parties’ proposed class action settlement; (3) appoint  
11 Plaintiffs John DiFlauro and Brian Martin as the Class Representatives, their counsel  
12 as Class Counsel, and Epiq Class Action and Claim Solutions, Inc., as Settlement  
13 Administrator; (4) set the deadlines for written exclusions or objections to the  
14 Agreement; (5) approve the form of notice (Mail Notice and Class Notice) to the  
15 Settlement Class; and (6) schedule a hearing on the final approval of the Agreement  
16 for December 5, 2022 (the “Final Approval Motion”).

17 NOW, THEREFORE, IT IS ORDERED:

18 **1. Nature of Action.** Plaintiffs allege that Defendant Bank of America,  
19 N.A. (“BANA”) improperly charged and collected transaction fees from customers  
20 each time they made a payment on a residential mortgage loan serviced by BANA  
21 by telephone, IVR, or the internet, in violation California’s Rosenthal Fair Debt  
22 Collection Practices Act (“RFDCPA”) and Unfair Competition Law (“UCL”).  
23 BANA disputes and denies all of Plaintiffs’ claims. BANA contends that it has fully  
24 complied with all applicable laws at issue in this matter.

25 **2. Settlement.** Plaintiffs John DiFlauro and Brian Martin (the “Class  
26 Representatives” or “Plaintiffs”), individually and as Class Representatives on behalf  
27 of the Class, and BANA (collectively, the “Parties”) have negotiated a settlement to  
28 the Action to avoid the expense, uncertainties, and burden of protracted litigation, and

1 to resolve the Released Claims (as defined in the Agreement) against BANA and the  
2 Releasees.

3       **3. Review.** At the preliminary approval stage, the Court’s task is to  
4 evaluate whether the settlement is within the “range of reasonableness.” 4 Newberg  
5 on Class Actions § 11.26 (4th ed. 2010). In determining whether class action  
6 settlements should be approved, “[c]ourts judge the fairness of a proposed  
7 compromise by weighing the plaintiff’s likelihood of success on the merits against  
8 the amount and form of the relief offered in the settlement. [Citation omitted] . . .  
9 They do not decide the merits of the case or resolve unsettled legal questions.” *Carson*  
10 *v. American Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981). To determine if a class action  
11 settlement is “fair, reasonable, and adequate,” the district court “may consider some  
12 or all of the following factors when assessing whether a class action settlement  
13 agreement meets this standard,” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 963  
14 (9th Cir. 2009) (internal quotations omitted).

15       [1] the strength of plaintiffs’ case; [2] the risk, expense, complexity,  
16 and likely duration of further litigation; [3] the risk of maintaining class  
17 action status throughout the trial; [4] the amount offered in settlement;  
18 [5] the extent of discovery completed, and the stage of the proceedings;  
19 [6] the experience and views of counsel; [7] the presence of a  
20 governmental participant; and [8] the reaction of the class members  
21 to the proposed settlement.

22 *Id.* However, no single criterion is dispositive for whether a class settlement meets  
23 the requirements of Rule 23(e). Where a settlement results from arm’s length  
24 negotiations after “relevant discovery,” there is “a presumption that the agreement is  
25 fair.” *Linney v. Cellular Ala. P’Ship*, 1997 WL 450064 at \*5 (N.D. Cal. 1997). So  
26 long as the discovery is sufficient to give the parties a clear view of the relative  
27 strengths and weaknesses of their respective cases, it need not be exhaustive. *See, e.g.,*  
28 *In re Immune Response Sec. Litig.*, 497 F.Supp.2d 1166, 1174 (S.D. Cal. 2007)

1 (settlement approved where informal discovery gave the parties a clear view of the  
2 strengths and weaknesses of their cases).

3 The Court has carefully reviewed the Agreement, including the plan of  
4 allocation and the release of claims, as well as the files, records, and proceedings to  
5 date in the Action. The Court has also reviewed the declarations of John DiFlauro and  
6 Brian Martin in support of preliminary approval. The terms and conditions in the  
7 Agreement are hereby incorporated as though fully set forth in this Order, and, unless  
8 otherwise indicated, capitalized items in this Order shall have the meanings attributed  
9 to them in the Agreement.

10 **4. Jurisdiction.** This Court has jurisdiction over the subject matter of the  
11 Action and over all parties to the Action, including all Members of the Class, and  
12 venue in this Court is proper.

13 **5. Preliminary Approval.** Based on the review the Court has conducted,  
14 as set forth in paragraph 3, the Court does hereby preliminarily approve the  
15 Agreement and the Settlement set forth therein as fair, reasonable, and adequate,  
16 subject to further consideration at the Final Approval Hearing described below. The  
17 Court finds on a preliminary basis that the Settlement as set forth in the Agreement  
18 falls within the range of reasonableness and was the product of informed, good-faith,  
19 arm's length negotiations between the Parties and their counsel, and therefore meets  
20 the requirements for preliminary approval. The Court finds and concludes that the  
21 assistance of an experienced mediator in the settlement process supports the finding  
22 that the Settlement is non-collusive.

23 **6. Settlement Class.** The Court conditionally certifies, for settlement  
24 purposes only (and for no other purpose and with no other effect upon the Action,  
25 including no effect upon the Action should the Agreement not receive Final Approval  
26 or should the Effective Date not occur), a class defined as all persons who have or had  
27 a California address, and at any time between June 1, 2016 and the date of the Court's  
28 order preliminarily approving the settlement, paid at least one transaction fee to BANA

1 for making a payment on a residential mortgage loan serviced by Bank of America,  
2 N.A. by telephone, IVR or the internet.

3 **7. Designation of Class Representatives and Class Counsel.** The Court  
4 finds and concludes that the Class Representatives John DiFlauro and Brian Martin  
5 have claims typical of the Settlement Class and are adequate representatives of the  
6 Settlement Class they propose to represent. The Court hereby appoints John DiFlauro  
7 and Brian Martin as the Class Representatives for the Settlement Class. The Court  
8 finds and concludes that Bradley Grombacher LLP and Lexicon Law PC have  
9 experience and expertise in prosecuting consumer class actions. The Court hereby  
10 appoints Bradley Grombacher LLP and Lexicon Law PC as Class Counsel.

11 **8. Final Approval Hearing.** A hearing (the “Final Approval Hearing”)   
12 shall be held before this Court on December 5, 2022, at 1:30 p.m., at First Street U.S.  
13 Courthouse, 350 West 1st Street, Courtroom 7D, Los Angeles, California, 90012 to  
14 determine, among other things: (i) whether the proposed Settlement of the Action on  
15 the terms and conditions set forth in the Agreement is fair, reasonable, and adequate  
16 to the Class and should be approved by the Court; (ii) whether a Judgment as  
17 provided in Paragraph 1.20 of the Agreement should be entered; (iii) whether  
18 Settlement Class Members should be bound by the Release set forth in the  
19 Agreement; (iv) any amount of fees and expenses that should be awarded to Class  
20 Counsel and any award to the Class Representatives for their representation and  
21 service to the Class; (vi) to consider any Settlement Class Member’s objections to  
22 the Settlement and/or any application of Class Counsel for payment or  
23 reimbursement of attorney’s fees, costs, and expenses and any application for an  
24 award to the Class Representatives; and (vii) to rule upon such other matters as the  
25 Court may deem appropriate. The Parties shall include the date of the Final Approval  
26 Hearing in the Notice to be mailed to the Settlement Class.

27 **9. Class Notice.** The Court approves the form, substance, and requirements  
28 of the Notice of Proposed Settlement of Class (the “Notice”) attached as **Exhibits 1-**

1 **A, 1-B, and 1-C.** The Court further finds that the form, content, and mailing of the  
2 Notice, substantially in the manner and form set forth in Paragraph 9 of this Order,  
3 meets the requirements of Rule 23 of the Federal Rules of Civil Procedure and due  
4 process. The Notice is based on the model forms supplied by the Federal Judicial  
5 Center, and it fairly, plainly, accurately, and reasonably in forms potential Class  
6 Members of appropriate information about: (1) the nature of this action, the definition  
7 of the Settlement Class, the identity of Class Counsel, and the essential terms of the  
8 Settlement, including the plan of allocation for the monetary and other relief, and  
9 includes the address for a website maintained by the Settlement Administrator that has  
10 links to the notice, motions for approval and for attorney's fees, and any other  
11 important documents in this case; (2) Plaintiffs' forthcoming application for Class  
12 Counsel's attorneys' fees and costs award; (3) how Settlement Class Members'  
13 payments will be calculated; (4) this Court's procedures for final approval of the  
14 Settlement; (5) how to Opt-Out or Object to the Settlement; (6) how to obtain  
15 additional information regarding this Action and the Settlement, including instructions  
16 on how to access the case docket via PACER or in person at any of the Court's  
17 locations; and (7) the date of the Final Approval Hearing and that the date may change  
18 without further notice to the Settlement Class, and that Class Members may check the  
19 settlement website or the Court's PACER site to confirm that the date has not been  
20 changed.

21 The Court further finds and concludes that the proposed plan for distributing  
22 the Notice likewise is a reasonable method calculated to reach all individuals who  
23 would be bound by the Settlement. Under this plan, prior to distributing the Notice  
24 and after receiving a Notice List from BANA, the Settlement Administrator will  
25 update addresses through the National Change of Address ("NCOA"). After the  
26 Settlement Administrator updates the Settlement Class's addresses, the Notices will  
27 be sent out via first-class mail. There is no additional method of distribution that is  
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1 cost-effective and would be reasonably likely to notify potential Class Members who  
2 may not receive notice under this proposed distribution plan.

3 The Court hereby concludes that the proposed Notice and Notice plan are the  
4 best practicable under the circumstances and are reasonably calculated, under all the  
5 circumstances, to apprise potential Class Members of the pendency of the Action, to  
6 apprise persons who would otherwise fall within the definition of the Class of their  
7 right to exclude themselves from the proposed Class, and to apprise Class Members  
8 of their right to object to the proposed Settlement and their right to appear at the Final  
9 Approval Hearing. The Court further finds that the Notice constitutes due and  
10 sufficient notice to all persons entitled thereto.

11 **10. Settlement Administrator.** Pursuant to Rule 53(c) of the Federal Rules  
12 of Civil Procedure, the Court appoints Epiq Class Action and Claim Solutions, Inc.  
13 (“Settlement Administrator”) to supervise and administer the notice procedure as more  
14 fully set forth below:

15 a. No later than 60 days from the entry of this Order (the “Notice  
16 Mailing Date”), the Settlement Administrator shall cause a copy of the Notice,  
17 substantially in the form attached as **Exhibit 1-A**, to be mailed by first class U.S. mail  
18 to the last known mailing address of each individual on the Notice List, after being  
19 updated by the Settlement Administrator using NCOA;

20 b. No later than the “Notice Mailing Date”, the Settlement  
21 Administrator shall cause a copy of the Email Notice, substantially in the form  
22 attached as **Exhibit 1-C**, to be emailed to the last known email address, if any, of  
23 each individual on the Notice List;

24 c. No later than the Notice Mailing Date, the Settlement  
25 Administrator shall establish a website at [www.LoanPaymentSettlement.com](http://www.LoanPaymentSettlement.com), and  
26 shall post on the website the Agreement and Exhibits, the operative Complaint in this  
27 Action, and a copy of the Notice, substantially in the form attached as **Exhibit 1-B**;

1           d.     Following the mailing of the Notice, the Settlement Administrator  
2 shall provide counsel with written confirmation of the mailing, emailing, and  
3 publication via website;

4           e.     The Settlement Administrator has prepared the CAFA notice in  
5 conformity with 28 U.S.C. § 1715. The Court finds that BANA’s obligations under  
6 CAFA are satisfied.

7           f.     The Settlement Administrator shall otherwise carry out its duties  
8 as set forth in Section 6 of the Agreement.

9           **11. Exclusion from the Class.** Any Class Member may, upon request, be  
10 excluded from the Class. Any such Class Member must submit a written Request to  
11 Opt Out to the Settlement Administrator, postmarked not less than 60 days after the  
12 Settlement Administrator sends Mail Notice and not later than 45 days before the  
13 Final Approval Hearing. To be valid, the Request to Opt Out must: (a) identify the  
14 case name; (b) identify the name and address of the person requesting exclusion; (c)  
15 be personally signed by the person requesting exclusion; and (d) contain a statement  
16 that indicates a desire to be excluded from the Settlement Class, such as “I hereby  
17 request that I be excluded from the proposed Settlement Class in the Action,” as set  
18 forth in Section 11 of the Agreement. All Class Members who submit valid, verified,  
19 and timely Requests to Opt Out in the manner set forth in this Paragraph shall have no  
20 rights under the Agreement and shall not be bound by the Agreement or any Final  
21 Judgment. Mass or class opt outs shall not be allowed. A Class Member who desires  
22 to opt out must make timely affirmative written action pursuant to this Order and the  
23 Agreement, even if the person desiring to opt out of the Class (a) files or has filed a  
24 separate action against any of the Releasees, or (b) is, or becomes, a putative class  
25 member in any other class action filed against any of the Releasees.

26           **12. Copies of Requests to Opt Out and Objections.** The Settlement  
27 Administrator shall provide a report to the Court with a list of all timely Requests to  
28 Opt Out and Objections, and provide a copy of that report to Class Counsel and



1 Defense Counsel, within seven days after the Opt-Out Deadline and Objection  
2 Deadline. The Court shall have the ultimate determination of whether an Opt Out and  
3 Objection has been appropriately made.

4 **13. Entry of Appearance.** Any member of the Class who does not exclude  
5 himself or herself from the Settlement Class may enter an appearance in the Action,  
6 at his or her own expense, individually or through counsel of his or her own choice.  
7 If he or she does not enter an appearance, he or she will be represented by Class  
8 Counsel.

9 **14. Binding Effect on Class.** All Class Members who do not exclude  
10 themselves from the Settlement Class by properly and timely submitting a Request  
11 to Opt Out shall be bound by all determinations and judgments in the Action  
12 concerning the Settlement, whether favorable or unfavorable to the Class.

13 **15. Objections.** Any Class Member who does not timely and validly exclude  
14 himself or herself from the Settlement Class may appear and show cause, if he or she  
15 has any reason why the proposed Settlement of the Action should not be approved as  
16 fair, reasonable, and adequate, why a Final Judgment should not be entered thereon,  
17 why Attorneys' Fees and Expenses should not be awarded to Class Counsel, or why  
18 an award should not be made to the Class Representatives; provided, however, that  
19 no Class Member shall be heard or entitled to contest the approval of the terms and  
20 conditions of the proposed Settlement, or, if approved, the Final Judgment to be  
21 entered thereon approving the same, or any attorney's fees and expenses to be  
22 awarded to Class Counsel or award made to the Class Representatives, unless a  
23 written objection is submitted to the Settlement Administrator and Class Counsel  
24 postmarked not less than 60 days after the Settlement Administrator sends Mail and  
25 Email Notice. To be valid, the written objection must include: (a) the case name and  
26 number; (b) the name, address, telephone number of the Settlement Class Member  
27 objecting and, if represented by counsel, of his/her counsel; (c) the basis for  
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1 objection; and (d) a statement of whether he/she intends to appear at the Final  
2 Approval Hearing, either with or without counsel.

3         Within seven days of the Objection Deadline, the Settlement Administrator shall  
4 provide a report to the Court, and provide a copy of that report to Class Counsel and  
5 Defense Counsel, setting forth a list of Objections that meet the above guidelines.

6 The Court shall have the ultimate determination of whether an Objection has been  
7 appropriately made. Any Settlement Class Member who does not make his or her  
8 objection in the manner provided in this Section shall be deemed to have waived such  
9 objection, shall not be permitted to object to any terms or approval of the Settlement  
10 at the Final Approval Hearing, and shall be foreclosed from making any objection to  
11 the fairness, reasonableness, or adequacy of the proposed Settlement as incorporated  
12 in the Agreement, and to the award of Attorney’s Fees and Expenses to Class Counsel  
13 and the payment of an Incentive Award to the Class Representative, unless otherwise  
14 ordered by the Court.

15         **16. Appearance of Objectors at Final Approval Hearing.** Any Settlement  
16 Class Member who submits and serves a written objection in accordance with  
17 Paragraph 15 of this Order may appear, in person or by counsel, at the Final Approval  
18 Hearing held by the Court, to show cause why the proposed Settlement would not be  
19 approved as fair, adequate, and reasonable, but only if the objector submits to the  
20 Settlement Administrator and Class Counsel a “Notice of Intention to Appear at the  
21 Final Approval Hearing” by the Objection Deadline (“Notice of Intention to  
22 Appear”). The Notice of Intention to Appear must include copies of any papers,  
23 exhibits, or other evidence that the objecting Settlement Class Member will present  
24 to the Court in connection with the Final Approval Hearing. Any Settlement Class  
25 Member who does not file a Notice of Intention to Appear in accordance with the  
26 deadlines and other specifications set forth in the Agreement and Class Notice shall  
27 not be entitled to appear at the Final Approval Hearing and raise any objections.

28         **17. Service of Motion for Final Approval.** The motion in support of final

1 approval of the Settlement shall be filed and served no later than 28 days prior to the  
2 Final Approval Hearing and any responsive papers shall be filed and  
3 served no later than seven calendar days prior to the Final Approval Hearing.

4 **18. Fees, Expenses, and Awards.** Class Counsel's application for  
5 Attorney's Fees and Expenses shall be filed and served no later than 60 calendar days  
6 prior to the Final Approval Hearing. Neither BANA nor the Releasees shall have any  
7 responsibility for any application for Attorney's Fees and Expenses submitted by  
8 Class Counsel, and such matters will be considered separately from the fairness,  
9 reasonableness, and adequacy of the Settlement. At or after the Final Approval  
10 Hearing, the Court shall determine whether any application for Attorney's Fees and  
11 Expenses, and any award to the Class Representatives for their service to the Class,  
12 should be approved.

13 **19. Releases.** If the Settlement is finally approved, the Releasors shall  
14 release the Releasees from the Released Claims.

15 **20. Use of Order.** Neither this Order, the fact that settlement was reached  
16 and filed, the Agreement, nor any other related negotiations, statements, or  
17 proceedings shall be construed as, offered as, admitted as, received as, used as, or  
18 deemed to be an admission or concession of liability or wrongdoing whatsoever or  
19 breach of any duty on the part of BANA. This Order is not a finding of the validity or  
20 invalidity of any of the claims asserted or defenses raised in the Action. In no event  
21 shall this Order, the fact that a settlement was reached, the Agreement, or any of its  
22 provisions or any negotiations, statements, or proceedings relating to in any way be  
23 used, offered, admitted, or referred to in the Action, in any other action, or in any  
24 judicial, administrative, regulatory, arbitration, or other proceeding, by any person or  
25 entity, except by the Parties and only by the Parties in a proceeding to enforce the  
26 Agreement.

27 **21. Continuance of Final Approval Hearing.** The Court reserves the right  
28 to continue the date of the Final Approval Hearing without further notice to the

1 Settlement Class Members, and retains jurisdiction to consider all further applications  
2 arising out of or connected with the proposed Settlement. The Court may approve the  
3 Settlement with such modifications as may be agreed to by the Parties, if appropriate,  
4 without further notice to the Class.

5 **22. Stay of Proceedings.** All proceedings in this Action are stayed until  
6 further Order of this Court, except as may be necessary to implement the Settlement  
7 or comply with the terms of the Agreement.

8 **23. Preliminary Injunction.** Pending final determination of whether the  
9 Settlement should be approved, and upon expiration of the Opt-Out Deadline, all  
10 Class Members who do not timely and validly exclude themselves from the  
11 Settlement Class, and each of them, and anyone who purports to act on their behalf,  
12 are preliminarily enjoined from directly or indirectly maintaining, commencing,  
13 prosecuting, or pursuing directly, representatively, or in any other capacity, any  
14 Released Claim subsumed and covered by the Release in the Agreement, including in  
15 any court or arbitration forum.

16 **24. Termination of Settlement.** If: (a) the Agreement is terminated as  
17 provided in Section 13 of the Agreement; or (b) any specified material term or  
18 condition of the Settlement as set forth in the Agreement is not satisfied as provided  
19 in Section 13 of the Agreement, then this Order may not be introduced as evidence  
20 or referred to in any actions or proceedings by any person or entity and shall be treated  
21 as vacated, nunc pro tunc (except Paragraph 20 of this Order shall remain in effect),  
22 and each party shall be restored to his, her, or its respective position in this Action as  
23 its existed prior to the execution of the Agreement.

24 **25. No Merits Determination.** By entering this Order, the Court does not  
25 make any determination as to the merits of this Action.

26 **26. Authority.** The Court hereby authorizes the Parties to take such further  
27 steps as necessary and appropriate to establish the means necessary to implement the  
28 terms of the Agreement.

1           **27. Jurisdiction.** The Court retains exclusive jurisdiction over the Action to  
2 consider all further matters arising out of or connected with the Agreement and the  
3 Settlement.

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5           **IT IS SO ORDERED.**

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8 Dated: July 1, 2022



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Dale S. Fischer  
United States District Judge

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# COURT ORDERED NOTICE

*John DiFlauro et al.  
v. Bank of America  
Corporation et al.*

**Class Action Notice**  
Opt Out Deadline:  
[Date]

*John DiFlauro et al. v.  
Bank of America Corporation et al.*  
c/o [Settlement Administrator]  
[Address]



Postal Service: Please do not mark barcode

## LIST ID

[First][Last]  
[Address1]  
[Address2]  
[City], [State], [Zip Code]

FIRST CLASS  
MAIL  
US POSTAGE  
PAID  
Permit#\_

A settlement has been reached in a class action lawsuit, *DiFlauro et al. v. Bank of America Corporation et al.*, alleging violations of California's Rosenthal Fair Debt Collection Practices Act and Unfair Competition Law. Plaintiffs claim that Bank of America, N.A. ("BANA") improperly charged customers a transaction fee each time they paid their residential mortgage payments by telephone, IVR or the internet. Defendant denies that it violated any law, but has agreed to the Settlement to avoid the expenses associated with continuing the litigation. This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please review the Settlement Agreement and "Long Form" Notice of Settlement, available at [www.LoanPaymentSettlement.com](http://www.LoanPaymentSettlement.com).

**Am I a Class Member?** Defendant's records indicate you are a Class Member because you have or had a California address, and at any time between June 1, 2016 and the date of the Court's order preliminarily approving the settlement, paid at least one transaction fee to BANA for making a payment on a residential mortgage loan serviced by Bank of America, N.A. by telephone, IVR or the internet.

**What Can I Get?** If the Settlement is approved by the Court, and you do not opt out, you will receive a cash payment.

**How Do I Receive These Benefits?** If you are a Class Member and do not opt out, these benefits are automatic. You need simply wait and not exclude yourself from the Settlement Class and you will receive these benefits.

**How Would I Exclude Myself?** You may exclude yourself from the Settlement Class by mailing a written notice to the Settlement Administrator postmarked by **[DATE]**. Your written notice must include: (1) the name of the lawsuit, *John DiFlauro et al. v. Bank of America Corporation et al.*, Case No. 2:20-cv-05692; (2) your full name, current address, and telephone number; (3) a statement expressing your intent to exclude yourself from the Settlement; and (4) your original signature. If you exclude yourself, then you cannot receive any settlement benefits, but you do not release any potential rights you may have relating to the legal issues in the lawsuit. In the alternative, you can also object. If you do not exclude yourself, then you or your lawyer can appear before the Court and object to the Settlement. Your written objection must be filed with the Court no later than **[DATE]**. Specific instructions on how to object to or exclude yourself from the Settlement are available at [www.LoanPaymentSettlement.com](http://www.LoanPaymentSettlement.com).

**Who Represents Me?** The Court has appointed lawyers from Bradley Grombacher LLP and Lexicon Law PC to serve as Class Counsel. They will petition to be paid legal fees and will also petition for their reasonable legal expenses in pursuing the lawsuit. But you may hire your own lawyer at your expense if you so choose.

**When Will the Court Consider the Settlement?** The Court will hold a final approval hearing on **December 5, 2022 at 1:30 p.m.** at First Street Courthouse, 350 West 1st Street, Courtroom 7D, Los Angeles, California 90012. At that hearing, the Court will hear any objections concerning the fairness of the Settlement and decide whether to approve the requested attorneys' fees and the requested Class Representative payments.

**How Do I Get More Information?** For more information, go to [www.LoanPaymentSettlement.com](http://www.LoanPaymentSettlement.com), or contact the Settlement Administrator at (855) 604-1823.

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION**

*A Federal Court authorized this notice. This is not a solicitation from a lawyer.*

*John DiFlauro et al. v. Bank of America Corporation et al.*

**Case No. 2:20-cv-05692-DSF-SK**

**United States District Court for the Central District of California**

**If you have or had a California address, and at any time between June 1, 2016 and the date of the Court’s order preliminarily approving the settlement, paid at least one transaction fee to BANA for making a payment on a residential mortgage loan serviced by Bank of America, N.A. by telephone, IVR or the internet, then the proposed settlement of a class action lawsuit may affect your rights.**

- This Notice explains what the class action is about, what the Settlement will be if it is approved by the United States District Court for the Central District of California, what benefits you may receive under the Settlement, and what to do if you want to (i) object to the Settlement; or (ii) not participate in the Settlement and instead “opt out” of the class action. These rights and options—and the deadlines to exercise them—are explained in this notice.
- The Court still has to decide whether to approve the settlement. The relief provided to Settlement Class Members will be provided if the Court approves the settlement and after appeals, if any, are resolved in favor of the settlement. Please be patient.
- **Your legal rights may be affected whether you act or do not act. Read this notice carefully because it explains decisions you must make and actions you must take now.**

<b>Your Legal Rights And Options In This Settlement</b>	
<b>DO NOTHING</b>	You will receive the benefits conferred by the Settlement and will be bound by any orders or judgment relating to the Settlement approved by the Court.
<b>EXCLUDE YOURSELF</b>	You will be entitled to no benefits under the Settlement. This is the only choice that will allow you to sue BANA on your own regarding the claims discussed in this notice. An exclusion request must be in writing and <b>postmarked</b> on or before <b>[DATE]</b> .



<b>Your Legal Rights And Options In This Settlement</b>	
<b>OBJECT TO THE SETTLEMENT</b>	You can write to the Court about why you do not agree with any aspect of the settlement. An objection must be in writing, <b>filed</b> , and <b>postmarked</b> on or before <b>[DATE]</b> .
<b>GO TO A HEARING</b>	You can ask to speak to the Court about “fairness” of the settlement, after you submit your objection. A Notice of Intention to Appear must be in writing, <b>filed</b> , and <b>postmarked</b> on or before <b>[DATE]</b> in addition to submitting a timely objection.

## **BASIC INFORMATION**

### **1. Why did I get this notice and what is this lawsuit about?**

A class action lawsuit entitled, *DiFlauro et al. v. Bank of America Corporation et al.*, is pending in the United States District Court for the Central District of California, No. 2:20-cv-05692 (the “Action”). The Complaint in the Action claims that Defendant BANA violated California’s Rosenthal Fair Debt Collection Practices Act (“RFDCPA”) and Unfair Competition Law (“UCL”) by improperly charging customers a transaction fee each time they paid their residential mortgage payments by telephone, IVR, or the internet. For more detailed information as to Plaintiffs’ allegations, you may review a copy of Plaintiffs’ Complaint at [www.LoanPaymentSettlement.com](http://www.LoanPaymentSettlement.com).

BANA denies the claims and contends its practices were proper under the law.

The Parties have now settled this lawsuit and a Settlement Administrator has issued this notice. In connection with the settlement, BANA has agreed to make certain cash payments to members of the class.

The Court ordered that you be sent this notice because the proposed settlement may apply to you and you have a right to know about it and all your options before the Court decides whether to approve the settlement.

### **2. Why is this a class action and who is involved?**

In a class action, one or more people called “Class Representatives” sue on behalf of other people who have similar claims. All those people together are the “Class” or “Settlement Class Members.” The Class Representatives and Settlement Class Members together are the “Plaintiffs,” and, in this case, BANA, is the “Defendant.” One court resolves the issues for everyone in the Class.

**3. Why is there a settlement?**

The Court did not decide in either Plaintiffs or BANA's favor and will not do so if the proposed settlement is approved. The Settlement will end all the claims against BANA in the Action and avoid the uncertainties and costs of further litigation and any further trial.

Plaintiff has agreed to a settlement of this action after considering, among other things: (1) the substantial benefits to Plaintiffs and the proposed class under the terms of the Settlement Agreement; (2) the risks, costs, and uncertainty of protracted litigation, especially in consumer actions such as these, as well as the difficulties and delays inherent in such litigation; and (3) the desirability of consummating the Settlement Agreement promptly in order to provide effective relief to Plaintiffs and the proposed class.

The proposed settlement does not suggest that BANA has or has not done anything wrong, or that Plaintiffs and the proposed Class would or would not win their case if it were to go to trial.

**WHO IS IN THE SETTLEMENT**

**4. How do I know if I am part of the Settlement?**

You are a Settlement Class Member if:

- (a) You have or had a California address;
- (b) You have or had a residential mortgage loan serviced by BANA; and
- (c) At any time between June 1, 2016 and the date of the Court's order preliminarily approving the settlement, you paid at least one transaction fee to BANA for making your residential mortgage payments by telephone, IVR, or the internet.

If you are not sure whether you qualify as a Class Member, you can contact the Settlement Administrator.

**WHAT YOU GET FROM THE SETTLEMENT**

**5. What does the Settlement provide?**

If the proposed settlement is approved, then all Settlement Class Members will receive a cash payment. If the settlement is not approved, then Settlement Class Members will not get any benefits of the settlement and the parties will go back to Court for further proceedings, possibly including a trial.

**Cash Benefits For Settlement Class Members Who Paid Transaction Fees to BANA:** BANA will create a Settlement Fund of one million, nine-hundred seventy-five thousand dollars (\$1,975,000). If you paid any transaction fees for paying your residential mortgage by telephone, IVR, or the internet, then you will get a cash payment from the Settlement Fund. You will be paid from the Settlement Fund relative to the total dollar amount of transaction fees you paid to BANA. It will also depend on how much money remains in the Settlement Fund after the payment of settlement administrative costs, Plaintiffs' attorney's fees, and any incentive payment to the Class Representatives.

**IF ELIGIBLE, YOU DO NOT NEED TO DO ANYTHING TO RECEIVE THESE BENEFITS.**

**Cy Pres:** If, after all cash benefits are distributed, residual funds remain in the Settlement Fund (e.g., because of uncashed checks), then such amounts shall be distributed to the **National Foundation for Credit Counseling**. The proposed *cy pres* recipient is the largest and longest-serving non-profit financial counseling organization in the United States providing, amongst other services, mortgage counseling.

**6. When would I receive my benefits?**

Once the deadlines for opting out and objecting to the settlement set forth below have passed, the Court will hold a Final Approval Hearing on **December 5, 2022** to decide whether to approve the settlement. If the judge approves the settlement and there are no appeals, we estimate that checks for the cash payment benefit will be mailed approximately 60 days after the Court enters an order for final approval of the settlement. However, because it is always possible for there to be unexpected delays or appeals, it is possible that these benefits will be delayed by a year or more, or that an appeals court will determine that the benefits may not be conferred.

We will provide regular updates of the status of the Settlement at [www.LoanPaymentSettlement.com](http://www.LoanPaymentSettlement.com). If your contact information changes, please submit your new contact information to the Settlement Administrator or Class Counsel via that website.

**7. What am I giving up for these benefits?**

In exchange for the benefits described in this Notice, and if the Court grants final approval of the settlement, all Settlement Class Members who do not opt out of the settlement are giving up (also called "releasing") their right to sue BANA for claims related to the payment of transaction fees for making their mortgage payments by telephone, IVR, or the internet.

You will be enjoined and barred from initiating or continuing any lawsuit or other proceeding against BANA if those claims are included among those released in the Settlement.

As part of this Settlement, the Court has preliminarily enjoined all Settlement Class Members and/or their representatives (who do not timely exclude themselves from the Class) from maintaining, commencing, prosecuting, or pursuing any Released Claim as Settlement Class Members or otherwise against BANA (or against any of their related parties or affiliates).

Upon final approval of the settlement, Plaintiffs and BANA will ask the Court to make this injunction permanent. All Settlement Class Members will be bound by this permanent injunction.

The Settlement Agreement is available at [www.LoanPaymentSettlement.com](http://www.LoanPaymentSettlement.com) and provides more detail regarding the Release.

## THE LAWYERS REPRESENTING YOU

### 8. Do I have a lawyer in this case?

The Court has decided that the lawyers at Bradley Grombacher LLP and Lexicon Law PC are qualified to represent you and all Settlement Class Members. These lawyers have been designated as “Class Counsel” based on a determination that they are capable and experienced in handling complex consumer class actions.

You can contact Class Counsel at:

Marcus J. Bradley  
Kiley Lynn Grombacher  
Bradley Grombacher LLP  
31365 Oak Creek Drive Suite 240  
Westlake Village, CA 91301  
[mbradley@bradleygrombacher.com](mailto:mbradley@bradleygrombacher.com)  
[kgrombacher@bradleygrombacher.com](mailto:kgrombacher@bradleygrombacher.com)

Tiffany Noelle Buda  
John R. Habashy  
Lexicon Law PC  
633 West 5th Street 28th Floor  
Los Angeles, CA 90071  
[tiffany@lexiconlaw.com](mailto:tiffany@lexiconlaw.com)  
[john@lexiconlaw.com](mailto:john@lexiconlaw.com)

### 9. How will the lawyers be paid?

Class Counsel will file a motion for attorney’s fees and expenses. The Court may award less than the requested amount. Any amounts awarded will be paid from the Settlement Fund.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you want to be able to sue BANA for the claims that are covered by the release in this lawsuit, you must exclude yourself from the Class. This process is also sometimes referred to as “opting out.”

### 10. How do I opt out of the Settlement?

To exclude yourself from the Settlement, you must submit a Request to Opt Out. Any Request to Opt Out must be in writing and submitted to the Settlement Administrator. The Request to Opt Out must: (a) identify the name of the lawsuit, *John DiFlauro et al. v. Bank of America Corporation et al.*, Case No. 2:20-cv-05692; (b) identify the name and address of the person requesting exclusion; (c) be personally signed by the person requesting exclusion; and (d) contain a statement that indicates a desire to be excluded from the Settlement Class, such as “I hereby request that I be excluded from the proposed Settlement Class in the Action.” Your exclusion must be postmarked no later than [DATE], and must be mailed to:

*DiFlauro et al. v. Bank of America Corporation, et al.*  
Epiq Class Action & Claims Solutions, Inc.  
P.O. Box 4735  
Portland, OR 97208-4735

If you ask to be excluded, you will **not** receive any settlement benefits, and you **cannot** object to the settlement.

**However, if your request for exclusion is late or deficient, you will be considered a part of the Settlement Class, you will be bound by the settlement and by all other orders and judgments in this lawsuit, and you will not be able to participate in any other lawsuits based on the claims in this case.**

## OBJECTING TO THE SETTLEMENT

If you remain in the class, you can tell the Court you do not agree with the settlement or some part of it.

### 11. How do I tell the Court I do not like the Settlement?

You can ask the Court to deny approval by submitting an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement benefits will be conferred and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed settlement must be in writing and submitted to the Settlement Administrator and Class Counsel postmarked no later than **[DATE]**. You may submit a written objection to the settlement by mailing a written objection (with the requisite postmark) to the Settlement Administrator and Class Counsel. All written objections must include: (a) the case name and number; (b) the name, address, telephone number of the Settlement Class Member objecting and, if represented by counsel, of his/her counsel; (c) the basis for objection; and (d) a statement of whether he/she intends to appear at the Final Approval Hearing, either with or without counsel.

If you submit and serve a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

## **THE COURT'S FAIRNESS HEARING**

The Court will hold a fairness hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you do not have to.

### **12. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a fairness hearing on **December 5, 2022 at 1:30 p.m.** at the United States District Court for the Central District of California, First Street U.S. Courthouse, 350 West 1st Street, Courtroom 7D, Los Angeles, California 90012 before the Honorable Dale S. Fischer, United States District Judge. Due to the ongoing COVID-19 pandemic, the fairness hearing may be conducted telephonically or virtually. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may also decide how much Class Counsel and the Class Representative should be paid, and the amount will be deducted from the Settlement Fund. After the hearing, the Court will decide whether to approval the settlement. We do not know how long these decisions will take. The fairness hearing may be postponed without further notice to the Class. If you plan to attend the hearing, you should check [www.LoanPaymentSettlement.com](http://www.LoanPaymentSettlement.com) or the Court's PACER site at <https://pacer.uscourts.gov/>, to confirm that the date has not been changed.

### **13. Do I have to come to the hearing?**

No. Class Counsel will represent you and will answer any questions Judge Fischer may have. However, you are also welcome to come at your own expense. If you send a comment (including an objection), you do not have to come to the Court to speak about it. As long as you submitted it on time, the Court may consider it. You may also pay your own lawyer to attend, but it is not necessary.

### **14. May I speak at the hearing?**

You may ask the Court for permission to speak at the fairness hearing. To do so, you must either yourself, or through your own attorney, submit to the Settlement Administrator and Class Counsel a “Notice of Intention to Appear at the Fairness Hearing” (with the requisite postmark). Any “Notice of Intention to Appear at the Fairness Hearing” must include: (a) the case name and number, *DiFlauro et al. v. Bank of America Corporation, et al.* Case. No. 2:20-cv-05692; (b) the name, address, telephone number of the Settlement Class Member objecting and, if represented by counsel, of his/her counsel; (c) the basis for objection; and (d) a statement of whether he/she intends to appear at the Final Approval Hearing.”

Your Notice of Intention to Appear must be mailed (with the requisite postmark) no later than [DATE] and must include copies of any papers, exhibits, or other evidence that you plan to present to the Court. This requirement may be excused upon a showing of good cause.

You cannot speak at the hearing if you have opted out or excluded yourself, because the case no longer affects you.

## GETTING MORE INFORMATION

### 15. Are there more details about the Settlement?

This Notice is intended to be a summary of the terms of the Settlement. The Settlement Agreement, Complaint, and this Notice are all available at [www.LoanPaymentSettlement.com](http://www.LoanPaymentSettlement.com).

You may also obtain this information by contacting the Settlement Administrator at (855) 604-1823, class counsel at Bradley Grombacher LLP at (805) 270-7100 or Lexicon Law PC at (213) 233-5900, by accessing the Court docket in this case through the Court’s Public Access to Court Electronic Records (PACER) system at <https://pacer.uscourts.gov/>, or by visiting the Office of the Clerk for the United States District Court for the Central District of California, First Street U.S. Courthouse, 350 W. 1st Street, Suite 4311 Los Angeles, CA 90012 between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding court-observed holidays.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.**

By order of the United States District Court for the Central District of California.

Dated: [DATE]

**Exhibit 1-C – Email Notice**

*John DiFlauro et al. v. Bank of America Corporation et al.*  
2:20-cv-05692-DSF-SK (C.D. Cal.)

**Email Subject Line:** NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

\* \* \* \* \*

**Email Body:**

**COURT ORDERED CLASS ACTION NOTICE**  
***John DiFlauro et al. v. Bank of America Corporation et al.***  
**Opt Out Deadline: [DATE]**

A settlement has been reached in a class action lawsuit alleging violations of California’s Rosenthal Fair Debt Collection Practices Act and Unfair Competition Law. Plaintiffs claim that Bank of America, N.A. (“BANA”) improperly charged customers a transaction fee each time they paid their residential mortgage payments by telephone, IVR or the internet. Defendant denies that it violated any law, but has agreed to the Settlement to avoid the expenses associated with continuing the litigation. This Email Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please review the Settlement Agreement and “Long Form” Notice of Settlement, available at [www.LoanPaymentSettlement.com](http://www.LoanPaymentSettlement.com).

**Am I a Class Member?** Defendant’s records indicate you are a Class Member because you have or had a California address , and at any time between June 1, 2016 and the date of the Court’s order preliminarily approving the settlement, paid at least one transaction fee to BANA for making a payment on a residential mortgage loan serviced by Bank of America, N.A. by telephone, IVR or the internet.

**What Can I Get?** If the Settlement is approved by the Court, and you do not opt out, you will receive a cash payment.

**How Do I Receive These Benefits?** If you are a Class Member and do not opt out, these benefits are automatic. You need simply wait and not exclude yourself from the Settlement Class and you will receive these benefits.

**How Would I Exclude Myself?** You may exclude yourself from the Settlement Class by mailing a written notice to the Settlement Administrator postmarked no later than [DATE]. Your written notice must include: (1) the name of the lawsuit, *John DiFlauro et al. v. Bank of America Corporation et al.*, Case No. 2:20-cv-05692; (2) your full name, current address, and telephone number; (3) a statement expressing your intent to exclude yourself from the Settlement; and (4) your original signature. If you exclude yourself, then you cannot receive any settlement benefits, but you do not release any potential rights you may have relating to the legal issues in the lawsuit. In the alternative, you can also object. If you do not exclude yourself, then you or your lawyer can appear before the Court and object to the Settlement. Specific instructions on how to object to or exclude yourself from the Settlement are available at [www.LoanPaymentSettlement.com](http://www.LoanPaymentSettlement.com).

**Who Represents Me?** The Court has appointed lawyers from Bradley Grombacher LLP and Lexicon Law PC to serve as Class Counsel. They will petition to be paid legal fees and will also



petition for their reasonable legal expenses in pursuing the lawsuit. But you may hire your own lawyer at your expense if you so choose.

**When Will the Court Consider the Settlement?** The Court will hold a final approval hearing on **December 5, 2022 at 1:30 p.m.** at First Street Courthouse, 350 West 1st Street, Courtroom 7D, Los Angeles, California 90012. At that hearing, the Court will hear any objections concerning the fairness of the Settlement and decide whether to approve the requested attorneys' fees and the requested Class Representative payments.

**How Do I Get More Information?** For more information, go to [www.LoanPaymentSettlement.com](http://www.LoanPaymentSettlement.com), or contact the Settlement Administrator at (855) 604-1823.