

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

MICHAEL JETTE, on behalf of
himself and all others similarly
situated,

Plaintiffs,

v.

BANK OF AMERICA, N.A.,

Defendant.

Civ. A. No. 2:20-cv-06791-LDW

The Honorable Leda D. Wettre,
U.S.M.J.

**ORDER GRANTING THE
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

WHEREAS, pursuant to Rule 23(a), (b) and (e) of the Federal Rules of Civil Procedure, Plaintiff seeks entry of an order preliminarily approving the settlement of this action pursuant to the Settlement Agreement fully executed on May 21, 2021 (“Settlement Agreement”), which, together with its attached exhibits, sets forth the terms and conditions for a proposed settlement of the action and dismissal of the action with prejudice; and

WHEREBY, the Court having read and considered the Settlement Agreement and its exhibits, and the Motion for Preliminary Approval, the Plaintiffs’ motion is GRANTED.

IT IS HEREBY ORDERED as follows:

1. This Order incorporates by reference the definitions in the Settlement Agreement, filed herewith, and all terms used in this Order shall have the same meanings as set forth in the Settlement Agreement.

2. This Court has jurisdiction over this litigation, Plaintiff, all Settlement Class Members, Defendant Bank of America, N.A. (“BANA”), and any party to any agreement that is part of or related to the Settlement Agreement.

3. The Court preliminarily approves the Settlement Agreement as being fair, reasonable, and adequate. Plaintiff and the Settlement Class Members, by and through their counsel, have investigated the facts and law relating to the matters alleged in the Complaint, including through dispositive motion practice, legal research as to the sufficiency of the claims, an evaluation of the risks associated with continued litigation, trial, and/or appeal, including risks associated with the currently pending interlocutory appeal, and confirmatory discovery. The Settlement appears to be the product of arm’s length negotiations between Class Counsel and counsel for BANA, which occurred following mediation before the Honorable Layn R. Phillips (Ret.). The Settlement confers substantial benefits upon the Settlement Class, without the costs, uncertainties, delays, and other risks associated with continued litigation, trial, and/or appeal and is fair, adequate, and reasonable. The Court finds that the Settlement Agreement otherwise meets the criteria for approval, subject to further consideration at the Final Approval Hearing described below, and

warrants issuance of notice to the Settlement Class. Accordingly, the proposed Settlement Agreement is preliminarily approved.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of effectuating the Settlement Agreement, the Settlement Class as follows: All persons in the United States who have or had (1) a Bank of America credit card, (2) enrolled in Bank of America's eBill AutoPay for their credit card and (3) selected the "Amount Due" payment option before March 7, 2021, and (4) switched their payment option from "Amount Due" to "Account Balance" after making an "Amount Due" payment and being assessed interest from June 3, 2014 through May 21, 2021. Excluded from the Settlement Class are: the Defendant; any entities in which it has a controlling interest; its agents and employees; any Judge to whom this action is assigned and any member of such Judge's staff and immediate family; and persons who validly and timely exclude themselves.

5. The Court preliminarily finds, solely for purposes of the Settlement, that the Settlement Agreement is likely to receive final approval and class certification, specifically that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over any individual questions; (c) the claims of the Plaintiff are typical of the claims of the

Settlement Class; (d) Plaintiff and Class Counsel have and will continue to fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to all other available methods for the fair and efficient adjudication of the controversy.

6. The Court appoints Hassan A. Zavareei of Tycko & Zavareei LLP and James C. Shah of Miller Shah, LLP, as Class Counsel, having determined that the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are satisfied by this appointment.

7. The Court hereby appoints Plaintiff, Michael Jette to serve as Class Representative for settlement purposes only on behalf of the Settlement Class.

8. The Court designates Epiq as Settlement Administrator.

9. The Court conditionally approves the form and content of the class notice program as described in Section VIII of the Agreement. The Court finds that emailing where email addresses are available and mailing where email address are not available of the Postcard Notice, and posting the Long Form Notice in the manner and form set forth in the Agreement satisfies Due Process and meets the requirements of Rule 23 of the Federal Rules of Civil Procedure. This notice program is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Settlement Class members entitled to such notice. The conditions for approval are as follows:

a. By July 8, 2021, the Settlement Administrator shall establish the Settlement Website, which will be located at an address to be designated by the Settlement Administrator. The Settlement Website shall include the (i) the Settlement Agreement; (ii) the Long Form Notice, (iii) the Preliminary Approval Order (iv) the Amended Complaint and other relevant orders of the Court; (v) contact information for Class Counsel and the Settlement Administrator; and (vi) periodic updates on progress of the Settlement, as agreed upon by the Parties.

b. By July 28, 2021, the Notice shall be disseminated to Settlement Class Members in the form and manner set forth in the Settlement Agreement. The Court authorizes the Parties to make non-material modifications to the Notice prior to publication if they jointly agree that any such changes are necessary under the circumstances.

10. If Settlement Class Members do not wish to participate in the Settlement Class, they may exclude themselves by timely delivering a written request for exclusion to the Settlement Administrator's address listed in the Short Form Notice, Long Form Notice, and on the Settlement Website. All requests by Settlement Class Members to be excluded from the Settlement Class must be in writing and postmarked on or before September 11, 2021. Plaintiff will file with the Reply in Support of their Final Approval Motion, the list of persons and entities that

properly excluded themselves from the Settlement Class. The persons and entities deemed by the Court to have excluded themselves from the Settlement Class will be attached as an exhibit to the Final Order and Judgment.

11. The written request for exclusion must include: (a) the opt-out's name, current address, and telephone number; (b) state that he/she is the owner of a credit account with BANA, and the sender's status as a person who would be a Settlement Class Member but for the "opt-out;" (c) provide a clear and unambiguous statement indicating an election to be excluded from the Settlement Class; and (d) be signed by the Settlement Class Member. No request for exclusion will be valid unless all of the information described above is included. All Settlement Class Members who exclude themselves from the Settlement Class will not be eligible to receive any benefits under the Settlement Agreement, will not be bound by any further orders or judgments entered for or against the Settlement Class, and will preserve their ability to independently pursue any claims they may have against Defendant.

12. To state a valid objection to the Settlement Agreement, an objecting Settlement Class member must in writing: (a) set forth the name of the Litigation and case caption number; (b) set forth his/her full name, current address, and telephone number; (c) state that he/she is the owner of a credit account with BANA; (d) state that the objector has reviewed the Settlement Class definition and understands that he/she is a Settlement Class Member, and has not opted out of the

Settlement Class; (e) set forth a complete statement of all legal and factual bases for any Objection that the objector wishes to assert; (f) provide copies of any documents that the objector wishes to submit relating to his/her position; and (g) a detailed list of any other objections submitted by the objector, or the objector's counsel, to any class action settlements in any court, whether state or federal, in the United States within the previous five (5) years. Any objecting Settlement Class Member must also mail copies of any such Objection documents (a) through (g) to Class Counsel and Defense Counsel.

13. Objections must be filed with the Court, served by first-class mail, by the Objection Deadline and any objecting Class Member also must provide copies of any other documents offered in support of the objection.

14. In addition to providing a copy of the objection to the Court, objecting Class Members must also deliver their objections by the Objection/Opt-Out date to each of the following, postmarked on or before September 11, 2021: Hassan A. Zavareei, Tycko & Zavareei LLP, 1828 L Street NW, Suite 1000, Washington, DC 20036; William K. Pao, O'Melveny & Myers LLP, 400 South Hope Street, 18th Floor, Los Angeles, CA 90071. Plaintiff and BANA may file responses to any objections that are submitted.

15. Any Settlement Class Member who does not make his or her objections in the manner provided herein shall be deemed to have waived such objections and

shall forever be foreclosed from making any objections to the fairness, reasonableness, or adequacy of the proposed Settlement Agreement and the judgment approving the Settlement Agreement.

16. Class Counsel shall file with the Court their petition for payment of attorneys' fees and reimbursement of litigation costs and expenses no later than August 27, 2021.

17. By October 20, 2021, Plaintiff shall file a motion for judgment and final approval of the Settlement. The Parties shall file their briefs in support of settlement approval, as well as any supplemental briefs supporting Class Counsel's motion for attorneys' fees and reimbursement of litigation costs, at that time. The briefing shall include the Parties' responses to any Objections, as well as a declaration setting forth the number of Settlement Class members who opted-out of the Settlement Class. Such briefing shall be served on any other attorneys who have entered an appearance in this proceeding and on any member of the Settlement Class to whose Objection to the Settlement the memoranda or other briefing responds.

If any Settlement Class Members object or opt-out after Plaintiff files the motion for final approval, the Parties shall file supplemental briefing no later than November 10, 2021, setting forth the Parties' responses to such Objections and the number of opt-outs. If appropriate, the parties shall include supplemental briefing on Class Counsel's motion for attorneys' fees at that time.

18. The Court hereby schedules the Final Approval Hearing for **November 17, 2021**, at 10:00 a.m. in Courtroom MLK 3C of the United States District Court for the District of New Jersey, Newark Division, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07102, to determine whether the proposed Settlement Agreement should be approved as fair, reasonable, and adequate; whether a judgment should be entered approving such Settlement Agreement; and whether Class Counsel's application for attorneys' fees and for costs as well as for a service award to the class representative should be approved. The Court may modify the dates above if good cause exists, and the Court may adjourn the Final Approval Hearing without further notice to Settlement Class Members; however, any changes to deadlines shall be posted on the Settlement Website.

IT IS SO ORDERED on this 28th day of June, 2021.

HONORABLE LEDA D. WETTRE
UNITED STATES MAGISTRATE JUDGE