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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 GRANTING
PRELIMINARY APPROVAL OF
CLASS SETTLEMENT AND
DIRECTION OF NOTICE UNDER
RULE 23(E)**

Judge: Hon. George Wu

Before the Court is Plaintiff Donald M. Lusnak’s (“Plaintiff”) Unopposed Motion for Preliminary Approval of Class Settlement and Direction of Notice Under Rule 23(e) (“Motion”). Plaintiff and Defendant Bank of America, N.A. (“Bank of America”) have entered into a Class Action Settlement Agreement and Release, dated December 27, 2019 (“Settlement Agreement”). Having thoroughly reviewed the Settlement Agreement, including the proposed forms of class notice and other exhibits thereto, the Motion, and the papers and arguments in connection therewith, THE COURT HEREBY FINDS, CONCLUDES, AND ORDERS THE FOLLOWING:

1. Capitalized terms not otherwise defined herein have the meanings set

1 forth in the Settlement Agreement.

2 2. This Court has subject matter jurisdiction over this matter pursuant to
3 28 U.S.C. § 1332(d), and has personal jurisdiction over the Parties and the
4 Settlement Class Members. Venue is proper in this District.

5 3. The Motion is GRANTED.

6 4. The Court hereby preliminarily approves the Settlement Agreement
7 and the terms embodied therein pursuant to Rule 23(e)(1). The Court finds that it
8 will likely be able to approve the Settlement Agreement under Rule 23(e)(2) and to
9 certify the Settlement Class for purposes of judgment on the proposed Settlement.
10 The Court preliminarily finds that the Settlement is fair, reasonable, and adequate
11 as to the Settlement Class Members under the relevant considerations. The Court
12 finds that Plaintiff and proposed Settlement Class Counsel have adequately
13 represented, and will continue to adequately represent, the Settlement Class. The
14 Court further finds that the Settlement Agreement is the product of arm's length
15 negotiations by the Parties through an experienced mediator, Eric Green of
16 Resolutions LLC, and comes after years of litigation, significant discovery, and full
17 briefing on class certification. The Court preliminarily finds that the relief
18 provided—a non-reversionary common settlement fund of \$35 million, which
19 Plaintiff estimates represents approximately 75% of the alleged class damages—is
20 adequate taking into account, *inter alia*, the costs, risks, and delay of trial and
21 appeal and the proposed method of distributing payments to the Settlement Class
22 (i.e., direct payments by check with no need for Settlement Class Members to
23 submit a claim). The Court further finds that the Settlement Agreement treats the
24 Settlement Class Members equitably relative to each other. Under the terms of the
25 Settlement Agreement, Settlement Class Members will be sent a settlement
26 payment, which will be based on the unpaid escrow interest each of them is
27 allegedly owed. Specifically, each Settlement Class Member will receive a
28 minimum payment of \$5.00, plus a portion of remaining settlement payment funds

1 (after payment of attorney’s fees and costs, service award, and notice and
2 settlement administration costs) in amounts directly proportionate to the alleged
3 unpaid escrow interest for their loan. The Court will fully assess any request for
4 attorneys’ fees and litigation expenses after receiving a motion from Settlement
5 Class Counsel supporting such request. At this stage, the Court finds that the plan
6 to request fees and litigation expenses to be paid from the common settlement fund
7 creates no reason not to direct notice to the Settlement Class; should this Court find
8 any aspect of the requested attorneys’ fees or expenses unsupported or unwarranted,
9 such funds will not revert to Bank of America.

10 5. The Court hereby provisionally certifies, for settlement purposes only,
11 a “Settlement Class,” pursuant to Rule 23(a) and Rule 23(b)(3), consisting of:

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

27 6. The Court finds that, for settlement purposes only, the Settlement
28 Class, as defined above, meets the requirements for class certification under Federal

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

8 7. Certification of the Settlement Class shall be solely for settlement
9 purposes and without prejudice to the Parties in the event the Settlement is not
10 finally approved by this Court or otherwise does not take effect, and the Parties
11 preserve all rights and defenses regarding class certification in the event the
12 Settlement is not finally approved by this Court or otherwise does not take effect.

13 8. The Court hereby appoints Plaintiff Donald M. Lusnak as Settlement
14 Class Representative to represent the Settlement Class.

15 9. The Court hereby appoints the following attorneys as Settlement Class
16 Counsel for the Settlement Class: McCune Wright Arevalo LLP (Richard D.
17 McCune and Elaine Kusel) and Lieff Cabraser Heimann & Bernstein, LLP (Roger
18 N. Heller and Michael W. Sobol).

19 10. The Court hereby appoints Epiq Class Action & Claims Solutions, Inc.
20 (“Epiq”) as Settlement Administrator and directs Epiq to carry out all duties and
21 responsibilities of the Settlement Administrator as specified in the Settlement
22 Agreement and herein.

23 11. The Court hereby appoints Arthur Olsen of Cassis Technologies, LLC
24 as Calculation Advisor and directs Mr. Olsen to carry out all of the duties and
25 responsibilities of the Calculation Advisor as specified in the Settlement Agreement
26 and herein.

27 Notice Program

28 12. Pursuant to Rule 23(e)(1) and Rule 23(c)(2)(B), the Court approves the

1 proposed Notice program set forth at Section 4.2 of the Settlement Agreement,
2 including the form and content of the proposed forms of class notice attached as
3 Exhibits C through F to the Settlement Agreement. The Court finds that the
4 proposed Notice program meets the requirements of due process under the U.S.
5 Constitution and Rule 23; and that such Notice program, which includes individual
6 direct email/mail notice to Settlement Class Members, publication notice, and the
7 establishment of a Settlement Website, is the best notice practicable under the
8 circumstances and shall constitute due and sufficient notice to all persons entitled
9 thereto. The Court further finds that the proposed form and content of the forms of
10 the Notice are adequate and will give the Settlement Class Members sufficient
11 information to enable them to make informed decisions as to the Settlement Class,
12 the right to object or opt out, and the proposed Settlement and its terms. The Court
13 finds that the Notice clearly and concisely states in plain, easily understood
14 language, *inter alia*: (i) the nature of the Lawsuit; (ii) the definition of the
15 Settlement Class; (iii) the class claims and issues; (iv) that a Settlement Class
16 Member may enter an appearance through an attorney if the member so desires; (v)
17 that the Court will exclude from the Settlement Class any member who timely and
18 validly requests exclusion; (vi) the time and manner for requesting exclusion; and
19 (vii) the binding effect of a class judgment on Settlement Class Members
20 under Rule 23(c)(3).

21 13. The Court directs the Settlement Administrator and the Parties to
22 implement the Notice program as set forth in the Settlement Agreement.

23 14. Mortgage Escrow List: No later than thirty (30) days after entry of this
24 Preliminary Approval Order, Bank of America shall provide the Mortgage Escrow
25 List to the Calculation Advisor, including all of the information specified for such
26 list in the Settlement Agreement or as otherwise mutually agreed to by Bank of
27 America and Settlement Class Counsel.

28 15. Preliminary Settlement Class Member List: As soon as practicable,

1 and no later than fifty (50) days after entry of this Preliminary Approval Order, the
2 Calculation Advisor shall provide the Preliminary Settlement Class Member List to
3 Bank of America and Settlement Class Counsel, including all of the information
4 specified for such list in the Settlement Agreement or as otherwise mutually agreed
5 to by Bank of America and Settlement Class Counsel.

6 16. Settlement Class Member List: As soon as practicable, and no later
7 than seventy (70) days after entry of this Preliminary Approval Order, Bank of
8 America shall provide the Settlement Administrator with the Settlement Class
9 Member List, including all of the information specified for such list in the
10 Settlement Agreement or as otherwise mutually agreed to by Bank of America and
11 Settlement Class Counsel.

12 17. Email Notice: By no later than ninety (90) days after entry of this
13 Preliminary Approval Order (hereinafter, the “Notice Date”), the Settlement
14 Administrator shall send the Email Notice, substantially in the form attached as
15 Exhibit D to the Settlement Agreement, to the Settlement Class Members who have
16 an email address listed in the Settlement Class Member List.

17 18. Mail Notice: By no later than the Notice Date the Settlement
18 Administrator shall send to all Settlement Class Members, via first class U.S. Mail,
19 the Postcard Notice, substantially in the form attached as Exhibit E to the
20 Settlement Agreement. Before sending the Postcard Notice, the Settlement
21 Administrator shall update each Settlement Class Member’s mailing address
22 through the U.S. Postal Service National Change of Address database and use the
23 mailing address as updated. For Postcard Notices that are returned undeliverable
24 with forwarding address information, the Settlement Administrator shall re-send the
25 Postcard Notice to the new address indicated within seven (7) days of receiving the
26 returned Postcard Notice. For Postcard Notices that are returned undeliverable
27 without forwarding address information, the Settlement Administrator shall
28 perform a standard skip trace, in the manner that the Settlement Administrator

1 customarily performs skip traces, to try to identify an updated address and shall re-
2 send the Postcard Notice if updated address information is identified.

3 19. Publication Notice: By no later than the Notice Date, the Settlement
4 Administrator shall cause the Publication Notice, substantially in the form attached
5 as Exhibit F to the Settlement Agreement, to be published once (no smaller than 1/4
6 page advertisements) in each of the following publications: San Francisco
7 Chronicle, Sacramento Bee, Los Angeles Times, and San Diego Union-Tribune.

8 20. Settlement Website: The Settlement Administrator shall establish a
9 Settlement Website, at the URL www.EscrowInterestSettlement.com, dedicated to
10 the Settlement. The Settlement Website shall contain the Website Notice
11 (substantially in the form attached as Exhibit C to the Settlement Agreement), as
12 well as the Settlement Agreement, this Order, Settlement Class Counsel's motion
13 for attorneys' fees, expenses, and service award (after it is filed), and other
14 appropriate documents and/or information as agreed to by the Parties or further
15 ordered by the Court. The Settlement Website shall not include any advertising,
16 and shall not bear or include Bank of America's logo or trademarks. The
17 Settlement Website shall be operational by no later than the day before the first day
18 the Settlement Administrator sends an Email Notice or a Postcard Notice to any
19 Settlement Class Member, and the Settlement Administrator shall maintain the
20 Settlement Website until one year after the Effective Date or such later date as
21 agreed to by the Parties. The Settlement Website shall be optimized for mobile
22 device use.

23 21. Toll-Free Number: The Settlement Administrator shall also establish a
24 toll-free telephone number, with message and interactive voice response (IVR)
25 capabilities, which Settlement Class Members can refer to for information about the
26 Lawsuit and the Settlement. The toll-free number shall be operational by no later
27 than the day before the first day the Settlement Administrator sends an Email
28 Notice or a Postcard Notice to any Settlement Class Member, and the Settlement

1 Administrator shall maintain the toll-free number until one year after the Effective
2 Date or such later date as agreed to by the Parties.

3 22. Within 30 days of entry of this Preliminary Approval Order, Bank of
4 America shall pay the Notice and Administration Costs Advance to the Settlement
5 Administration in an amount of \$335,000.

6 23. By no later than fourteen (14) days before the Final Approval Hearing,
7 the Settlement Administrator shall file (or provide to Settlement Class Counsel for
8 filing) a declaration confirming that Notice program has been implemented in
9 accordance with the Settlement Agreement and this Order (including CAFA notice)
10 and providing a final list of persons who submitted timely and valid Requests for
11 Exclusion from the Settlement Class.

12 Opt-Out and Objection Procedures

13 24. Settlement Class Members may exclude themselves from the
14 Settlement Class by mailing to the Settlement Administrator a written Request for
15 Exclusion that is postmarked no later than sixty (60) days after the Notice Date (the
16 “Exclusion/Objection Deadline”). To be effective, the Request for Exclusion must
17 include (a) the Settlement Class Member’s full name, telephone number, mailing
18 address, and email address; (b) a clear and unequivocal statement that the
19 Settlement Class Member wishes to be excluded from the Settlement Class; (c) the
20 name and case number of the Lawsuit: “*Lusnak v. Bank of America, N.A.*, Case No.
21 2:14-CV-1855”; and (d) the Settlement Class Member’s signature or a signature of
22 an individual authorized to act on the Settlement Class Member’s behalf. Requests
23 for Exclusion must be specific to individual Settlement Class Members, and
24 Settlement Class Members cannot request exclusion as a class or group. Any
25 Request for Exclusion from a Settlement Class Member that is a co-borrower on a
26 mortgage must be signed by all co-borrowers on that mortgage. Upon the
27 Settlement Administrator’s receipt of a timely and valid Request for Exclusion, the
28 Settlement Class Member shall be deemed excluded from the Settlement Class,

1 shall not be considered a Settlement Class Member, and shall not be entitled to any
2 benefits from this Settlement. Any person in the Settlement Class who submits a
3 timely and valid Request for Exclusion is foreclosed from objecting to the
4 Settlement or to Settlement Class Counsel’s motion for attorneys’ fees, expenses,
5 and service award. If a Settlement Class Member submits both a timely and valid
6 Request for Exclusion and an objection, the Settlement Class Member shall be
7 treated as if they had only submitted a Request for Exclusion. Any Settlement Class
8 Member who does not submit a timely and valid Request for Exclusion in
9 accordance with this paragraph shall be bound by the Final Order and Judgment if
10 and when it is entered. The Settlement Administrator shall provide copies of all
11 timely and valid Requests for Exclusion to Settlement Class Counsel and Bank of
12 America’s Counsel.

13 25. Any Settlement Class Member who does not submit a timely and valid
14 Request for Exclusion may object to the proposed Settlement and/or to Settlement
15 Class Counsel’s motion for attorneys’ fees, expenses, or service award. To be
16 considered valid, an objection must be in writing, must be filed with or mailed to
17 the Court, and mailed to the Settlement Administrator at the addresses listed in the
18 Website Notice, postmarked or filed no later than sixty (60) days after the Notice
19 Date (the “Exclusion/Objection Deadline”), and must include the following: (a) the
20 name and case number of the Lawsuit: “*Lusnak v. Bank of America, N.A.*, Case No.
21 2:14-CV-1855”; (b) the full name, mailing address, telephone number, and email
22 address of the objector; (c) the objector’s signature or the signature of an individual
23 authorized to act on his or her behalf; (d) a description of the specific reasons for
24 the objection; (e) the name, address, bar number and telephone number of counsel
25 for the objector, if the objector is represented by an attorney; and (f) state whether
26 the objector intends to appear at the Final Approval Hearing either in person or
27 through counsel. Only objections that are submitted in accordance with this
28 paragraph shall be heard by the Court. Any Settlement Class Member who does

1 not timely submit an objection in accordance with this paragraph, shall waive the
2 right to object or to be heard at the Final Approval Hearing and shall be forever
3 barred from making any objection to the proposed Settlement or to Settlement Class
4 Counsel's motion for attorneys' fees, expenses, and service award.

5 **Final Approval Hearing**

6 22. The Court will hold a Final Approval Hearing on August 10, 2020 at
7 8:30 a.m., in the United States District Court for the Central District of California,
8 Courtroom 9D, 350 West 1st Street, Los Angeles, CA, 90012. The purposes of the
9 Final Approval Hearing will be to: (i) determine whether the proposed Settlement
10 Agreement should be finally approved by the Court as fair, reasonable, adequate,
11 and in the best interests of the Settlement Class; (ii) determine whether judgment
12 should be entered pursuant to the Settlement Agreement, dismissing the Lawsuit
13 with prejudice and releasing all Released Claims; (iii) determine whether the
14 Settlement Class should be finally certified; (iv) rule on Settlement Class Counsel's
15 motion for attorneys' fees, expenses and service awards; (v) consider any properly
16 filed objections; and (vi) consider any other matters necessary in connection with
17 the final approval of the Settlement. Agreement

18 23. By no later than fifteen (15) days after the Notice Date, Settlement
19 Class Counsel shall file their: (a) motion for final approval of the Settlement
20 Agreement; and (b) motion for attorneys' fees, expenses and service awards.
21 Promptly after they are filed, these documents shall be posted on the Settlement
22 Website.

23 24. By no later than fourteen (14) days before the Final Approval Hearing,
24 the Parties shall file any responses to any Settlement Class Member objections and
25 any replies in support of final settlement approval and/or Settlement Class
26 Counsel's motion for attorneys' fees, expenses and service awards.

27 25. The Court may, in its discretion, modify the date and/or time of the
28 Final Approval Hearing. In the event the Court changes the date and/or time of the

1 Final Approval Hearing, the new date and time shall be posted on the Settlement
2 Website.

3 26. Only Settlement Class Members who have submitted timely and valid
4 objections, in accordance with the requirements of this Preliminary Approval
5 Order, may be heard at the Final Approval Hearing.

6 27. If the Settlement Agreement, including any amendment made in
7 accordance therewith, is not approved by the Court or shall not become effective
8 for any reason whatsoever, the Settlement Agreement and any actions taken or to be
9 taken in connection therewith (including this Preliminary Approval Order and any
10 judgment entered herein), shall be terminated and shall become null and void and of
11 no further force and effect except for (i) any obligations to pay for any expense
12 incurred in connection with Notice and administration as set forth in the Settlement
13 Agreement, and (ii) any other obligations or provisions that are expressly
14 designated in the Settlement Agreement to survive the termination of the Settlement
15 Agreement.

16 28. Other than such proceedings as may be necessary to carry out the
17 terms and conditions of the Settlement Agreement, including matters relating to
18 Settlement Class Counsel's motion for attorneys' fees, expenses and service award,
19 all proceedings in the Lawsuit are hereby stayed and suspended until further order
20 of this Court.

21 29. Pending final determination of whether the Settlement Agreement
22 should be finally approved, Plaintiff and all Settlement Class Members are barred
23 and enjoined from filing, commencing, prosecuting, or enforcing any action against
24 the Released Parties insofar as such action asserts Released Claims, directly or
25 indirectly, in any judicial, administrative, arbitral, or other forum. This bar and
26 injunction is necessary to protect and effectuate the Settlement Agreement and this
27 Preliminary Approval Order, and this Court's authority to effectuate the Settlement,
28 and is ordered in aid of this Court's jurisdiction.

1 30. This Preliminary Approval Order, the Settlement Agreement, and all
 2 negotiations, statements, agreements, and proceedings relating to the Settlement,
 3 and any matters arising in connection with settlement negotiations, proceedings, or
 4 agreements shall not constitute, be described as, construed as, offered or received
 5 against Bank of America or the other Released Parties as evidence or an admission
 6 of: (a) the truth of any fact alleged by Plaintiff in the Lawsuit; (b) any liability,
 7 negligence, fault, or wrongdoing of Bank of America or the Released Parties; or (c)
 8 that this Lawsuit or any other action may be properly certified as a class action for
 9 litigation, non-settlement purposes.

10 31. The Court retains jurisdiction over this Lawsuit to consider all further
 11 matters arising out of or connected with the Settlement, including enforcement of
 12 the Releases provided for in the Settlement Agreement.

13 32. The Parties are directed to take all necessary and appropriate steps to
 14 establish the means necessary to implement the Settlement Agreement according to
 15 its terms should it be finally approved.

16 33. The Court may, for good cause, extend any of the deadlines set forth in
 17 this Preliminary Approval Order without further notice to Settlement Class
 18 Members. Without further order of the Court, the Parties may agree to make non-
 19 material modifications in implementing the Settlement that are not inconsistent with
 20 this Preliminary Approval Order.

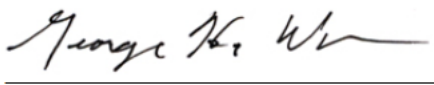
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 22 34. The following chart summarizes the dates and deadlines set by this
 23 Preliminary Approval Order:

Last day for Bank of America to provide the Mortgage Escrow List to the Calculation Advisor	30 days after entry of Preliminary Approval Order
Last day for the Calculation Advisor to provide the Preliminary Settlement Class Member List to Bank of America and Settlement Class Counsel	50 days after entry of Preliminary Approval Order

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Last day for Bank of America to provide the Settlement Class Member List to the Settlement Administrator	70 days after entry of Preliminary Approval Order
Notice Date	90 days after entry of the Preliminary Approval Order
Last day for Settlement Class Counsel to file motion for final approval of the Settlement, and motion for attorneys' fees, expenses and service award	15 days after Notice Date
Exclusion/Objection Deadline	60 days after Notice Date
Last day for the Parties to file any responses to objections, and any replies in support of motion for final settlement approval and/or Settlement Class Counsel's application for attorneys' fees, expenses and service awards	14 days before Final Approval Hearing
Final Approval Hearing	August 10, 2020, 8:30 a.m.¹

IT IS SO ORDERED.
 DATED: January 30, 2020.



 Hon. George H. Wu
 United States District Judge

¹ This is the earliest date for the Final Approval Hearing, assuming the Preliminary Approval Order is entered January 30, 2020. If the Preliminary Approval Order is entered later, the Final Approval Hearing will need to be set for a later date.