

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO. 2023-018034-CA-01

ANDREA FONSECA, individually and on behalf
of all others similarly situated,

CLASS ACTION

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

**PLAINTIFF’S AGREED MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND SUPPORTING MEMORANDUM**

Plaintiff Andrea Fonseca, on behalf of herself and all others similarly situated, respectfully requests that the Court grant final approval of the proposed class action settlement described in detail in the Class Action Settlement Agreement previously filed and approved by this Court (the “Agreement”). Defendant does not oppose the relief sought herein.

I. CONCISE STATEMENT OF THE PRECISE RELIEF REQUESTED

Plaintiff files this motion requesting that the Court finally approve the Agreement and certify a settlement class. Plaintiff respectfully requests that the Court grant approval of the proposed settlement, and enter an order of Final Approval including, in substantially the same form, the content of the proposed Order attached to the Agreement.

The proposed Order approves the form of notice given to the Class and finds that it constituted the best notice practicable and comported with due process requirements, awards attorneys’ fees and an incentive award, enters judgment, and dismisses the Action with prejudice and without costs except as set forth in the Agreement, bars and enjoins the Class Representatives, the Settlement Class, and each Settlement Class Member (collectively, the “Releasing Parties”)

from asserting Released Claims, releases the Released Parties from Released Claims, and reserves jurisdiction over the Parties to administer, supervise, construe, and enforce the Agreement in accordance with its terms.

II. STATEMENT OF THE BASIS FOR THE REQUEST

As set forth in the Plaintiff's Motion for Preliminary Approval of Class Action Settlement, the Parties reached a Settlement Agreement wherein Defendant has agreed to establish a fund of **\$500,000.00** for the benefit of the Settlement Class members. This amount reflects the statutory cap permitted under the FCCPA. Through the Settlement Agreement, each Class Member may receive up to \$500.00, which will be determined on a pro rata basis based on the number of valid claims. Moreover, the Parties have implemented the Notice plan and provided the Notice as approved and ordered by the Court, and only eight Class Members requested to be excluded from the terms of the Settlement Agreement. *See* Declaration of Class Administrator, attached hereto as **Exhibit 1**. "[A] low percentage of objections points to the reasonableness of a proposed settlement and supports its approval." *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1324 (S.D. Fla. 2005).

Thus, the terms of the Settlement are fair and reasonable, the form of Notice comported with due process requirements, and the Settlement Agreement is ripe for final approval so that the agreed-upon payments may be made to Settlement Class Claimants in accordance with the terms of the Agreement.

III. MEMORANDUM OF LEGAL AUTHORITY

a. Terms of the Settlement

The Settlement requires Defendant to pay a Settlement Fund pursuant to the terms of the Settlement Agreement that will consist of the following: (1) \$500,000.00 in cash for the purpose

of payment to all settlement class members on a pro rata basis not to exceed \$500.00 per claimant; (2) attorneys' fees and costs paid separately in the amount of \$150,000.00; (3) make Service Award of \$3,500.00 to Plaintiff, to be paid separately from the fund; and (4) pay the costs of the Class Notice and Administration, to be paid separately from the fund.

b. Certification of the Settlement Class for Settlement Purposes Is Warranted

As discussed below, each of the requirements are satisfied here for settlement purposes of the Settlement Class, defined as:

All Florida residents (1) who were sent a Communication¹ not known to be undeliverable (2) between 9:00 PM and 8:00 AM in the resident's local Florida time zone, (3) by Bank of America² or on Bank of America's behalf (4) regarding a Consumer Account³, (5) where such communication occurred on or between April 22, 2020 and the date of the Final Approval Order.

The Settlement Class excludes the following: (1) the trial judge presiding over this case; (2) the Settling Parties, as well as any parent, subsidiary, affiliate, or control person of the Settling Parties, and the officers, directors, agents, servants, or employees of the Settling Parties; (3) any of the Released Parties; (4) the immediate family of any such person(s); (5) any Settlement Class

1 **"Communication"** includes email, text/SMS, push alerts, and any other electronic notifications, including bill pay notifications, concerning amounts owed to Bank of America or third parties.

2 **"Bank of America"** includes Bank of America, N.A., its parent, subsidiary, and affiliate companies.

3 **"Consumer Account"** includes any financial or other account, debt, or obligation, which accounts, debts, or obligations relate to or are primarily a consumer transaction (i.e., used for household, family, or personal purposes), including as applicable business and small business accounts to the extent used primarily for consumer purposes. This definition includes any account for which a natural person is obligated or allegedly obligated to pay any amount arising out of a consumer transaction.

Member who has timely opted out of this proceeding; and (6) Plaintiff's Counsel, their employees, and their immediate family.

As to Rule 1.220(a), for purposes of certifying the Settlement Class pursuant to the Settlement, there are thousands of Settlement Class members (numerosity), all of which have the same claim under the FCCPA (commonality), Plaintiff's claims are the same as the rest of the Settlement Class members' claims and Plaintiff are not subject to any unique affirmative defenses (typicality), and Plaintiff and Class Counsel have zealously litigated the claim, secured substantial relief, and have no interests antagonistic to the Settlement Class (adequacy). As to Rule 1.220(b)(3), pursuant to the terms of the Settlement, there are no individual issues precluding class treatment (predominance), and class treatment is the best method of adjudication, as seen in the fact that every Settlement Class member shall receive relief without the need for numerous (and duplicative) individual cases (superiority). *See Sosa v. Safeway Premium Fin. Co.*, 73 So. 3d 91, 106-07 (Fla. 2011) (outlining requirements for class certification). Thus, certification of the Settlement Class is warranted.

c. The Notice Provided to Class Members Was the Best Practicable Notice and Comported with Due Process Requirements

The notice requirements of Rule 1.220 are designed to provide sufficient due process to class members by sufficiently informing them of the pendency of the Action and providing an opportunity to be heard or opt out, and must be the "best notice practicable" under the circumstances. *Nelson v. Wakulla County*, 985 So. 2d 564, 576 (Fla. 1st DCA 2008). To satisfy such requirement, individual notice should be provided to Class Members who can be identified through reasonable effort. *See Cordell v. World Ins. Co.*, 355 So. 2d 479, 481 (Fla. 1st DCA 1978) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974)).

Here, the Parties agreed to send direct, individual Notice by email to potential members of the Settlement Class. Individual, direct notice by email comports with due process requirements. *See, e.g., Juris v. Inamed Corp.*, 685 F.3d 1294, 1320 (11th Cir. 2012). Moreover, and as outlined in Order Preliminarily Approving Class Action Settlement (the “Preliminary Approval Order”), the Claim Form and E-Mail Notices provided included a clear explanation of the terms of the Settlement, the amount sought in attorneys’ fees and service awards, informed class members of their right to object to seek exclusion and the method by which to do so and provided an opportunity to be heard.

d. The Terms of the Settlement are Fair and Reasonable

Finally, before granting final approval of a proposed settlement, the court must find that the terms of the settlement are fair, reasonable, and adequate. *See Ramos v. Phillip Morris Cos.*, 743 So. 2d 24, 31 (Fla. 3d DCA 1999) (citations omitted). Courts consider several factors in making such determination, including: (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risk of establishing liability; (5) the risk of establishing damages; (6) the risk of maintaining a class action; (7) the ability of the defendant to withstand a greater judgment; (8) the reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. *Grosso v. Fid. Nat'l Title Ins. Co.*, 983 So. 2d 1165, 1173-74 (Fla. 3d DCA 2008); *see also Griffith v. Quality Distrib.*, 43 Fla. L. Weekly 1599 (App.2018).

All such aforementioned factors favor a finding that the terms of the Agreement are clearly fair, adequate, and reasonable. *See Ramos v. Philip Morris Cos.*, 743 So. 2d 24, 32 (Fla. 3d DCA 1999) (approving settlement because benefits obtained must be analyzed in light of significant risk of litigation); *Wilson v. EverBank*, 2016 U.S. Dist. LEXIS 15751, at *34 (S.D. Fla. Feb. 3, 2016)

(finding significant that appellate court could rule unfavorably to settlement class members). Continuing litigation through class certification briefing, additional summary judgment briefing (and potentially trial), and through an extensive appellate process would have been extremely expensive and complex, and likely would have extended for several years. *See, e.g., Borcea v. Carnival Corp.*, 238 F.R.D. 664, 673 (S.D. Fla. 2006) (approving settlement and finding significant that class members risked recovering nothing on threshold issue of whether a litigated class would be certified); *Hamilton v. SunTrust Mortg. Inc.*, 2014 U.S. Dist. LEXIS 154762 (S.D. Fla. Oct. 24, 2014) (avoiding expense and length of protracted litigation is significant factor in analyzing terms of settlement). Moreover, only eight Class Members opted out of the terms of the Agreement, which is virtually dispositive on the question of whether the terms of a settlement are fair and reasonable to Class Members. *See also Barnhill v. Fla. Microsoft Anti-Trust Litig.*, 905 So. 2d 195, 200 (Fla. 3d DCA 2005) (“The fairness of the settlement and the propriety of the release is confirmed by the fact that so few of the class members have objected to it[.]”).

As set forth in the Motion for Preliminary Approval, the Settlement Fund made available to the class here is more than reasonable, given the complexity of the litigation and the significant risks and barriers that loomed in the absence of settlement including, but not limited to, arbitration and consent. Defendant has asserted various legal challenges, and additional motion practice would follow, including a motion for class certification and motions for summary judgment, plus trial and potential appellate review following a final judgment.

For all these reasons, Plaintiff respectfully submits that the terms of the Settlement are fair, adequate, and reasonable to class members.

e. The Attorneys' Fees Requested Are Reasonable

The fees sought here are reasonable under the guidance of the United States Supreme Court for analysis of fee petitions in class actions where a settlement fund is obtained. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (The Supreme Court “has recognized consistently that a litigant or a lawyer who recovers a fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”).

Here, Class Counsel is seeking the equivalent of 30% of the Settlement Fund or \$150,000.00, ***which Defendant has agreed to pay separately and in addition to the Settlement Fund.*** In other words, the fee request will have no impact on the Class Members’ recovery. Moreover, Class Counsel does not seek reimbursement of costs even though they are entitled to seek them. Courts typically award between 20-40% of the settlement fund. *See Camden I Condo. Ass’n v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991)(“To avoid depleting the funds available for distribution to the class, an upper limit of 50% of the fund may be stated as a general rule, although even larger percentages have been awarded”); *see also Dasher v. RBC Bank U.S. (In re Checking Account Overdraft Litig.)*, No. 09-MD-02036, 2020 U.S. Dist. LEXIS 142012, 2020 WL 4586398, at *51 (S.D. Fla. Aug. 10, 2020) (Approving thirty-five percent of a \$ 7,500,000 settlement fund plus costs for Class Counsels efforts in achieving a resolution). The hours spent here by Class Counsel were on numerous issues, including investigating the potential claim and relevant legal and factual issues, drafting the Complaint, researching legal issues, discovery-related issues, data analysis, and mediation session. The fee request is reasonable based on the results obtained. *See Swift v. BancorpSouth Bank*, No. 10-cv-00090-GRJ (N.D. Fla., July 15, 2016) (awarding \$8.4 million in fees—35%—of \$24 million class settlement); *see also Johns Manville v. Tennessee Valley Auth.*, No. 99-2294 (N.D. Ala. Aug. 20, 2007) (awarding \$6.3 million in fees—35%—of

\$18 million class settlement); *Neal v. Chase Manhattan Bank, U.S.A., N.A.*, No. 06-00049 (S.D. Ala. May 30, 2006) (awarding \$1 million in fees and expenses—37%—of \$2.7 million class settlement): *see also* Stuart J. Logan et al., *Attorney Fee Awards in Common Fund Class Actions*, 24 Class Action Rep. 169 (Mar.-Apr. 2003) (listing numerous fee awards above 35% between 1973 and 2003); *Blanco v. Xtreme Drilling & Coil Services, Inc.*, 2020 U.S. Dist. LEXIS 126155, 2020 WL 4041456, at *5 (D. Colo. July 17, 2020) (awarding 38% fee of \$850,000 settlement because it was in “line with the customary fees and awards in similar cases”); *Candelaria v. Health Care Serv. Corp.*, No. 2:17-cv-404-KG-SMV, 2020 U.S. Dist. LEXIS 202390, at *17-18 (D.N.M. Oct. 30, 2020) (“I find that the requested attorneys' fee award of 35% of the gross settlement fund is reasonable and in line with similar awards.”); *Blanco v. Xtreme Drilling & Coil Servs.*, Civil Action No. 16-cv-00249-PAB-SKC, 2020 U.S. Dist. LEXIS 126155, at *15 (D. Colo. July 17, 2020) (“Plaintiff's counsel in this case seeks \$323,000 in attorney's fees and costs, or 38% of the total settlement amount. The Court finds this amount to be in line with the customary fees and awards in similar cases.”); *In re Thornburg Mortg., Inc. Sec. Litig.*, 912 F. Supp. 2d 1178, 1257 (D.N.M. 2012) (“Fees in the range of 30-40% of any amount recovered are common in complex and other cases taken on a contingency fee basis.”); *Cook v. Rockwell Int'l Corp.*, 2017 U.S. Dist. LEXIS 181814, 2017 WL 5076498, at *1-2 (D. Colo. Apr. 28, 2017) (explaining forty percent fee falls within acceptable range); *Cimarron Pipeline Construction, Inc. v. National Council on Compensation Insurance*, 1993 U.S. Dist. LEXIS 19969, 1993 WL 355466 at *2 (W.D. Okla. June 8, 1993) (“Fees in the range of 30-40% of any amount recovered are common in complex and other cases taken on a contingent fee basis.”); *Shaw v. Interthinx, Inc.*, No. 13-CV-01229-REB-NYW, 2015 WL 1867861, at *6 (D. Colo. Apr. 22, 2015) (awarding one-third of a \$6 million common fund, and noting that “[t]his is well within the percentage range approved in similar

cases,” and that “the ‘customary fee’ factor supports the requested fee award”); *Robles v. Brake Masters Sys., Inc.*, No. CIV 10-0135 JB/WPL, 2011 WL 9717448, at *19 (D.N.M. Jan. 31, 2011) (“Fees in the range of 30–40% of any amount recovered are common in complex and other cases taken on a contingent fee basis.”) (quoting *Cimarron Pipeline Const., Inc. v. Nat’l Council on Comp. Ins.*, No. CIV 89-1186-T, 1993 WL 355466, at *2 (W.D. Okla. June 8, 1993)). The hours spent here by Class Counsel were on numerous issues, including investigating the potential claim and relevant legal and factual issues, drafting the Complaint, researching legal issues, informally exchanging class data, data analysis, and an all-day mediation session in Miami, Florida.

f. The Service Award Requested is Reasonable

As explained by the Third District Court of Appeals, being a putative class representative “is less an honor than a headache” because he or she is “identified as a class litigant in public records (potentially affecting credit reports and disclosures for financing), is subject to fiduciary duties...may be deposed and required to produce records [and] meet with counsel and appear in court.” *Altamonte Springs Imaging*, 12 So. 3d at 857. Thus, “incentive awards are appropriate to recognize the efforts of the representative plaintiffs to obtain recovery for the class.” *In re Domestic Air Transp. Litig.*, 148 F.R.D. 297, 358 (N.D. Ga. 1993).

Here, Defendant has agreed to pay the service awards of up to \$3,500.00 to the named Plaintiff, which is far less than amounts regularly approved by courts. *See, e.g., Altamonte Springs Imaging*, 12 So. 3d at 857 (approving incentive award of \$10,000); *Bastian v. USAA*, No. 13-cv-1454, USDC Middle District of Florida (\$10,000 service awards in total-loss class action settlement); *Jones v. I.Q. Data Int’l, Inc.*, No. 1:14-CV-00130-PJK, 2015 WL 5704016, at *2 (D.N.M. Sept. 23, 2015) (\$20,000 incentive award from a \$1 million fund); *Markos*, 2017 WL 416425, at *3 (approving incentive awards of \$20,000 each in TCPA class action); *Prater*, 2015

WL 8331602, at *3 (\$20,000 incentive award from a \$6.75 million fund); *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11-CV-4462, 2015 WL 1399367, at *6 (N.D. Ill. Mar. 23, 2015) (collecting cases and approving a \$25,000 service award to TCPA class representative); *Ritchie v. Van Ru Credit Corp.*, No. CV-12-1714-PHX-SMM, 2014 WL 956131, at *5 (D. Ariz. Mar. 12, 2014) (\$12,000 incentive award from a \$2.3 million fund); *Martin v. Dun & Bradstreet, Inc.*, No. 1:12-cv-215, 2014 WL 9913504, at *3 (N.D. Ill. Jan. 16, 2014) (approving a \$20,000 service award to a TCPA class representative).

CONCLUSION

Plaintiffs respectfully request that the Court grant final approval of the proposed Settlement, and enter an order of final approval including:

1. Directing payment be issued to Settlement Class Members in accordance with the terms of the Agreement;
2. Certifying the Settlement Class for purposes of settlement only;
3. Finding that the Notice provided was the best notice practicable and comported with due process requirements;
4. Appointing the named Plaintiff Andrea Fonseca as class representative;
5. Appointing Jibrael Hindi and Manuel Hiraldo as Class Counsel;
6. Finding that the terms of the Settlement were fair, adequate, and reasonable;
7. Releasing the Settling Parties and the Released Parties from Released Claims;
8. Barring and enjoining Releasing Parties from asserting Released Claims;
9. Entering judgment with prejudice and without costs except as provided in the Agreement;
10. Approving Class Counsel's application for attorneys' fees and costs and Plaintiffs'

Service Awards in accordance with the Agreement; and

11. Reserving jurisdiction to administer, supervise, and enforce the Agreement according to its terms.

Dated: December 26, 2023

Respectfully submitted,

HIRALDO P.A.

/s/ Manuel S. Hiraldo

Manuel S. Hiraldo

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Telephone: 954.400.4713

*Attorneys for Plaintiff and the
Settlement Class*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of December, 2023, I electronically filed the foregoing with the Clerk of the Court which will send notice of electronic filing to all counsel of record.

/s/ Manuel S. Hiraldo
Manuel S. Hiraldo

EXHIBIT 1

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

ANDREA FONSECA, individually and on
behalf of all other similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

CASE NO.: 2023-018034-CA-01

CLASS ACTION

**DECLARATION OF
SCOTT M. FENWICK OF KROLL
SETTLEMENT ADMINISTRATION LLC
IN CONNECTION WITH FINAL
APPROVAL OF SETTLEMENT**

Date: January 11, 2024

Time: 11:00 AM

The Hon. Valerie R. Manno Schurr

I, Scott M. Fenwick, declare as follows:

INTRODUCTION

1. I am a Senior Director of Kroll Settlement Administration LLC (“Kroll”),¹ the Administrator appointed in the above-captioned case, whose principal office is located at 2000 Market Street, Suite 2700, Philadelphia, Pennsylvania 19103. I am over 21 years of age and am authorized to make this declaration on behalf of Kroll and myself. The following statements are based on my personal knowledge and information provided by other experienced Kroll employees working under my general supervision. This declaration is being filed in connection with Final Approval of the Settlement.

2. Kroll has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities fraud, labor and employment, consumer, and government enforcement matters. Kroll has provided notification and/or claims administration services in more than 3,000 cases.

BACKGROUND

3. Kroll was appointed as the Administrator to provide notification and claims administration services in connection with that certain Settlement Agreement and Release (the “Settlement Agreement”) entered into in this Action. Kroll’s duties in connection with the Settlement have and will include: (a) receiving and analyzing the Settlement Class Data from Defendant; (b) creating a Settlement Website with online Claim filing capabilities; (c) establishing a toll-free telephone number; (d) establishing a post office box for the receipt of mail; (e) preparing and sending email Notice; (f) receiving and processing Claim Forms; (g) receiving and processing Requests for Exclusion; and (h) such other tasks as Class Counsel and Counsel for Defendant or the Court request Kroll to perform.

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement(as described below).

Data and Case Setup

4. On October 4, 2023, Kroll received eight (8) data files from the Defendant. Six (6) of the files each contained 1,000,000 names, email addresses, and phone numbers for potential Settlement Class Members, the seventh file contained 1,000,001 names, email addresses, and phone numbers for potential Settlement Class Members, and the eighth file contained 757,219 names, email addresses and phone numbers for potential Settlement Class Members. Kroll undertook several steps to reconcile the eight (8) lists and compile the eventual potential Settlement Class Data for the email of Notices. Kroll identified and removed 512,379 duplicate records, leaving 7,244,841 records as unique.

5. On September 14, 2023, Kroll created a dedicated Settlement Website entitled www.electroniccommunicationsettlement.com. The Settlement Website “went live” on November 1, 2023, and contains a summary of the Settlement, frequently asked questions, contact information for the Administrator, important documents concerning the Settlement (including the Settlement Agreement, the Preliminary Approval Order, the Class Action Complaint, the Notice in English and Spanish, the Long-Form Notice, and the Claim Form,) and allows Settlement Class Members an opportunity to file a Claim Form online.

6. On October 5, 2023, Kroll established a toll-free telephone number, (833) 383-9050, for Settlement Class Members to call and obtain additional information regarding the Settlement through an Interactive Voice Response (“IVR”) system. As of December 21, 2023, the IVR system has received 2,362 calls.

7. On October 5, 2023, Kroll designated a post office box with the mailing address *Fonseca v. Bank of America*, c/o Kroll Settlement Administration LLC, PO Box 5324, New York, NY 10150-5324, in order to receive Requests for Exclusion, Claim Forms and correspondence from Settlement Class Members.

The Notice Program

8. On November 1, 2023, Kroll caused the email Notice to be sent to the 7,244,841 email addresses on file for potential Settlement Class Members, as noted above. A true and correct

copy of a complete exemplar email Notice (including the subject line) is attached hereto as **Exhibit A**. Of the 7,244,841 emails attempted for delivery, 1,199,870 emails were rejected/bounced back as undeliverable. As detailed above, the potential Settlement Class Data Kroll received from Defendant did not contain any physical addresses, and Kroll was not instructed to attempt further direct notice (by email or mail) for any of the initial emailed Notices that were rejected/bounced back as undeliverable.

CLAIM ACTIVITY

9. The Claim Deadline is January 26, 2024.
10. As of December 22, 2023, Kroll has received 928 Claim Forms through the mail and 19,432 Claim Forms filed electronically through the Settlement Website. Kroll is still in the process of reviewing and validating Claim Forms.
11. To prevent Claim Forms from being filed by individuals outside the Settlement Class and to curtail fraud, Settlement Class Members were provided a unique “Class Member ID” on their respective Notices. The Class Member ID is required for Settlement Class Members to file a Claim Form online.

EXCLUSIONS AND OBJECTIONS

12. The Opt-Out Deadline and Objection Deadline was December 12, 2023.
13. Kroll has received eight (8) timely Requests for Exclusion from the Settlement. A list of the exclusion requests received is attached hereto as **Exhibit B**. Settlement Class Members were not instructed to submit their objection to the Administrator, and none have been received by Kroll.

Certification

I declare under penalty of perjury under the laws of the State of Florida that the above is true and correct to the best of my knowledge and that this Declaration was executed on December 22, 2023, Inver Grove Heights, Minnesota.


SCOTT M. FENWICK

Exhibit A

From: Kroll Settlement Administration LLC <bankofamericasettlement@e.emailksa.com>
Sent:
To:
Subject: Legal Notice of Class Action Settlement

Class Member ID:

If You Received a Consumer Account Communication From Bank of America Between 9:00 p.m. and 8:00 a.m. On or After April 22, 2020, You May Be Entitled to a Payment from a Class Action Settlement

Si desea recibir esta notificación en español, llámenos o visite nuestra página web.

A Settlement^[1] has been reached in a class action lawsuit about whether Bank of America, N.A. ("Bank of America") sent consumer account communications between 9:00 p.m. and 8:00 a.m. in violation of the Florida Consumer Collection Practices Act ("FCCPA"). Bank of America denies the allegations and any wrongdoing. **The Court has not decided who is right.**

Who's Included? The Settlement includes: **All Florida residents (1) who were sent a Communication^[2] not known to be undeliverable (2) between 9:00 P.M. and 8:00 A.M. in the resident's local Florida time zone, (3) by Bank of America^[3] or on Bank of America's behalf (4) regarding a Consumer Account^[4], (5) where such Communication occurred on or between April 22, 2020 and the date of the Final Approval Order.** You received this email because records show that you may be a Settlement Class Member.

What Are the Settlement Terms? Bank of America has agreed to pay Settlement Class Members who submit a valid Claim Form and to pay for Notice and Administrative claims Costs of the Settlement, Attorneys' Fees and Expenses incurred by counsel for the Settlement Class, and a Service Award for Plaintiff. Defendant will pay \$500,000 (the "Settlement Fund"). Each Settlement Class Member who submits a timely, valid, correct and verified Claim Form by the Claim Deadline in the manner required by this Agreement, making all the required affirmations and representations, shall be sent a Claim Settlement Payment by the Administrator on a pro rata basis not to exceed \$500. Settlement Class Claimants will receive their Claim Settlement Payments via the method they submitted on their Claim Form within 60 Days following the Effective Date. One Claim is allowed per Settlement Class Member.

How Can I Get a Claim Settlement Payment? To get a Claim Settlement Payment, you must submit a Claim Form by the deadline stated below. You may download a Claim Form at the Settlement Website, www.electroniccommunicationsettlement.com, or request a Claim Form by calling the Administrator at the toll-free number below. To be valid, a Claim Form must be completed fully and accurately, signed under penalty of perjury, and submitted timely. You may submit a Claim Form by U.S. mail or file a Claim Form online. If you send in a Claim Form by U.S. mail, it must be postmarked by **January 26, 2024**. If you file a Claim Form online, then you must so file by **11:59 p.m. EST on January 26, 2024**.

Your Other Options. If you do not want to be legally bound by the Settlement, you must exclude yourself by **December 12, 2023**. If you do not exclude yourself, you will release any claims you may have, as more fully described in the Settlement Agreement, available at the Settlement Website. You may object to the Settlement by **December 12, 2023**. The Long Form Notice available on the Settlement Website explains how to exclude yourself or object. The Court will hold a Final Approval Hearing on **January 11, 2024 at 11:00 a.m. EST** to consider whether to approve the Settlement, a request for Attorneys' Fees and Expenses of up to \$150,000, and a Service Award of \$3,500 to the Class Representative. You may appear at the Final Approval Hearing, either yourself or through an attorney you hire, but you don't have to. For more information, call or visit the Settlement Website.

www.electroniccommunicationsettlement.com

1- 833-383-9050

[1] Capitalized terms herein have the same meanings as those defined in the Settlement Agreement, a copy of which may be found online at the Settlement Website below.

[2] **“Communication”** includes email, text/SMS, push alerts, and any other electronic notifications, including bill pay notifications and notifications sent via mobile or web application, concerning amounts owed to Bank of America or third parties.

[3] **“Bank of America”** includes Bank of America, N.A., its parent, subsidiary, and affiliate companies.

[4] **“Consumer Account”** includes any financial or other account, debt, or obligation, which accounts, debts, or obligations relate to or are primarily a consumer transaction (i.e., used for household, family, or personal purposes), including as applicable business and small business accounts to the extent used primarily for consumer purposes. This definition includes any account for which a natural person is obligated or allegedly obligated to pay any amount arising out of a consumer transaction.

[Unsubscribe](#)

Exhibit B

Exclusion List

Count	Record Identification Number
1	76176D4KQXMVK
2	76176DZC6NQZT
3	76176HH5DHK2J
4	76176GCV7T5J7
5	76176DBT5V2QS
6	76176NQQHBZ4N
7	76176GNX47DNV
8	76176G5D7DSPN