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JS-6

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

FEDERICO GALAVIS and ZAK
KIRIAKOS, Individually and On Behalf
of All Others Similarly Situated,

Plaintiffs,

vs.

BANK OF AMERICA, N.A. and VISA,
INC.,

Defendants.

Case No.: 2:18-cv-09490-SVW-PJWx

**ORDER GRANTING PLAINTIFFS'
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

1 This case comes before the Court on the motion of Plaintiffs Federico Galavis
2 and Zak Kiriakos (“Plaintiffs”), on behalf of themselves and the Settlement Class they
3 represent, for an order granting Final Approval of the class action Settlement
4 Agreement (the “Motion”) between Plaintiffs and Defendants Bank of America, N.A.
5 (“BANA”) and Visa Inc. (“Visa”) (together with BANA, “Defendants”). The
6 definitions in the Settlement Agreement are hereby incorporated as though fully set
7 forth in this Final Approval Order and Judgment (“Final Approval Order”), and
8 capitalized terms shall have the meanings attributed to them in the Settlement
9 Agreement.

10 On November 1, 2019, notice of the settlement was sent to state and federal
11 officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715. (*See*
12 *Declaration of Stephanie J. Fierisk, Esq. on Implementation of Settlement Notice*
13 *Program*.) On December 17, 2019, the Court preliminarily approved the Settlement
14 Agreement by Preliminary Approval Order (ECF No. 62), conditionally certified for
15 settlement purposes the Settlement Class, and approved the form, content, and method
16 of providing notice proposed by the Parties. The Class Notices were thereafter
17 distributed to Settlement Class Members pursuant to the terms of the Preliminary
18 Approval Order. (*See Declaration of Peter Sperry on Implementation of Settlement*
19 *Notice Program*.)

20 The Court has read and considered the papers filed in support of the Motion,
21 including the Settlement Agreement and the exhibits thereto, memoranda and
22 arguments submitted on behalf of Plaintiffs, the Settlement Class, and Defendants,
23 together with supporting declarations. The Court has also noted the lack of objections
24 or other written comments submitted to the Clerk of the Court by members of the
25 Settlement Class, together with any responses of the Parties to the objections.

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1 In light of General Order 20-05 and the lack of objections to the class settlement,
2 the Court vacated the Final Approval Hearing set for April 6, 2020.

3 Based on the papers filed with the Court and the presentations made to the Court
4 by the Parties and other interested persons at the Final Approval Hearing, the Court
5 finds that the Settlement Agreement is fair, reasonable, and adequate. Accordingly,

6 **IT IS HEREBY ORDERED THAT:**

7 1. For purposes of this Settlement only, the Court has jurisdiction over the
8 subject matter of the Complaint and personal jurisdiction over the Parties and the Class
9 Members.

10 2. Pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3), and based
11 on findings made in the Preliminary Approval Order, the Court certifies, solely for
12 purposes of effectuating this Settlement, the Settlement Class, defined in paragraph
13 2.1(a) of the Settlement Agreement.

14 3. The Court finds no conflict or other reason why Plaintiffs are not adequate
15 to represent the Settlement Class, and the Court is satisfied that Class Counsel are
16 adequate and competent to serve as class counsel.

17 4. The Court has determined that the Class Notices given to Settlement
18 Class Members fully and accurately informed Class Members of all material elements
19 of the proposed Settlement and constituted valid, due, and sufficient notice to
20 Settlement Class Members consistent with all applicable requirements. The Court
21 further finds that the method for distributing the Class Notices satisfies due process and
22 has been properly implemented.

23 5. The Settlement Class Member(s) listed on Exhibit A to this Final
24 Approval Order have properly and timely opted-out of the Settlement and are therefore
25 not bound by the Settlement, Releases, Final Approval Order or Final Judgment.

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6. The Court finally approves the Settlement of this Action in accordance with the terms of the Settlement Agreement and, having considered the matters required under applicable law, finds that the Settlement is in all respects fair, reasonable, adequate and in the best interest of the Class Members, especially in light of the fact that Plaintiffs and the Settlement Class, 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 appeal. The Settlement was reached as a result of arm's length negotiations between Class Counsel and counsel for Defendants, which occurred as a result of mediation before the Honorable Jay C. Gandhi (Ret.) of JAMS. The Settlement confers substantial benefits upon the Settlement Class, without the costs, uncertainties, delays, and other risks associated with continued litigation, trial, and appeal and is fair, adequate, and reasonable. In finding the Settlement fair, reasonable and adequate, the Court has also considered that, as of the March 1, 2020 deadline for seeking exclusion from the Settlement, only a small number of Settlement Class Member opted out of the Settlement. The Court has considered the lack of duly filed objections to the Settlement, as indicative of the non-collusive nature of the settlement. The Court has also considered that no state or federal official notified of the Settlement pursuant to 28 U.S.C. § 1715 has objected.

7. This settlement agreement was negotiated before the class had been certified, and therefore "requires a higher standard of fairness" and "a more probing inquiry than may normally be required under Rule 23(e)." *Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048–49 (9th Cir. 2019) (internal quotations and citations omitted). The Court has thoroughly consulted the record and determined that given the Court's reductions in the attorney fee award negotiated, and the non-reversionary character of the settlement, it satisfies the "exacting review" necessary for final approval of a settlement negotiated prior to class certification. *See Allen v. Bedolla*, 787 F.3d 1218, 1224 (9th Cir. 2015).

1 Similarly, while the Settlement Agreement does contain a "clear sailing" agreement
2 preventing Defendants from objecting to a motion for attorney's fees unless it exceeds
3 \$285,000, Dkt. 53-1 at 11, the fact that this fee award is contingent on the Court's
4 approval and any funds not awarded to Class Counsel will be distributed to class
5 members persuades the Court, in conjunction with the arms-length negotiation with the
6 assistance of a mediator and substantial discovery efforts, that the settlement represents
7 a non-collusive bargain in the best interests of the Settlement Class.

8 8. The Court dismisses the Complaint and all claims and causes of action
9 asserted therein with prejudice. These dismissals are without costs to any party, except
10 as specifically provided in the Settlement Agreement.

11 9. The Court adjudges that Plaintiffs and all Class Members shall be bound
12 by this Final Approval Order.

13 10. Upon the Effective Date, Plaintiffs and each Class Member who has not
14 opted-out of the Settlement Class pursuant to the procedures set forth in the Settlement
15 Agreement, shall be deemed to have, and by operation of this Final Approval Order,
16 shall have released all of Defendants' Releasees in accordance with the Settlement
17 Agreement.

18 11. Without affecting the finality of this Final Approval Order in any way, the
19 Court retains jurisdiction over: (a) implementation and enforcement of the Settlement
20 Agreement pursuant to further order of the Court until the final judgment contemplated
21 hereby has become effective and each and every act agreed to be performed by the
22 Parties shall have been performed pursuant to the Settlement Agreement; (b) any other
23 action necessary to conclude this Settlement and to implement the Settlement
24 Agreement; and (c) the enforcement, construction, and interpretation of the Settlement
25 Agreement.

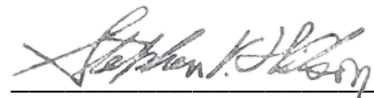
26 12. The Court has considered and addressed Plaintiff's motion for attorney's
27 fees and costs in a separate Order filed concurrently with this Order.
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13. The Court approves the Class Representative Service Awards for each of the Plaintiffs in the amount of \$5,000, based on a finding that such amounts represent an appropriate payment for their service to the Settlement Class, given their substantial efforts to bring these claims to light and participation in the litigation process.

14. The Court orders the Parties to the Settlement Agreement to perform their obligations thereunder pursuant to the terms of the Settlement Agreement. Defendants are ordered to pay the Cash Settlement Amount consistent with the terms of the Settlement Agreement, and in accord with Section 3.2 of the Settlement Agreement regarding funds not included in the attorney fee award authorized in this Court's companion Order, which must be added to the Cash Settlement fund and distributed to the Settlement Class.

IT IS SO ORDERED.

Date: July 14, 2020



Hon. Stephen V. Wilson
United States District Judge

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