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**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

**ORRDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

1 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement came
2 before this Court for hearing on December 9, 2019. The Court, having fully reviewed
3 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, the
4 supporting Memorandum of Points and Authorities and Declarations filed in support
5 thereof, including the Stipulation of Settlement (“Settlement Agreement”) and Notice
6 of Settlement (“Notice”), and for good cause appearing, **HEREBY MAKES THE**
7 **FOLLOWING ORDERS:**

8 1. The Court grants preliminary approval of the settlement based upon the
9 terms set forth in the Settlement Agreement, which is attached as Exhibit A to the
10 Declaration of David J. Harris, Jr., and is incorporated in full by this reference and
11 made a part of this Order. The Settlement appears to be fair, adequate, and reasonable
12 to the Class.

13 2. All capitalized terms defined in the Settlement Agreement shall have the
14 same meaning when used in this Order.

15 3. The Settlement falls within the range of reasonableness of a settlement
16 that could ultimately be given final approval by this Court, and appears to be
17 presumptively valid, subject only to any objections that may be raised at the Final
18 Approval Hearing and final approval by this Court. The Court notes that Defendants
19 Bank of America, N.A. (“BANA”) and Visa, Inc. (“Visa”) (together with BANA,
20 “Defendants”) have agreed to provide the Cash Settlement Amount of an aggregate of
21 \$415,000 in cash to Class Members who do not validly opt out; a non-reversionary
22 award of attorneys’ fees and expenses of up to \$285,000 to be paid by Defendants,
23 separate and apart from the Cash Settlement Amount; the costs of Settlement
24 Administration of approximately \$70,000, separate and apart from the Cash Settlement
25 Amount; and an Incentive Award of up to \$5,000 to each named Plaintiff for his
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1 respective contributions to prosecuting the Class’s claims in this Action, which shall
2 be paid from the Settlement Fund Account.

3 4. The Court finds and concludes that the Settlement is the result of arms-
4 length negotiations between the parties and a mediation conducted after Class Counsel
5 had adequately investigated Plaintiffs’ claims and become familiar with their strengths
6 and weaknesses of the case. The assistance of an experienced mediator in the
7 settlement process further suggests that the Settlement is non-collusive.

8 5. In accordance with the Settlement Agreement, the Court hereby certifies
9 the following class for purposes of settlement: “All persons and entities in the United
10 States who, upon acquiring a Cryptocurrency during the Class Period, incurred Cash
11 Advance Fees and/or Cash Advance Interest charges on credit cards issued by
12 BANA.” The Class Period is defined as the time period between June 1, 2016 and
13 September 26, 2019, inclusive.

14 6. The Court hereby preliminarily finds and concludes, for the purposes of
15 settlement only, that the Class satisfies all of the requirements for certification under
16 Fed. R. Civ. P. 23(a) and 23(b)(3).

17 7. With respect to the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3),
18 the Court makes the following findings:

- 19 a. The Class, which has approximately 21,325 members, satisfies the
20 standard for numerosity in Fed. R. Civ. P. 23(a)(1).
- 21 b. There are sufficient questions of fact and law that are common to
22 the Class regarding purchases of cryptos using BANA credit cards,
23 thereby satisfying the standard for commonality in Fed. R. Civ. P.
24 23(a)(2).
- 25 c. Plaintiffs and each Class Member assert the same legal claims
26 against BANA for breach of contract and violations of TILA’s

1 notice requirements, as well as tortious interference on the part of
2 Visa, thereby satisfying the typicality requirement of Fed. R. Civ.
3 P. 23(a)(3).

4 d. The Court finds that Finkelstein & Krinsk LLP, will fairly and
5 adequately represent the Class, and appoints that firm as Class
6 Counsel.

7 e. The Court finds that Plaintiffs Federico Galavis and Zak Kiriakos
8 will fairly and adequately represent the Class, and appointments
9 them as Class Representatives.

10 f. The Court finds that for purposes of settlement only, common
11 questions of law and fact predominate over individualized issues,
12 because the claims arise from (1) whether cryptos constituted
13 “Cash Equivalents” within the meaning of BANA’s form
14 cardholder agreements, (2) whether BANA changed the terms of its
15 cardholder agreements without notice to Class Members; (3)
16 whether Visa tortiously interfered with cardholders’ contractual
17 relations with BANA; and (4) whether Defendants are liable to
18 Class Members for the Cash Advance charges they incurred upon
19 buying cryptos.

20 g. The Court further finds that the superiority requirement is satisfied
21 because it is likely that recovery on an individual basis would be
22 dwarfed by the cost of litigating on an individual basis.

23 8. The Court approves Epiq Class Action & Claims Solutions, Inc.
24 (“Administrator”) to perform the duties of the Settlement Administrator as set forth in
25 this Order and the Settlement Agreement.

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1 counsel who represent the objector; indicate whether the objector (whether pro se or
2 through representation) intends to testify at the Final Approval Hearing; and be
3 personally signed by the Class Member. To be timely, the objection must be
4 postmarked no later than seventy-five (75) calendar days after the Preliminary
5 Approval. Any Class Member who does not timely submit such a written objection
6 will not be permitted to raise such objection, except for good cause shown, and any
7 Class Member who fails to object in the manner prescribed by this Order will be
8 deemed to have waived, and will be foreclosed from raising, any such objection.

9 15. The Final Approval Hearing shall be held before this Court on April 6,
10 2020 at 1:30 p.m. in Courtroom 10A, to consider the fairness, adequacy, and
11 reasonableness of the proposed settlement preliminarily approved by this Order, and to
12 consider the motion of Class Counsel for an award of reasonable attorneys' fees and
13 costs and a Class Representative service payment.

14 16. Any party to this case, including any Class Member, may be heard in
15 person or by counsel, in support of, or in opposition to, the Court's determination of
16 the good faith, fairness, reasonableness, and adequacy of the proposed settlement, the
17 requested attorneys' fees and costs, the requested Class Representative service
18 payment, and any order of final approval and Judgment regarding such settlement,
19 fees, costs, and payments; provided however, that no person shall be heard in
20 opposition to such matters unless such person has complied with the conditions set
21 forth in the Notice.

22 17. The Court orders that if for any reason the Court does not execute and file
23 an order of final approval and judgment, or if such a final approval order is reversed,
24 the Settlement Agreement and the proposed settlement that is the subject of this Order
25 and all evidence and proceedings had in connection therewith, shall be without
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1 prejudice to the status quo ante rights of the Parties to the litigation as more
2 specifically set forth in the Settlement Agreement.

3 18. The Court orders that the Settlement Agreement shall not be construed as
4 an admission or evidence of liability.

5 19. Pending further order of this Court, all proceedings in this matter except
6 those contemplated herein and in the Settlement Agreement are stayed.

7 20. The Court expressly reserves the right to adjourn or continue the Final
8 Approval Hearing without further notice to Class Members.

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10 **IT IS SO ORDERED.**

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12 Date: December 17, 2019

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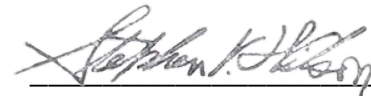
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Hon. Stephen V. Wilson
United States District Judge