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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO

16 Coordination Proceeding Special Title (Rule) JUDICIAL COUNCIL COORDINATION
17 1550(b)) PROCEEDING NO. 4211
18 CONSUMER PRIVACY CASES) FINAL SETTLEMENT AGREEMENT
19 Consolidated actions:)
20 *Utility Consumers' Action Network v.*)
Bank of America, N.A.)
21 *Slayton III v. Bank of America NT and*)
22 *SA*)
23 *Asatryan v. Bank of America*)

1 This Settlement Agreement (the "Settlement") is entered into by and between plaintiffs Donovan
2 Collier, Juan Duron, Terry Wolbert, Ki Won Rhee, Do Young Cho and Frank Cho, individually and as
3 representatives of the Settlement Class (as defined below), and Utility Consumers' Action Network
4 ("UCAN") acting on behalf of itself and its affiliate The Privacy Rights Clearinghouse, on the one hand,
5 and defendants Bank of America, N.A. and Bank of America NT & SA, on the other hand. This
6 Settlement is subject to preliminary and final approval by the Court.

7 DEFINITIONS

8 1. As used in this Settlement, the following terms have the meanings specified below:

9 (a) "Action" means and refers to the action entitled *Consumer Privacy Cases*,
10 J.C.C.P. No. 4211 (San Francisco Superior Court).

11 (b) "Bank of America" or "Defendants" means Bank of America, N.A. and Bank of
12 America NT & SA; except that references to a "Bank of America" credit card shall mean a credit card
13 bearing the Bank of America logo or brand or issued by any subsidiary or affiliate of Bank of America,
14 and references to any other type of "Bank of America" account (such as a checking or savings account
15 or mortgage) shall mean an account maintained or owned by Bank of America or any subsidiary or
16 affiliate of Bank of America.

17 (c) "Claims Administrator" means the settlement administrator retained by Bank of
18 America and Class Counsel pursuant to Paragraph 20.

19 (d) "Class Counsel" means and refers to Lerach Coughlin Stoia Geller Rudman &
20 Robbins LLP, 655 West Broadway, Suite 1900, San Diego, California 92101-3301, Altshuler Berzon
21 LLP, 177 Post Street, Suite 300, San Francisco, California 94108, and Yeroushalmi & Associates,
22 Wilshire Park Place, 3700 Wilshire Blvd., Suite 480, Los Angeles, California 90010, or their
23 successor(s).

24 (e) "Class Member[s]" means all persons who are members of the Settlement Class
25 to be certified under Paragraph 5 hereof.

26 (f) "Class Period" means September 9, 1995 to May 31, 2007.

1 (g) "Class Representatives" means Donovan Collier, Juan Duron, Terry Wolbert, Ki
2 Won Rhee, Do Young Cho and Frank Cho individually and collectively.

3 (h) "Court" means the Superior Court of the State of California for the County of San
4 Francisco.

5 (i) "Defendants" means Bank of America, N.A. and Bank of America NT & SA.

6 (j) "Defendants' Counsel" means Calvo & Clark LLP, One Lombard Street, Second
7 Floor, San Francisco, California 94111, and Morrison & Foerster, LLP, 425 Market Street, San
8 Francisco, California 94105-2482.

9 (k) "Effective Date" has the meaning set forth in Paragraph 21 of this Settlement.

10 (l) "Final Judgment" or "Judgment" means the Final Judgment and Order of
11 Dismissal with Prejudice to be entered in the Action in connection with the Settlement after it
12 becomes final. The Final Judgment shall be substantially in the form of Exhibit F. The Judgment
13 in the Action shall be deemed final ("Final"): (1) 30 days after the Final Judgment and Order of
14 Dismissal with Prejudice is entered if no document is filed within that time seeking appeal, review,
15 rehearing, reconsideration or any other action regarding that Order and/or Judgment; or (2) if any
16 such document is filed, then 15 days after the date upon which all appellate and/or other
17 proceedings resulting from the document have been finally terminated in such a manner as to permit
18 no further judicial action.

19 (m) "Judgment" has the same meaning as "Final Judgment."

20 (n) "Mailed Claim Form" means and refers to the claim form to be mailed with the
21 Mailed Notice. The Parties' proposed Mailed Claim Form is attached as Exhibit C. The Mailed Claim
22 Form will also be mailed by the Claims Administrator to any Class Member who requests such a form
23 from the Claims Administrator.

24 (o) "Mailed Notice" means the written Notice of Proposed Class Action Settlement
25 to be mailed in connection with the Settlement. The Parties' proposed form of Mailed Notice is
26 attached hereto as Exhibit B.

27 (p) "Mailed Notice Cycle" means the periodic statement cycle during which account
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1 statements are mailed to deposit account customers and credit card customers in June 2007.

2 (q) "Parties" means Plaintiffs and Defendants in this Action.

3 (r) "Plaintiffs" means plaintiffs Donovan Collier, Juan Duron, Terry Wolbert, Ki
4 Won Rhee, Do Young Cho and Frank Cho, individually and as representatives of the Settlement Class,
5 and Utility Consumers' Action Network ("UCAN") acting on behalf of itself and its affiliate The
6 Privacy Rights Clearinghouse.

7 (s) "Plaintiffs' Counsel" means and refers to counsel who have appeared for any of
8 the Plaintiffs in the Action.

9 (t) "Preliminary Approval Order" means the Order Preliminarily Approving
10 Settlement and Providing for Notice to the Class. The Parties' proposed form of order is attached
11 hereto as Exhibit A.

12 (u) "Privacy Policy" means Bank of America's written policies concerning how
13 Bank of America maintains, handles, or discloses to affiliates and/or third parties information about its
14 customers.

15 (v) "Published Notice" means the Notice of Proposed Class Action Settlement to be
16 published in connection with the Settlement, the Parties' proposed form of which is attached hereto as
17 Exhibit D.

18 (w) "Released Claims" shall have the meaning set forth in Paragraph 13 of this
19 Settlement.

20 (x) "Settlement Website" means a website to be created and maintained by the
21 Claims Administrator entitled www.bankprivacycase.com.

22 (y) "Web Claim Form" means and refers to the claim form that will be made
23 available in .html and .pdf format at the Settlement Website that can be completed and submitted
24 online. The Parties' proposed Web Claim Form is attached as Exhibit E.

25 **RECITALS**

26 2. By the Consolidated Class Action Complaint (the "Complaint"), which was filed on or
27 about April 14, 2003 in the Action, Plaintiffs allege, among other things, that plaintiff UCAN is a

1 consumer rights group and that its affiliate, The Privacy Rights Clearinghouse, advocates for consumer
2 privacy rights; that plaintiffs Donovan Collier, Juan Duron, Terry Wolbert, Ki Won Rhee, Do Young
3 Cho and Frank Cho were customers of Bank of America; that Bank of America provided banking or
4 financial services to them and other customers; that Bank of America possessed certain non-public
5 personal information regarding them and other customers; that Bank of America made representations
6 to them and other customers regarding the maintenance of such non-public personal information; and
7 that Bank of America sold and/or disclosed non-public personal information regarding them and other
8 customers to third-party marketers in exchange for money, directly or indirectly. Based on these
9 allegations, Plaintiffs, on behalf of themselves and the other customers of Bank of America and in a
10 representative capacity, assert claims for unlawful, unfair, and fraudulent business practices under
11 California's Unfair Competition Law (Cal. Bus. & Prof. Code §§17200 and 17500); for invasion of
12 privacy under California's Constitution and the common law; and for unjust enrichment. Plaintiffs seek
13 injunctive relief, restitution and disgorgement, a constructive trust, general damages, punitive damages,
14 reasonable attorneys' fees and costs pursuant to California Code of Civil Procedure §1021.5, and pre-
15 and post-judgment interest.

16 3. Bank of America denies all claims asserted against it in the Action and denies all
17 allegations of wrongdoing and liability. In particular, Bank of America disputes Plaintiffs' claim that
18 Bank of America routinely shared confidential personal financial information regarding customers'
19 accounts. Bank of America contends that, at all relevant times, its practices met or exceeded industry
20 standards for maintaining the privacy and confidentiality of customer information. Nevertheless, solely
21 for the purpose of avoiding the burden, expense, risk and uncertainty of continuing these proceedings,
22 and for the purpose of putting to rest the controversies engendered by the Action, Bank of America
23 desires to settle the Action and the claims asserted in the Action on the terms and conditions set forth
24 herein.

25 4. Class Counsel have investigated the facts relating to the claims alleged and the
26 underlying events and transactions in the Action and have analyzed the legal principles applicable to the
27 claims asserted in the Action. While Plaintiffs and Class Counsel believe that the claims asserted in the
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1 Action have substantial merit, they have concluded, based upon their investigation and taking into
2 account the sharply contested issues involved, the inherent problems of proof and legal defenses which
3 may be an impediment to prevailing in whole or in part on the claims they assert, the risks, uncertainty
4 and costs of further prosecution of the Action, and the substantial benefits to be received pursuant to
5 this Settlement, that a settlement on the terms set forth herein is fair, reasonable, adequate and in the
6 best interests of the Class Members.

7 TERMS OF THE SETTLEMENT

8 In consideration for the complete and final settlement of the Action, and under the terms and
9 conditions set forth below, the Parties agree as follows:

10 Certification of the Settlement Class

11 5. For settlement purposes only, the Parties agree that the Court may certify a Settlement
12 Class, defined as follows:

13 Any person who, at any time between September 9, 1995 and May 31, 2007, was a
14 U.S. resident, and: (1) Had a Bank of America non-business checking or savings
15 account; (2) Was a borrower on a non-business loan issued by (or acquired by) Bank
16 of America secured by residential real estate within the United States; or (3) Had a
17 Bank of America branded consumer credit card and a California mailing address for
18 purposes of communicating with Bank of America. Excluded from the Settlement
19 Class are Bank of America, any parent, subsidiary, affiliate or sister company of Bank
20 of America, and all officers or directors who are, or who have been, employed by
21 Bank of America or any parent, subsidiary, affiliate or sister company at any time
22 during the Class Period. Also excluded is any person who timely submits a valid
23 request to be excluded, in accordance with paragraph 18.

24 The Settlement Class does not include any person who held a consumer credit card
25 issued by FleetBoston with respect to any claims such person may have had against
26 FleetBoston arising out of events occurring prior to FleetBoston's acquisition by Bank of
27 America on April 1, 2004. However, the Class does include all such persons with respect to
28 any claims they may have had against FleetBoston or Bank of America, or any affiliates
thereof, arising out of any events occurring after April 1, 2004. The Class does not include
any person who held a consumer credit card issued by MBNA with respect to any claims
such person may have had against MBNA arising out of events occurring prior to MBNA's
acquisition by Bank of America on January 1, 2006. However, the Class does include all

1 such persons with respect to any claims they may have had against MBNA or Bank of
2 America, or any affiliates thereof, arising out of any events occurring after January 1, 2006.

3 6. If the Court does not grant final approval of the Settlement, certification of the
4 Settlement Class will be vacated and the Parties will be returned to their positions *quo ante* with respect
5 to the Action as if the Settlement had not been entered into, except with respect to the extension of the
6 five-year period for bringing the Action to trial, as provided in Paragraph 9.

7 **Settlement Consideration**

8 7. Subject to approval by the Court, the consideration to be provided by Bank of America
9 pursuant to the Settlement shall be as follows:

10 (a) **Cy Pres Funds:** Bank of America shall pay \$3.25 million dollars to *cy pres*
11 beneficiaries as follows:

12 (1) \$1.75 million shall be paid to the Rose Foundation for distribution within two
13 years to one or more non-profit entities that specialize in privacy-related research, privacy-related
14 education, and/or privacy-related policy development, to be used for such entity's or entities' privacy-
15 related programs.

16 (2) \$1.5 million shall be paid to one or more of the entities listed on Exhibit G, to
17 fund privacy-related projects proposed by such entities that are accepted by Class Counsel and Bank of
18 America pursuant to paragraph (3) below. Any notification of such entities that they may be eligible to
19 request a portion of the \$1.5 million shall be the responsibility of Plaintiffs.

20 (3) Each entity identified in Exhibit G that wishes to receive a portion of the \$1.5
21 million described in subparagraph (2) above shall submit jointly to Class Counsel and Bank of America,
22 no later than 60 days following the date of entry of the Preliminary Approval Order, a written proposal
23 describing its proposed use of the funds for which it seeks project approval. Such proposal shall
24 provide that any funds granted shall be used for a purpose that relates to privacy-related research or
25 privacy rights of consumers. Each entity whose project is approved may use the funds only for the
26 purposes described in its written proposal. Each grant of funds made under or by reason of Paragraph
27 7(a)(1) and (2) shall carry the restriction that the funds may not be used to finance, promote, or facilitate

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1 litigation against financial institutions. Violation by a grant recipient of any of the restrictions in the
2 two preceding sentences shall obligate the grant recipient to forfeit the entire grant amount, used or
3 unused, so that the funds may be redistributed to another grant recipient acceptable to the Parties.

4 (4) The amounts to be paid pursuant to this Paragraph 7(a) shall be paid to the
5 Rose Foundation and to the designated entities within 20 calendar days following the Effective Date
6 (provided that the designated beneficiary has submitted a proposal as described above that has been
7 accepted by Class Counsel and Bank of America, and provided that Bank of America shall have no less
8 than 20 days after receiving the designated entity's W-9 to make payment to the designated entity). The
9 amounts to be paid pursuant to this Paragraph 7(a) shall be increased by simple interest at the rate of
10 1.5% per annum from the date of entry of the Preliminary Approval Order to the date of entry of the
11 Final Judgment, and 5.0% per annum from the date of entry of the Final Judgment to the date of
12 payment.

13 (b) **Benefits to Class Members:**

14 Bank of America shall make the following benefits totaling at least \$10.75 million available to
15 class members, as follows, subject to the provisions and limitations of Paragraph 7(b)(7) regarding
16 extent, timing, and duration of benefits:

17 (1) **DIR Fees:** For each Class Member who has a Bank of America non-
18 business checking or savings account in the United States, Bank of America will
19 waive any Deposited Item Return ("DIR") fee applicable to such account for any
20 item payable within the United States. The start date for such waivers shall be
21 in accordance with paragraph 7(b)(7)(a), and Bank of America shall have no
22 obligation to waive or reimburse any fees incurred or posted prior to the start
23 date.

24 (2) **VRU Fees:** For each Class Member who has a Bank of America non-
25 business checking or savings account in the United States, Bank of America will
26 waive any fee for telephone calls to Bank of America's Voice Response Unit
27 ("VRU") applicable to such account. The start date for such waivers shall be in
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accordance with paragraph 7(b)(7)(a), and Bank of America shall have no obligation to waive or reimburse any fees incurred or posted prior to the start date.

(3) **Loan Fee Vouchers:** For each Class Member who takes out a new first mortgage loan from Bank of America on residential property in the United States or refinances with Bank of America an existing first mortgage loan on residential property in the United States, Bank of America will offer a voucher good for a discount of \$200 off the loan origination fee, including borrower fees, lender fees, and closing costs, otherwise applicable to that loan or refinance. The voucher may be used in addition to any other discount off such fees that Bank of America may offer. The voucher may not be used for (e.g., “split” among) more than one loan or refinance transaction, and may not be assigned to a non-member of the Class. The voucher shall have no cash value and shall not be redeemable for cash or any consideration other than a discount off loan origination fees, borrower fees, lender fees, and closing costs as described above. The voucher shall be exercisable until 150 days after the date of entry of Final Judgment, following which it shall be null and void; except that Bank of America, at its option and sole discretion, may choose to honor any such voucher that would otherwise be null and void.

(4) **Credit Card Services:** For each Class Member who had or has a Bank of America branded consumer credit card and a California mailing address for purposes of communicating with Bank of America during the Class Period, Bank of America will make available the following two options, of which the Class Member may choose one (subject to the ordinary approval process of Bank of America or the applicable Bank of America affiliate):

