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7 **UNITED STATES DISTRICT COURT**  
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9  
10 LILLIAN FRANKLIN, individually  
and on behalf of all others similarly  
11 situated,

Plaintiff,

12 v.

13 WELLS FARGO BANK, N.A.,

14 Defendant.

Case No. 14cv2349-MMA (BGS)

**ORDER CERTIFYING PROVISIONAL  
SETTLEMENT CLASS**

**PRELIMINARILY APPROVING CLASS  
ACTION SETTLEMENT**

**DIRECTING DISSEMINATION OF  
CLASS NOTICE**

[Doc. No. 5]

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16  
17 The parties in this action have reached a settlement agreement, which, if approved,  
18 would resolve this putative class action. Plaintiff Lillian Franklin now seeks an order  
19 certifying a provisional settlement class, preliminarily approving the settlement pursuant to  
20 Federal Rule of Civil Procedure 23(e), directing dissemination of class notice, and  
21 scheduling a final approval hearing. Defendant Wells Fargo Bank, N.A. does not oppose  
22 the motion. The Court finds that, upon preliminary examination, the settlement appears  
23 fair, reasonable, and adequate. Accordingly, having considered Plaintiff's motion, the  
24 settlement agreement, and supporting documents, the Court **GRANTS** the motion, **SETS**  
25 the hearing for final approval of the settlement for Monday, July 20, 2015 at 2:30 p.m., and  
26 **ORDERS** as follows:  
27

1 1. Jurisdiction. The Court has jurisdiction over the subject matter of the Action and  
2 over all settling parties hereto.

3 2. Preliminary Approval of Proposed Settlement. The Agreement, including all  
4 exhibits thereto, is preliminarily approved as fair, reasonable and adequate and  
5 within the range of reasonableness for preliminary settlement approval. The Court  
6 finds that:

7 (a) the Agreement resulted from arm's length negotiations; and

8 (b) the Agreement is sufficient to warrant notice of the settlement to persons in the  
9 Settlement Class and a full hearing on the approval of the Settlement.

10 3. Class Certification for Settlement Purposes Only. Pursuant to Federal Rule of Civil  
11 Procedure 23(c), the Court conditionally certifies, for settlement purposes only, the  
12 following Settlement Class:

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14 All cell phone users or subscribers to wireless or cellular  
15 service within the United States who used or subscribed to  
16 phone numbers to which Wells Fargo placed any calls from  
17 November 1, 2009 to September 17, 2014 using any automated  
18 dialing technology or artificial or prerecorded voice technology  
19 in an effort to collect on a consumer credit card account.

20  
21 Defendant has identified, based on its records approximately 4,076,207 such class  
22 members.

23 In connection with this conditional certification, the Court makes the following  
24 preliminary findings:

25 a. The Settlement Class appears to be so numerous that joinder of all members is  
26 impracticable;

27

- 1 b. There appear to be questions of law or fact common to the Settlement Class for  
2 purposes of determining whether this settlement should be approved;
- 3 c. Plaintiff's claims appear to be typical of the claims being resolved through the  
4 proposed settlement;
- 5 d. Plaintiff appears to be capable of fairly and adequately protecting the interests  
6 of the Settlement Class Members in connection with the proposed settlement;
- 7 e. For purposes of determining whether the settlement is fair, reasonable and  
8 adequate, common questions of law and fact appear to predominate over  
9 questions affecting only individual Settlement Class Members. Accordingly,  
10 the Settlement Class appears to be sufficiently cohesive to warrant settlement  
11 by representation; and
- 12 f. For purposes of settlement, certification of the Settlement Class appears to be  
13 superior to other available methods for the fair and efficient settlement of the  
14 claims of the Settlement Class Members.

15 4. Class Representative. Plaintiff Lillian Franklin is designated as class representative  
16 for the Settlement Class.

17 5. Class Counsel. The Court appoints the Kazerouni Law Group, APC, Hyde &  
18 Swigart and the Law Offices of Douglas J. Campion, APC as counsel for the  
19 Settlement Class. The Court finds that counsel is competent and capable of  
20 exercising all responsibilities as Class Counsel for the Settlement Class.

21 6. Settlement Hearing. A final approval hearing (the "Settlement Hearing") shall be  
22 held before the Honorable Michael M. Anello, at the U.S. District Court, 221 West  
23 Broadway, San Diego, CA 92101, in Courtroom 3A, on **Monday, July 20, 2015 at**  
24 **2:30 p.m.**, as set forth in the notice to the Settlement Class, to determine whether  
25 the Agreement is fair, reasonable and adequate and should be approved. Papers in  
26 support of final approval of the Agreement, the incentive award to Plaintiff and  
27 Class Counsel's application for an award of attorneys' fees, costs and expenses (the

1 “Fee Application”) shall be filed with the Court according to the schedule set forth  
2 in Paragraph 10 below. The Settlement Hearing may be postponed, adjourned, or  
3 continued by order of the Court without further notice to the Settlement Class.

4 After the Settlement Hearing, the Court may enter a settlement order and final  
5 judgment in accordance with the Agreement that will adjudicate the rights of the  
6 Settlement Class Members with respect to the Released Claims being settled.

7 7. Class Notice. Class Notice shall be published within thirty (30) days following  
8 entry of this Order.

9 (a) Direct Mailing. The Claims Administrator will send Notice to the Class via  
10 first class mail thirty (30) days after entry of the Preliminary Approval Order.  
11 The Claims Administrator shall obtain this contact information from the Notice  
12 Database. In addition, the Claims Administrator (1) may check the each  
13 mailing address against the United States Post Office National Change of  
14 Address Database before the initial mailing; (2) may conduct a reasonable  
15 search to locate updated addresses for any Class Member whose Settlement  
16 Notice is returned as undeliverable; (3) shall update addresses based on any  
17 forwarding information received from the United States Post Office; and, (4)  
18 shall update addresses based on any requests received from Class Notice.

19 (b) Publication Notice. The Claims Administrator will cause Notice to be  
20 published to USA Today, to be run within 30 days of the issuance of this Order.

21 (c) Internet Notice. The Settlement Administrator will establish and maintain an  
22 Internet site using domain name [www.FranklinWellsFargoTCPA.com](http://www.FranklinWellsFargoTCPA.com)  
23 dedicated to the Settlement, on which will be posted the Short Form Notice, the  
24 Settlement Agreement with Exhibits, any attorneys’ fees and costs application  
25 and any Orders relating to Preliminary Approval or Final Approval. The  
26 Publication Notice shall direct recipients to the settlement website. The website  
27 shall also allow for a Claim Form to be downloaded. The Settlement web page

1 will be established prior to the publication of Notice and shall remain active  
2 until the date of Final Approval Order.

3 (d) Settlement Call Center. The Claims Administrator shall designate a toll-free  
4 number for receiving calls related to the settlement (“Settlement Call Center”).  
5 The Settlement Call Center shall be operation at a minimum from 9:00 a.m. to  
6 9:00 p.m. PST and shall be maintained from the date Notice is sent through the  
7 final date to submit a claim.

8 (e) CAFA Notice. In compliance with the Class Action Fairness Act of 2005, Pub.  
9 L. No. 109-2, 119 Stat. 4, and as set forth in the Agreement, Defendant shall be  
10 ultimately responsible for serving written notice of the proposed class action  
11 settlement on the person who has the primary Federal regulatory or supervisory  
12 responsibility with respect to Defendant.

13 (f) Declaration to be Filed Regarding Notice. At least fourteen (14) days prior to  
14 the Final Approval Hearing, the Claims Administrator shall file a declaration of  
15 compliance with the notice procedures as set forth in the Agreement.

16 (g) Findings Concerning Class Notice. The Court finds that the foregoing program  
17 of Class Notice and the manner of its dissemination is the best practicable  
18 notice under the circumstances and is reasonably calculated to apprise  
19 Settlement Class Members of the pendency of this Action and their right to  
20 object to or exclude themselves from the Settlement Class. The Court further  
21 finds that the Class Notice program is reasonable, that it constitutes due,  
22 adequate and sufficient notice to all persons entitled to receive notice and that it  
23 meets the requirements of due process and Federal Rule of Civil Procedure 23.

24 (h) Approval of Claims Process and Settlement Procedure. The claims submission  
25 processes described in the Settlement Agreement are hereby approved. The  
26 Court preliminarily approves the process set forth in the Settlement Agreement  
27 for submitting, reviewing, approving and paying all claims as described in the

1 Settlement Agreement. Claims shall be filed within 90 days of the initial date  
2 of mailing Direct Mail Notice to the Class.

3 (i) Costs of Administration, Incentive Payments, and Attorney Fees. The Court  
4 also approves the process for paying the costs of notice and claims  
5 administration, the incentive payment and the Class Counsel's attorneys' fees  
6 and litigation costs. These costs will be paid out of the Settlement Fund, prior  
7 to any disbursement of the remaining amount on a pro rata basis to the  
8 Settlement Class Members who submit timely and valid claim forms.

9 8. Exclusion from the Settlement Class.

10 (a) Class Members have the right to opt out and exclude themselves from the  
11 settlement by mailing an exclusion request ("Exclusion Request") to the Claims  
12 Administrator. The Exclusion Request must be postmarked on or before the  
13 date specified in the Notice, which is 100 days from the date of providing Direct  
14 Mail Notice, which is ten days after the deadline for submitting claims. The  
15 Claims Administrator will provide copies of such exclusion requests to Class  
16 Counsel and counsel for Defendant. All Settlement Class Members who do not  
17 opt out in accordance with the terms set forth herein will be bound by all  
18 determinations and judgments in the Action.

19 (b) Exclusion requests must: (i) be signed; (ii) include the full name, address and  
20 phone number of the person(s) requesting exclusion; (iii) include a statement to  
21 the effect that they wish to be excluded from this Settlement; and (iv) include  
22 the name and case number of the Action. No request for exclusion will be valid  
23 unless all of the information described above is included. No Settlement Class  
24 Member, or any person acting on behalf of or in concert or participation with  
25 that Settlement Class Member, may exclude any other Settlement Class Member  
26 from the Settlement Class.  
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1 (c) The Claims Administrator will retain a copy of all requests for exclusion. Not  
2 later than fourteen days before the Final Approval Hearing, the Claims  
3 Administrator shall file with the Court a declaration that lists all of the opt-outs  
4 received.

5 (d) If 2,000 or more Class Members opt-out of the Settlement Agreement by timely  
6 submitting an Exclusion Request, then Defendant, in its sole discretion, shall  
7 have the right to terminate the settlement. In the event that the settlement is  
8 terminated, the Parties will be returned to the status quo ante as if no settlement  
9 had been negotiated or entered into as set forth in the Settlement Agreement.

10 9. Objections and Appearances.

11 (a) Any person in the Class who has not timely submitted a valid request for  
12 exclusion from the Class, and thus is a Class Member, may appear at the Final  
13 Approval Hearing to argue that the proposed Settlement should not be approved  
14 and/or to oppose the application of Class Counsel for an award of attorneys' fees  
15 and the incentive award to the Plaintiff.

16 (b) In order to be heard at the hearing, the person must make any objection in  
17 writing and file it with the Court 100 days from the date of providing Direct  
18 Mail Notice, which is ten days after the deadline for submitting claims. The  
19 objection must also be mailed to the Class Counsel and defense counsel.

20 (c) Any Objection filed with the Court and submitted to the Claims Administrator  
21 must set forth the name and case number of this matter, Class Member's name,  
22 address, telephone number and all arguments, citations and evidence supporting  
23 the Objection, and a statement of whether the objecting Class Member intends to  
24 appear at the hearing for final approval of the class action settlement, and  
25 whether the objecting Class Member intends to appear at the hearing with or  
26 without counsel. Any Class Member who fails to comply with these provisions  
27 shall waive and forfeit any and all rights the Class Member may have to appear

1 separately and/or object, and shall be bound by all the terms of this Stipulation  
2 of Settlement and the Settlement, and by all proceedings, orders, and judgments  
3 in the Action. Any objections that are not timely filed and mailed shall be  
4 forever barred.

5 10. Further Papers in Support of Settlement and Fee Application. Any responses to  
6 objections to the Agreement shall be filed with the Court on or before the date of  
7 the Final Approval Hearing. Any general briefing in support of final approval of  
8 the Settlement not specifically directed to objections shall be filed fourteen (14)  
9 days before the Final Approval Hearing. Any application for attorneys' fees and  
10 costs shall be filed no later than thirty (30) days prior to the deadline for objecting  
11 to the Settlement. Supplemental papers in support of such fees and costs  
12 application, including objections to such fees and costs, may be filed fourteen (14)  
13 days before the date of the Final Approval Hearing.

14 11. Effect of Failure to Approve the Agreement. In the event the Agreement is not  
15 approved by the Court, or for any reason the Parties fail to obtain a Final  
16 Judgment as contemplated in the Agreement, or the Agreement is terminated  
17 pursuant to its terms for any reason, then the following shall apply:

- 18 (a) All orders and findings entered in connection with the Agreement shall become  
19 null and void and have no further force and effect, shall not be used or referred  
20 to for any purposes whatsoever, and shall not be admissible or discoverable in  
21 any other proceeding;
- 22 (b) The conditional certification of the Settlement Class pursuant to this Order shall  
23 be vacated automatically and void; no doctrine of waiver, estoppel or preclusion  
24 shall be asserted in any litigated certification proceedings in the Action; and the  
25 Agreement, its existence and any draft thereof, and any discussion, negotiation,  
26 documentation, or other part or aspect of the Parties' settlement discussions  
27 leading to the execution of the Agreement shall have no effect and shall not be



1 admissible evidence for any purpose, including to establish any fact relevant to  
2 class certification or any alleged liability of Bank of America for the matters  
3 alleged in the Action or for any other purpose;

4 (c) Nothing contained in this Order is, or may be construed as, any admission or  
5 concession by or against Defendant or Plaintiff on any point of fact or law; and

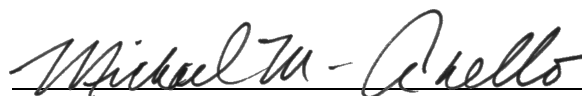
6 (d) Neither the settlement terms nor any publicly disseminated information  
7 regarding the settlement, including, without limitation, the class notices, court  
8 filings, orders and public statements, may be used as evidence for any purpose  
9 whatsoever. In addition, neither the fact of, nor any documents relating to,  
10 Defendant's withdrawal from the settlement, any failure of the Court to approve  
11 the settlement and/or any objections or interventions may be used as evidence  
12 for any purpose whatsoever.

13 12. Stay/Bar of Other Proceedings. All proceedings in this Action are stayed until  
14 further order of the Court, except as may be necessary to implement the terms of  
15 the settlement. Pending final determination of whether the settlement should be  
16 approved, Plaintiff, all persons in the Settlement Class and persons purporting to  
17 act on their behalf are enjoined from commencing or prosecuting (either directly,  
18 representatively or in any other capacity) against any of the Released Parties any  
19 action, arbitration or proceeding in any court, arbitration forum or tribunal  
20 asserting any of the Released Claims.

21 13. Continuing Jurisdiction. The Court retains continuing and exclusive jurisdiction  
22 over the action to consider all further matters arising out of or connected with the  
23 settlement, including the administration and enforcement the Agreement.

24 **IT IS SO ORDERED.**

25 Dated: February 9, 2015



26 Hon. Michael M. Anello  
27 United States District Judge