

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA**

No. 5:15-cv-231

GARY and ANNE CHILDRESS, THOMAS	)
and ADRIENNE BOLTON, STEVEN and	)
MORGAN LUMBLEY, RAYMOND and	)
JACKIE LOVE, HARRY and MARIANNE	)
CHAMPAGNE, and RUSSELL and MARY	)
BETH CHRISTE, <i>on behalf of themselves</i>	)
<i>and others similarly situated,</i>	)
Plaintiffs,	)
vs.	)
BANK OF AMERICA, N.A.,	)
Defendant.	)

**PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT  
AND CERTIFICATION OF THE SETTLEMENT CLASS**

Plaintiffs Gary and Anne Childress, Thomas and Adrienne Bolton, Steven and Morgan Lumbley, Raymond and Jackie Love, Harry and Marianne Champagne, and Russell and Mary Beth Christe (collectively "plaintiffs"), with agreement of the Defendant, Bank of America, N.A. ("Bank of America" or "Defendant"), under Fed. R. Civ. P. 23 and Local Rule 7.1, respectfully move the Court for an order:

1. Certifying, for settlement purposes, a proposed nationwide class of persons defined as: All persons identified in Bank of America's records as obligors or guarantors on an obligation or account who, at any time on or after September 11, 2001, received and/or may have been eligible to receive additional compensation related to military reduced interest rate benefits from Defendant, but excluding persons who have executed a release of the rights claimed in this action;
2. Granting preliminary approval of a settlement of this action between the class and

Bank of America;

3. Granting preliminary approval of the proposed distribution plan;
4. Appointing named plaintiffs in this action as class representatives and the law firms Hagens Berman Sobol Shapiro LLP, Smith & Lowney, PLLC, and Shanahan Law Group, PLLC as class counsel;
5. Approving the proposed form and manner of notice to the class;
6. Appointing KCC LLC as settlement administrator;
7. Approving the proposed schedule for completion of the approval and administration process and for plaintiffs' application for incentive awards to each of them and for attorneys' fees, costs, and expenses, and for scheduling a final settlement hearing; and
8. Staying all non-settlement-related proceedings in this action pending final approval of the proposed settlement.

The grounds for this motion are that the proposed settlement is fair, adequate, and reasonable, and that the other requested relief is well-grounded in law and fact, as set forth in the accompanying memorandum of law in support and the exhibits thereto.

This motion is based further on the declarations of counsel, with exhibits, including the proposed settlement agreement between the parties, and the proposed terms of class notice and administration. Plaintiffs also file contemporaneously a proposed order for the relief set forth above.

Submitted this 20th day of July, 2017.

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*Counsel for Plaintiffs*

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Motion for Preliminary Approval of Class Settlement** was filed this 20th day of July, 2017 with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA**

No. 5:15-cv-231

GARY and ANNE CHILDRESS, THOMAS )  
and ADRIENNE BOLTON, STEVEN and )  
MORGAN LUMBLEY, RAYMOND and )  
JACKIE LOVE, HARRY and MARIANNE )  
CHAMPAGNE, and RUSSELL and MARY )  
BETH CHRISTE, *on behalf of themselves* )  
*and others similarly situated,* )

Plaintiffs,

vs.

BANK OF AMERICA, N.A.,

Defendant.

**[PROPOSED] ORDER CERTIFYING SETTLEMENT CLASS,  
PRELIMINARILY APPROVING CLASS SETTLEMENT,  
AND APPROVING FORM AND MANNER OF NOTICE**

Upon plaintiffs' unopposed Motion for Preliminary Approval of Class Action Settlement, the Court has considered the parties' papers, relevant legal authority, and the record in this case, and the Court hereby GRANTS the Motion for Preliminary Approval.

WHEREAS, Plaintiffs, Gary and Anne Childress, Thomas and Adrienne Bolton, Steven and Morgan Lumbley, Raymond and Jackie Love, Harry and Marianne Champagne, and Russell and Mary Beth Christe (collectively "Plaintiffs"), on behalf of themselves and on behalf of the proposed Settlement Class, and Defendant Bank of America, N.A. ("Bank of America" or "Defendant"), have agreed, subject to Court approval, to settle the above-captioned litigation upon the terms set forth in the July 19, 2017 Settlement Agreement ("Settlement Agreement");

WHEREAS, this Court has reviewed and considered the Settlement Agreement entered into among the parties, as well as all exhibits thereto, the record in this case, the briefs and arguments of counsel, and supporting exhibits;

WHEREAS, Plaintiffs have moved for an order granting preliminary approval of the Settlement Agreement;

WHEREAS, this Court preliminarily finds, for purposes of settlement only, that the action meets all the prerequisites of Rule 23 of the Federal Rules of Civil Procedure;

WHEREAS, all defined terms contained herein shall have the same meanings as set forth in the Settlement Agreement;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Court has jurisdiction over the subject matter of this lawsuit and over the settling parties.
2. The Court hereby preliminarily approves the Settlement Agreement, subject to further consideration at the final Fairness Hearing described below, and directs the parties to perform and satisfy the terms and conditions of the Settlement Agreement for which entry of this Order is a condition precedent.
3. A final approval hearing (the "Fairness Hearing") shall be held before this Court on \_\_\_\_\_, 2017, at \_\_\_\_\_ a.m./p.m., at the Federal Courthouse located at [ ], in Courtroom \_\_\_\_\_, to determine whether the proposed settlement on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate to the Settlement Class and should be approved by the Court; whether final judgment should be entered; the amount of fees, costs, and expenses that should be awarded to Plaintiffs' counsel; and the amount of any incentive awards to be awarded to the class representatives. Attendance at the Final Approval Hearing is not mandatory and Settlement Class members need not appear or take any other action to indicate their approval of the proposed Settlement Agreement. The

Court may change the date, time, and location of the Fairness Hearing without further notice to the members of the Settlement Class.

4. For settlement purposes only, this action is hereby preliminarily certified and may be maintained as a class action under Rule 23 on behalf of a class (the “Settlement Class”) defined as follows:

All persons identified in Bank of America’s records as obligors or guarantors on an obligation or account who, at any time on or after September 11, 2001, received and/or may have been eligible to receive additional compensation related to military reduced interest rate benefits from Defendant, but excluding persons who have executed a release of the rights claimed in this action.

5. The Court finds that, in the context of this proposed Settlement only, the prerequisites to class certification under Rule 23(a) are satisfied, to wit:

- a. The Settlement Class is so numerous that joinder of all members is impracticable;
- b. There are numerous questions of law and fact common to all members of the Settlement Class, and the claims of the named Plaintiffs in this action are typical of the claims of the Settlement Class members; and
- c. These named Plaintiffs, represented as they are by counsel with vast experience in complex class-action litigation, will fairly and adequately protect the interests of the Settlement Class.

6. The Court finds further that, in the context of the proposed Settlement only, questions of law and fact common to all members of the Settlement Class predominate over questions affecting only individual members, and certification of the Settlement Class for



purposes of settlement is superior to other available methods for the fair and efficient resolution of this controversy, satisfying Rule 23(b)(3).

7. The Court approves, as to form and content, the notice of the proposed Settlement Agreement, attached as Exhibit B to the Settlement Agreement. The Court further finds that the proposed notice campaign, including all forms of proposed notice, substantially meets the requirements of Rule 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

8. The Court confirms and appoints KCC LLP as the Settlement Notice Administrator to administer the terms of the Settlement Agreement and the notification and payment to Class Members. The Settlement Notice Administrator shall commence all aspects of the approved notice campaign, including direct notice mailing and dedicated website, as more fully set forth in the Vasquez Declaration Regarding Dissemination of Class Notice, in accordance with the schedule set forth below.

9. No later than \_\_\_\_\_, \_\_\_\_ (the “Class Notice Date”) (30 days from the entry of the Preliminary Approval Order), the Settlement Notice Administrator shall cause the full versions of the Settlement Agreement and the Preliminary Approval Order to be published on a public website.

10. Beginning no later than \_\_\_\_\_, \_\_\_\_ (30 days from the entry of the Preliminary Approval Order), the Settlement Notice Administrator shall mail and/or email the notice, substantially in the form annexed as Exhibit B to the Settlement Agreement, to all Settlement Class members whose addresses can be identified with reasonable effort.

11. The Court approves, as to form and content, the Distribution Plan, attached as Exhibit A to the Settlement Agreement.

12. All reasonable expenses incurred in identifying and notifying members of the Settlement Class, as well as administering and distributing the settlement funds, shall be paid for as set forth in the Settlement Agreement.

13. The Court, pursuant to Rule 23, designates each of the named Plaintiffs in this action as class representatives and preliminarily appoints counsel Hagens Berman Sobol Shapiro LLP, Smith & Lowney, PLLC, and Shanahan Law Group, PLLC as Class Counsel in this matter.

14. Counsel shall file their motion for attorney fees, costs, and incentive awards, and all supporting documentation and papers, no later than \_\_\_\_\_, 2017 (14 days before the objection deadline).

15. Any person who desires to request exclusion from the Settlement Class shall do so by mailing their exclusion request to the address provided in the notice so they are received by the Settlement Notice Administrator or postmarked no later than 60 days after the Class Notice Date. All persons who submit valid and timely requests for exclusion shall have no rights under the Settlement Agreement, shall not share in the distribution of the settlement funds, and shall not be bound by the final judgment entered in the litigation.

16. Any member of the Settlement Class may enter an appearance in the litigation, at his or her own expense, individually or through counsel of his or her own choice. If the member does not enter an appearance, he or she will be represented by Class Counsel.

17. Any member of the Settlement Class may appear and, if he or she has any reason, show cause why the proposed Settlement should or should not be approved as fair, reasonable, and adequate; why a judgment should or should not be entered thereon; why the Distribution Plan should or should not be approved; why attorneys' fees and expenses should or should not be awarded to Class Counsel; or why the incentive awards should or should not be awarded to the

class representatives. All written objections and supporting papers must (a) clearly identify the case name and number, *Childress v. Bank of America, N.A.*, No. 5:15-cv-231; (b) be submitted to the Court by mailing them to the Clerk, United States District Court for the Eastern District of North Carolina, located at \_\_\_\_\_; and (c) be filed or postmarked no later than 60 days after the Class Notice Date.

18. Any objection to the Settlement, including objections to applications for attorneys' fees, shall be in writing and include an indication whether the Settlement Class member, and/or his or her counsel, intend to appear at the Final Approval Hearing. If so, any such lawyer must contemporaneously enter a written Notice of Appearance of Counsel with the Clerk of the Court, which includes the full caption and case number of each previous class action case in which that counsel has represented an objector.

19. All non-settlement-related proceedings in this action are stayed pending final approval of the proposed settlement.

20. Class Counsel shall file their motion for final approval of Settlement, and all supporting documentation and papers, no later than 35 days before the final Fairness Hearing, or by \_\_\_\_\_, 2017.

21. By this same date (no later than 35 days before the final Fairness Hearing), Class Counsel shall file with the Court a declaration from a representative of the Settlement Notice Administrator confirming that the plan for disseminating the notice has been accomplished in accordance with the Settlement Agreement and Distribution Plan approved and adopted here.

22. Class counsel shall file their responses to any objections to the Settlement Agreement, or to the application for attorneys' fees, reimbursement of expenses, and class

representative incentive awards, no later than 7 days before the final Fairness Hearing, or by \_\_\_\_\_, 2017.

23. If for any reason the Settlement Agreement is not finally approved by the Court, the Settlement Class shall be decertified, and each Settling Party's rights to litigate will be restored to the same extent as if the Settlement Agreement had never been entered into, and neither Settling Party shall assert that the other is estopped from taking any position relating to class certification.

24. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Plaintiffs or Defendants of the truth or falsity of any of the allegations in this lawsuit, or of any liability, fault, or wrongdoing of any kind.

25. All members of the Settlement Class are temporarily barred and enjoined from instituting or continuing the prosecution of any action asserting the claims released in the proposed Settlement, until the Court enters final judgment with respect to the fairness, reasonableness, and adequacy of the settlement.

26. All members of the Settlement Class shall be bound by all determinations and judgments in this lawsuit concerning the Settlement, whether favorable or unfavorable to the Settlement Class.

27. The Court adopts the following schedule proposed in the motion:

Event	Deadline
Order granting Motion for Preliminary Approval	_____, 2017.
Notice campaign to begin, including direct notice mailing and dedicated website ("Class	_____, 2017.

Notice Date”)	[30 days from preliminary approval]
Last day for motion for attorneys’ fees, costs, expenses, and service awards	_____, 2017. [14 days before objection deadline]
Last day to file objections to the Settlement or requests for exclusion from the Settlement Class	_____, 2017. [60 days from the Class Notice Date]
Last day for motion in support of final approval of Settlement; Last day to file Notice Declaration	_____, 2017. [35 days before Final Fairness Hearing]
Last day to respond to any objections to the Settlement Agreement, or to the application for attorneys’ fees, reimbursement of expenses, and class representative service awards	_____, 2017. [7 days before Final Fairness Hearing]
Final Fairness Hearing	_____, 2017, at _____ a.m./p.m.

28. The Court reserves the right to adjourn, continue, or otherwise change the date of the Fairness Hearing without further notice to the members of the Settlement Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement Agreement. The members of the Settlement Class are advised to confirm the date of the Fairness Hearing as set forth in the Settlement Notice. The Court may approve the Settlement Agreement, with such modifications as may be agreed to by the settling parties, if appropriate, without further notice to the Settlement Class.

This \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
HON. TERRENCE W. BOYLE  
UNITED STATES DISTRICT JUDGE