

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

STEPHENIE ROSE, on behalf herself and  
all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA CORPORATION,  
and FIA CARD SERVICES, N.A.,

Defendants.

CAROL DUKE AND JACK POSTER,  
on behalf of themselves and all others  
similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.; BANK OF  
AMERICA CORPORATION;  
AND FIA CARD SERVICES, N.A.,

Defendants.

Case No. 5:11-cv-02390-EJD (PSG)

**OBJECTION TO PROPOSED  
SETTLEMENT, FEE REQUEST,  
AND INCENTIVE PAYMENTS**

RECEIVED  
2014 MAR 31 P 5:01  
ROBIN W. WELLS  
CLERK U.S. DISTRICT COURT  
N.D. OF CALIFORNIA

RECEIVED

I, Erich Neumann ("Neumann"), an eligible Class Member, do hereby state as follows:

1. My name is Erich Neumann, and I reside at 5 Island Avenue, Unit 3J, Miami Beach, FL 33139. My telephone number is (305) 735-2404.

2. I am a Class Member. I received dozens of annoying and harassing automated calls regarding my mortgage loan during the class period. In my estimation, I received multiple calls per week for many months. These calls were especially frustrating because I was attempting to restructure my loan with Bank of America the entire time.

3. I object to the Settlement, Fee Request, and Incentive Payments in the above captioned matter, and I rely upon legal authority and evidenced cited herein.

4. My objections to the Proposed Settlement are as follows:

a. The settlement provides for only one (1) claim for class members who received harassing automated calls regarding mortgage payments. Additionally, it provides for

1 one (1) additional claim for class members who received harassing automated calls regarding  
2 credit card account payments. However, the settlement makes no distinction between class  
3 members, such as me, who received **multiple** harassing calls as compared to those who may  
4 have received only one or two harassing calls. Class members who received ongoing and  
5 multiple harassing calls on a weekly basis should be granted to right to make a claim for each of  
6 the calls received and should be entitled to a larger share of the total fund.

7 b. The total estimated payment for each claimant is inadequate. The notice  
8 form estimates that each claimant will receive between \$20 to \$40. However, to class members  
9 such as me, who received continuous harassing calls, this is completely inadequate  
10 compensation. Additionally, it will not stop the Defendants from engaging in the same behavior  
11 in the future if it prompts some of its debtors to pay their bills faster.

12 c. The attorneys' fee request is excessive compared to the actual billable  
13 time spent on the case. The plaintiff's counsel claims that 2,560.70 hours were spent during this  
14 litigation by its attorneys and staff. This number of attorneys' fees is simply impossible in a case  
15 that did not have substantial motion practice and did not go to trial. In fact, despite the long time  
16 period the case was open, there was very little litigation involved. After the motion to dismiss  
17 was fully briefed, no other substantive motions were filed until preliminary approval of  
18 settlement. Nor were there many discovery disputes that I can see from review of the docket. In  
19 summary, the Plaintiff filed its complaint, amended its complaint, filed one opposition brief to  
20 Defendant's motion to dismiss, entered into ADR, and then settled the case. This litigation was  
21 not hard fought by any stretch of the imagination and could not possibly have required the 2,560  
22 hours as claimed by the Plaintiff's counsel.

23 d. The rate claimed by the Plaintiff's counsel simply absurd. Plaintiff's  
24 counsel claims that 2,560.70 hours (including both attorney and staff hours combined) were  
25 spent on the file for a total dollar figure of \$1,396,523.75. This implies an average hourly rate of  
26 \$545.37 amongst all counsel and staff who worked on the file. As noted, this case did not  
27 involve complex issues, did not involve substantial motion practice and did not go to trial. In  
28

1 fact, although as much is not completely clear from the Plaintiff's filings, it appears that a large  
2 portion of the 2,560 hours were spent by staff members reviewing documents and administering  
3 claims forms. Certainly time spent by staff members and document reviewers, whether they  
4 were attorney or staff members, should not be compensated at such a high rate. Additionally,  
5 while I am sure that some of the attorneys involved in the litigation were highly experienced  
6 professionals, I find it hard to believe that they would command a rate at or over \$545 per hour  
7 for document review. In fact, in order for the overall rate (which presumably includes non-  
8 attorney staff and low level attorneys at lower rates) to average out to \$545 per hour, the  
9 experienced attorneys would have to be charging rates well in excess of \$700 to \$900 per hour.

10 e. The lodestar multiplier sought by the Plaintiff's counsel is clearly  
11 excessive. As discussed earlier, this case was not complex. It did not involve any novel issues.  
12 It did not involve any substantial motion practice. It did not involve any intensive discovery  
13 motions. It did not go to trial. Additionally, the Plaintiff's counsel are already overbilling and  
14 overcharging for each hour spent in their hourly rates. Yet, the Plaintiff's counsel are not  
15 content. They further request a 5.7x multiplier on top of their excessive lodestar. Plaintiff  
16 counsel's multiplier request equates to grand theft of the settlement funds that would otherwise  
17 go to the class members. The multiplier inflates Plaintiff's counsels' already inflated hourly  
18 rates from an average of \$545 per hour to a completely ridiculous \$3,106.50 per hour. This is  
19 unacceptable.

20 WHEREFORE, for the reasons stated above, I respectfully object to this settlement.

21  
22 Sincerely,



23  
24 Erich Neumann, Esq.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I hereby certify that on March 17, 2014, a true copy of the above document was served  
by U.S. Mail to the following:

Clerk of the Court  
U.S. District Court for the  
Northern District of California  
280 South 1st Street  
San Jose, CA 95113

Lieff Cabraser Heimann & Bernstein, LLP  
Embarcadero Center West  
275 Battery Street, 29th Floor  
San Francisco, CA 94111



Erich Neumann, Esq.