

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

STEVEN CHECCHIA, on behalf of himself
and all others similarly situated,

CASE NO. 2:21-cv-3585

Plaintiff

v.

BANK OF AMERICA, N.A.,

Defendant

**SUPPLEMENTAL DECLARATION OF CAMERON R. AZARI, ESQ. ON
IMPLEMENTATION AND ADEQUACY OF NOTICE PLAN**

I, Cameron R. Azari, Esq., hereby declare and state as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am a nationally recognized expert in the field of legal notice and have served as an expert in hundreds of federal and state cases involving class action notice plans.

3. I am a Senior Vice President of Epiq Class Action and Claims Solutions, Inc. (“Epiq”) and the Director of Legal Notice for Hilsoft Notifications, a firm that specializes in designing, developing, analyzing, and implementing large-scale, un-biased, legal notification plans. Hilsoft Notifications is a business unit of Epiq.

4. This declaration provides updated settlement administration statistics following the successful implementation of the Notice Plan (“Notice Plan”) and notices (the “Notice” or “Notices”) for *Checchia, et al., v. Bank of America, N.A., 2:21-cv-3585*, pending in United States District Court for the Eastern District of Pennsylvania. I previously executed my *Declaration of Cameron R. Azari, Esq. on Implementation and Adequacy of Notice Plan* (“Implementation Declaration”) on June 8, 2023, which described the successful implementation of the Notice Plan, detailed Hilsoft’s class action notice experience, attached Hilsoft’s curriculum vitae, and

provided settlement administration statistics. I also provided my educational and professional experience relating to class actions and my ability to render opinions on overall adequacy of notice programs.

NOTICE PLAN SUMMARY

5. Federal Rule of Civil Procedure 23 directs that notice must be “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort” and that “the notice may be by one or more of the following: United States mail, electronic means, or other appropriate means.”¹ The Notice Plan satisfied these requirements.

6. As detailed in my Implementation Declaration, the Notice Plan reached the greatest practicable number of Settlement Class members with individual notice via email and/or mail. The Notice Plan individual notice efforts reached approximately 93% of the identified Settlement Class members. The reach was further enhanced by a Settlement Website. In my experience, the reach of the Notice Plan was consistent with other court-approved notice plans, was the best notice practicable under the circumstances, and satisfied the requirements of due process, including its “desire to actually inform” requirement.²

CAFA NOTICE

7. As detailed in my Implementation Declaration, CAFA Notice—as required by the federal Class Action Fairness Act of 2005 (CAFA), 28 U.S.C. § 1715, was provided to 56 federal and state officials on June 28, 2022.

NOTICE PLAN IMPLEMENTATION

Individual Notice

8. As detailed in my Implementation Declaration, on March 9, 2023, Epiq received one data file with names, mailing addresses, email addresses, and account information, which

¹ Fed. R. Civ. P. 23(c)(2)(B).

² *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950) (“But when notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . .”).

was deduplicated and rolled-up. This resulted in 359,775 unique, identified Settlement Class member records (of these records, 1,527 records had no physical mail or email address that was mailable).

Individual Notice – Email

9. As detailed in my Implementation Declaration, on May 15, 2023, Epiq sent 137,760 Email Notices to identified Settlement Class members that are current accountholders for whom a valid email address was available, and for whom the Defendant’s data indicated were eligible to receive an Email Notice. After completion of the Email Notice efforts, 1,636 emails were not deliverable.

Individual Notice – Direct Mail

10. As detailed in my Implementation Declaration, on May 15, 2023, Epiq sent 220,488 Postcard Notices to identified Settlement Class members for whom an associated physical mailing address was available and who have not agreed to receive notices by email. The Postcard Notices were sent via United States Postal Services (“USPS”) first-class mail. Subsequently, on May 25, 2023, Epiq sent 1,636 Postcard Notices to identified Settlement Class members with an associated physical address for whom an Email Notice was undeliverable after multiple attempts.

11. The return address on the Postcard Notices is a post office box that Epiq maintains for this case. The USPS automatically forwarded Postcard Notices with an available forwarding address order that had not expired (“Postal Forwards”). Postcard Notices returned as undeliverable were re-mailed to any new address available through USPS information (for example, to the address provided by the USPS on returned mail pieces for which the automatic forwarding order had expired, but was still within the time period in which the USPS returned the piece with the address indicated), or to better addresses that were found using a third-party address lookup service. Upon successfully locating better addresses, Postcard Notices were promptly remailed. As of July 12, 2023, Epiq has remailed 1,534 Postcard Notices.

12. Additionally, a Long Form Notice was mailed to all persons who request one via the toll-free telephone number or other means. As of July 12, 2023, Epiq has mailed 1,869 Long Form Notices as a result of such requests.

Notice Results

13. As of July 12, 2023, an Email Notice and/or Postcard Notice was delivered to 334,773 of the 359,775 unique, identified Settlement Class members. This means the individual notice efforts reached approximately 93% of the identified Settlement Class members.

Settlement Website

14. The Settlement Website (www.NSFODFeeCheckSettlement.com) continues to be available 24 hours per day, 7 days per week. Relevant documents, including the Postcard Notice, Long Form Notice, Settlement Agreement, Preliminary Approval Order, Memorandum Opinion in Support of Preliminary Approval Order, Motion for Preliminary Approval, and Complaint are posted on the Settlement Website. In addition, the Settlement Website includes relevant dates, answers to frequently asked questions (“FAQs”), instructions for how Settlement Class members were able to opt-out (request exclusion) or object to the Settlement, contact information for the Settlement Administrator, and how to obtain other case-related information. As of July 12, 2023, there have been 53,390 unique visitor sessions to the Settlement Website, and 77,658 web pages have been presented.

Toll-Free Telephone Number and Other Contact Information

15. The toll-free telephone number (888-771-2047) established for the Settlement continues to allow Settlement Class members to call for additional information, listen to answers to FAQs, and to request that a Long Form Notice be mailed to them. This automated phone system is available 24 hours per day, 7 days per week. As of July 12, 2023, there have been 8,753 calls to the toll-free telephone number representing 20,188 minutes of use.

16. A postal mailing address continues to be available to allow Settlement Class members to contact the Settlement Administrator to request additional information or ask questions.

Requests for Exclusion and Objections

17. The deadline to opt-out from the Settlement or to object to the Settlement was June 24, 2023. As of July 12, 2023, Epiq has received five requests for exclusion. The Request for Exclusion Report is included as **Attachment 1**. A sixth request was submitted by an individual named Victor M. Crown purportedly as administrator for an Estate of Lourdes Theodossis, which inconsistently purports to both request exclusion from the Settlement Class and to offer an objection to the Settlement. Epiq can confirm that there is no Settlement Class member by either name. Therefore, the Parties have instructed Epiq not to include Victor M. Crown or Estate of Lourdes Theodossis as an opted-out Settlement Class member.

18. As of July 12, 2023, I am aware of no objections to the Settlement.

19. I am aware of one document that was provided to Epiq by a non-Settlement Class member that does not appear to have been filed with the Court, which requested to opt-out of the Settlement as well as provide a notice of intent to object. I have reviewed the document and it does not involve anything regarding notice or settlement administration. I further understand the parties will address this submission.

CONCLUSION

20. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, by federal rules and statutes, and further by case law pertaining to notice. This framework directs that the notice program be designed to reach the greatest practicable number of potential class members, and that the notice or notice program itself not limit knowledge of the availability of options—nor the ability to exercise those options—to class members in any way. All of these requirements were met in this case.

21. The Notice Plan included individual notice via email and/or mail to identified Settlement Class members. With the address updating protocols that were used, the Notice Plan individual notice efforts reached approximately 93% of the identified Settlement Class members. The reach was further enhanced by the Settlement Website. In 2010, the Federal Judicial Center

(“FJC”) issued a *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide*, which is relied upon for federal cases. This Guide states that, “the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%.”³ Here, we have developed and implemented a Notice Plan that readily achieved a reach at the highest end of that standard.

22. The Notice Plan described above provided the best notice practicable under the circumstances of this case, conformed to all aspects of the Federal Rule of Civil Procedure 23 regarding notice, comported with the guidance for effective notice articulated in the Manual for Complex Litigation, Fourth, and exceeded the requirements of due process, including its “desire to actually inform” requirement.

23. The Notice Plan schedule afforded sufficient time to provide full and proper notice to Settlement Class members before the opt-out and objection deadlines.

24. I declare under penalty of perjury that the foregoing is true and correct. Executed July 12, 2023.



Cameron R. Azari, Esq.

³ FED. JUDICIAL CTR, JUDGES’ CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 3 (2010), available at <https://www.fjc.gov/content/judges-class-action-notice-and-claims-process-checklist-and-plain-language-guide-0>.

Attachment 1

Checchia v. Bank of America, N.A.

Timely Requests for Exclusion

Opt Out No.	Name
1	DR SEYMOUR BACHMAN REV TRUST AGREEMENT
2	TARA T NGUYEN
3	CARMEN WILLOUGHBY
4	CHRISTOPHER TRICOCHE
5	DONNA A MCALISTER