

1 JAMES C. STURDEVANT (SBN 94551)
2 MARK T. JOHNSON (SBN 76904)
3 THE STURDEVANT LAW FIRM
4 475 Sansome Street, Suite 1750
5 San Francisco, California 941 1 1
6 Telephone: (415) 477-2410
7 Facsimile: (415) 477-2420

8 THOMAS J. BRANDI (SBN 53208)
9 TERENCE D. EDWARDS (SBN 168095)
10 LAW OFFICE OF THOMAS J. BRANDI
11 44 Montgomery Street, Suite 1050
12 San Francisco, CA 94104
13 Telephone: (415) 989-1 800
14 Facsimile: (415) 989-1 801

15 Attorneys for Plaintiffs

ENDORSED
FILED
San Francisco County Superior Court

OCT 16 2001

GORDON PARK-LI, Clerk
BY: ROBERT COULDING
Deputy Clerk

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SAN FRANCISCO**
13 **UNLIMITED JURISDICTION**

15 PAUL MILLER, individually and on behalf of)
16 others similarly situated,)

17 Plaintiff,)

18 vs.)

19 BANK OF AMERICA N.T. & S.A.)
20 a California corporation, and DOES 1 - 50,)

21 Defendants.)
22)
23)
24)
25)
26)
27)
28)

CASE NO. 301917

CLASS ACTION

**FWW0SEB1 ORDER CERTIFYING
THE CLASS**

1 The Motion to Certify the Class filed by plaintiff Paul Miller came on for
2 learing before this Court on June 8, 2001 and again in continued proceedings on
3 August 3, 2001, the Honorable Anne E. Bouliane presiding. James C. Sturdevant
4 and Mark T. Johnson of The Sturdevant Law Firm appeared on behalf of plaintiff
5 'au1 Miller, Arne Wagner of Morrison & Foerster LLP appeared on behalf of
6 defendant Bank of America ("BofA"). Having heard oral argument and read and
7 zonsidered the papers submitted in support of and in opposition to the motion; as
8 well as other pleadings and papers on file in this case,

9 THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

10 1. Plaintiff Paul Miller's Motion to Certify the Class is GRANTED. The
11 certified class includes the following persons:

12 All California residents who have, have had or will have, at any time
13 after August 13, 1994, a checking or savings deposit account with
14 Bank of America into which payments of Social Security benefits or
other public benefits are or have been directly deposited by the
government or its agent.

15 The Court's Order certifying the above-described class is based upon the following
16 Findings and determinations:

17 **Ascertainability of the Class.**

18 The class is ascertainable. The court finds that the class is sufficiently
19 numerous that joinder of individual members would be impractical. Members of the
20 class share objectively determined common characteristics, including the following:

21 (1) they are residents of California; (2) they have checking or savings accounts with
22 Bank of America during any period of time after August 13, 1994; and (3) they
23 have received Social Security or other public benefits from the government by
24 means of direct deposit of those funds electronically into their Bank of America
25 accounts.

26 **Community of Interest.**

27 The court finds that there is a well-defined community of interest among the
28 members of the class. Common issues of law and fact predominate over individual

1 issues to, be litigated in this case. The allegations of the complaint concern
2 practices regarding actions taken against a depositor's account which are
3 admittedly applied to all members of the class. (See, e.g., Declaration of Mark T.
4 Johnson, 7 5, Exh. C (Jackson) 64:24-65:9). The allegations concerning false and
5 misleading statements as to. the safety and security of direct deposit accounts and
6 the instant availability of funds in them, which apply to all remaining causes of
7 action in the First Amended Complaint, are based upon institution-wide marketing
8 practices and the utilization of standardized marketing materials. (Johnson Decl.,
9 7 9, Exh. G)

10 The Court also finds that litigation of this case as a class action is superior to
11 alternative means for the fair and efficient adjudication of the claims asserted in the
12 First, Second, Sixth and Seventh Causes of Action. Class treatment of the Fourth
13 Cause of Action for violations of the Consumer Legal Remedies Act does not
14 require a finding of superiority. Civil Code § 1781 (b); *Hogya v. Superior Court*
15 (1977) 75 Cal.App.3d 122, 136.

16 2. Each of plaintiff's objections to the evidence proffered by defendant
17 in opposition to the Motion for Class Certification is OVERRULED.

18 IT IS SO ORDERED.

19
20 DATED: _____, 2001

ANNE BOULIANE

The Honorable Anne Bouliane
JUDGE OF THE SUPERIOR COURT

21
22
23 Approved as to form:

MORRISON & FOERSTER LLP

24
25
26 DATED: / y2l r0 0 1

By: Arne Wagner
Arne Wagner

Attorneys for Defendant