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13 Facsimile: (415) 953-1334

14 Attorneys for Defendant  
BANK OF AMERICA N.A.  
15

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 CITY AND COUNTY OF SAN FRANCISCO  
18

19 PAUL MILLER, INDIVIDUALLY AND ON  
BEHALF OF OTHERS SIMILARLY  
20 SITUATED,

21 Plaintiff,

22 v.

23 BANK OF AMERICA, NT & SA,

24 Defendant.  
25

26 AND RELATED CROSS ACTION  
27  
28

**FILED**  
San Francisco County Superior Court

DEC 13 2002

GORDON PARK-LI, Clerk  
BY: Shanne Briff Deputy Clerk

No. 301917

CLASS ACTION

**[PROPOSED] ORDER REGARDING  
NOTICE TO PLAINTIFF CLASS**

1           Upon plaintiff Paul Miller's motion for class notice, argument of counsel for the plaintiff class  
2 and Bank of America N.A. ("Bank of America") on September 27, 2002, and December 11, 2002,  
3 and other telephonic conferences with counsel, and good cause appearing and in the interest of  
4 justice, IT IS HEREBY ORDERED AS FOLLOWS:

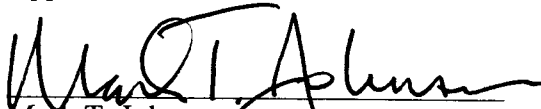
5           1.       Bank of America shall provide notice to the plaintiff class by sending a copy of the  
6 document attached hereto as Exhibit A ("Class Notice"), including any modifications referenced in  
7 this Order, by including the Class Notice with the account statements mailed by Bank of America in  
8 February 2003 to its California customers who have checking or savings accounts with Bank of  
9 America. It is understood that statements may not be mailed to customers who have savings accounts  
10 in which there has been no recent activity. Plaintiff's counsel shall by 12:00 p.m. on December 13,  
11 2002, provide to Bank of America's counsel the address to which class members may send opt out  
12 notices, which address shall be included in the final copy of the Class Notice.

13           2.       Plaintiff and class counsel shall reimburse Bank of America for the costs of printing or  
14 copying the Class Notices up to a maximum of \$40,000 or one-fifth (1/5) of the total reproduction  
15 costs, whichever amount is less. Plaintiff and class counsel shall reimburse Bank of America within  
16 30 days after receiving an invoice for such costs.

17  
18 Dated: \_\_\_\_\_, 2002

19  
20 \_\_\_\_\_  
The Honorable Anne Bouliane  
Judge of the Superior Court

21 Approved as to form:

22   
23 Mark T. Johnson  
24 The Sturdevent Law Firm  
25 475 Sansome Street, Suite 1750  
San Francisco, California 94111

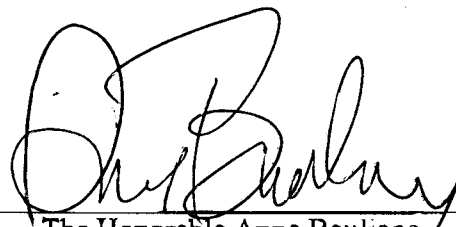
26 Attorneys for Plaintiff  
27  
28

1           Upon plaintiff Paul Miller's motion for class notice, argument of counsel for the plaintiff class  
2 and Bank of America N.A. ("Bank of America") on September 27, 2002, and December 11, 2002,  
3 and other telephonic conferences with counsel, and good cause appearing and in the interest of  
4 justice, IT IS HEREBY ORDERED AS FOLLOWS:


5           1.       Bank of America shall provide notice to the plaintiff class by sending a copy of the  
6 document attached hereto as Exhibit A ("Class Notice"), including any modifications referenced in  
7 this Order, by including the Class Notice with the account statements mailed by Bank of America in  
8 February 2003 to its California customers who have checking or savings accounts with Bank of  
9 America. It is understood that statements may not be mailed to customers who have savings accounts  
10 in which there has been no recent activity. Plaintiff's counsel shall by 12:00 p.m. on December 13,  
11 2002, provide to Bank of America's counsel the address to which class members may send opt out  
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14 copying the Class Notices up to a maximum of \$40,000 or one-fifth (1/5) of the total reproduction  
15 costs, whichever amount is less. Plaintiff and class counsel shall reimburse Bank of America within  
16 30 days after receiving an invoice for such costs.

17           Dated: 12-13, 2002

  
The Honorable Anne Bouliane  
Judge of the Superior Court

21           Approved as to form:

22             
23           Mark T. Johnson  
24           The Sturdevant Law Firm  
25           475 Sansome Street, Suite 1750  
26           San Francisco, California 94111

27           Attorneys for Plaintiff

# EXHIBIT A

**IMPORTANT LEGAL NOTICE OF CLASS ACTION LAWSUIT AFFECTING YOUR RIGHTS**

THIS IS A COURT ORDERED LEGAL NOTICE to advise you of a class action lawsuit in the Superior Court for the City and County of San Francisco, California which may affect your legal rights. The lawsuit, *Miller v. Bank of America*, is brought on behalf of a class of **all California residents who at any time since August 13, 1994 have had a checking or savings account with Bank of America into which payments of Social Security benefits or other public benefits have been directly deposited by electronic means.** This notice is to inform you about the case so you can make a decision as to what steps you may wish to take in relation to this lawsuit.

**Explanation of the Case:** The plaintiff in this case contends that Bank of America's practice of taking funds from Social Security direct deposit accounts to cover overdrafts, overdraft fees and other amounts it claims against account-holders is illegal and an unfair business practice. Plaintiff also contends that the bank has made misrepresentations to customers by stating that using direct deposit is safe and secure and will assure that their funds will be in their account when needed. Plaintiff seeks actual damages, statutory damages and punitive damages for himself and all members of the class. Plaintiff also seeks an order requiring Bank of America to return all the money it took from Social Security direct deposit accounts since August of 1994 to cover overdrafts, overdraft fees and other charges. Finally, plaintiff seeks an injunction prohibiting the bank from offsetting overdrafts, overdraft fees and other amounts against direct deposit Social Security or other government benefit accounts in the future. Defendant Bank of America maintains that its conduct is legal and denies that plaintiff and members of the class are entitled to any relief. Bank of America contends that the relief plaintiff seeks would prevent the Bank from providing class members overdraft protection and from honoring their checks written against insufficient funds. The case has been certified as a class action by the Superior Court and is scheduled to go to trial in May 2003.

**Estimated Possible Recovery:** If plaintiffs prevail and obtain the full amount of the recovery they seek on behalf of the class, each class member should receive the total of those overdrafts and fees recovered from the Social Security direct deposit funds in their account since August 13, 1994, plus a share of any punitive or statutory damages awarded. If the recovery is less than the total amount sought, each class member should receive a share proportional to his/her loss. Class counsel also intends to seek an award of attorneys fees, costs and expenses against the defendant bank under Civil Code section 1780 [the CLRA provision] and other statutory provisions. Bank of America contends, among other things, that, to the extent plaintiff and the class prevail and the Bank is required to refund overdrafts cleared from the class members' accounts or fees charged to their accounts, the Bank is entitled to recover those same funds from class members by cross-claims or otherwise.

**How to Be Included or Excluded From the Class:** If you are a member of the class defined above and wish to be included, you do not have to do anything at this time. If, however, you want to be excluded from the class you must give notice of your intent to "opt out" of the case by mailing a written statement to P.O. Box \_\_\_\_\_, San Francisco, California which includes: (1) your name and address; and (2) a statement that you elect to be excluded from the class, such as "I wish to be excluded from the class in *Miller v. Bank of America*." This notice must be received on or before April 1, 2003. If you exclude yourself from the class in this manner you will not share in any recovery in this case, and will not be bound by any judgment that may be rendered in the case. You may be able to pursue any individual claims you may have against the Bank of America, but it is possible that claims similar to those made by the plaintiff in this lawsuit may be barred in whole or in part by various defenses of the defendant, including the applicable statute of limitations.

Class members who do not opt out of the class are automatically included in the lawsuit, will be entitled to participate in any recovery awarded in the lawsuit, will be legally bound by any judgment entered and will not be able to take independent action or file a separate lawsuit against the defendant based upon the same conduct. If you do not request exclusion, your interests will be represented by the class representative through the following attorneys, who represent the plaintiff and the certified class. The names, addresses and telephone numbers of those attorneys are as follows:

James C. Sturdevant  
Mark T. Johnson  
The Sturdevant Law Firm  
475 Sansome Street, Suite 1750  
San Francisco, California 94111  
Telephone: (415) 477-2410  
Facsimile: (415) 477-2410  
e-mail: justice @sturdevantlaw.com

Thomas J. Brandi  
Law Office of Thomas J. Brandi  
44 Montgomery Street, Suite 900  
San Francisco, CA 94104  
Telephone: (415) 989-1800  
Facsimile: (415) 989-1801

**PROOF OF PERSONAL SERVICE**  
(CCP 1011, 2015.5)

1  
2 I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market  
3 Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of  
4 eighteen years and I am readily familiar with Morrison & Foerster's practice for the collection and  
5 processing of documents for hand delivery and know that in the ordinary course of Morrison &  
6 Foerster's business practice the document(s) described below will be taken from Morrison &  
7 Foerster's mailroom and hand delivered to the document's addressee (or left with an employee or  
8 person in charge of the addressee's office) on the same date that it is placed at Morrison & Foerster's  
9 mailroom.

6 I further declare that on the date hereof I served a copy of:

7 **[PROPOSED] ORDER REGARDING NOTICE TO PLAINTIFF CLASS**

8  
9 on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for  
10 collection and delivery at the mailroom of Morrison & Foerster LLP, 425 Market Street, San  
11 Francisco, California, 94105, in accordance with Morrison & Foerster's ordinary business practices:

11 James C. Sturdevant  
12 Mark T. Johnson  
13 The Sturdevant Law Firm  
14 475 Sansome Street, Suite 1750  
15 San Francisco, California 94111

14 Thomas J. Brandi  
15 Law Offices of Thomas J. Brandi  
16 44 Montgomery Street, Suite 1050  
17 San Francisco, California 94104

17  
18 I declare under penalty of perjury under the laws of the State of California that the above is  
19 true and correct.

19 Executed at San Francisco, California, this 11th day of December, 2002.

21 Kay Franklin  
22 \_\_\_\_\_  
(typed)

21   
22 \_\_\_\_\_  
(signature)