

MAR 4 - 2005

GORDON PARK-LI, Clerk

BY: [Signature] Deputy Clerk

IN THE SUPERIOR COURT
CITY AND COUNTY OF SAN FRANCISCO
STATE OF CALIFORNIA

PAUL MILLER, individually and on behalf of
others similarly situated,

Plaintiffs,

vs.

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

Defendants.

CASE NO. CGC-99-301917

JUDGMENT

This action came on regularly for jury trial on January 20, 2004 in Department 624 of the Superior Court, the Hon. Anne Bouliane, Judge assigned to the case for all purposes, presiding. The plaintiff Paul Miller and the certified plaintiff class of similarly situated persons appeared through their counsel Thomas J. Brandi of the Brandi Law Firm and James C. Sturdevant and Mark T. Johnson of the Sturdevant Law Firm. Defendant Bank of America, N.A., originally sued as Bank of America, N.T. & S.A., was represented by Joseph S. Genshlea of Weintraub Genshlea Chediak Sproul and by Arne D. Wagner, Arturo J. Gonzalez and Heather A. Moser of Morrison & Foerster LLP.

On January 30, 2004 a jury of 12 persons and 4 alternates was regularly impaneled and sworn to receive evidence and render a verdict on plaintiffs' causes of action for intentional and negligent misrepresentation and for violations of the Consumer Legal Remedies Act, Civil Code sections 1770(a)(5) and 1770(a)(14). The court, sitting without a jury, received additional

1 evidence on plaintiffs' claims under Civil Code section 1770(a)(19), the Unfair Competition Law,
2 Business and Professions Code section 17200, *et seq.* and the False Advertising Act, Bus. & Prof.
3 Code § 17500, *et seq.*

4 Witnesses were sworn and testified. After considering the evidence and the arguments of
5 counsel related to the issues before the jury, the jury was duly instructed by the Court and the cause
6 was submitted to the jury with directions to return a verdict on special issues. The jury deliberated
7 and thereafter returned to court with its special verdict, a copy of which is attached hereto as
8 Exhibit 1 and made a part hereof.

9
10 The jury awarded damages to the class in the amount of \$75,077,836.00 for amounts
11 collected by the defendant in the form of NSF fees set off or assessed against class member
12 accounts in violation of the law. In addition, having made the necessary findings, the jury
13 determined that an additional statutory damage award for members of the class under Civil Code
14 section 1780(b) was appropriate and awarded such damages in the amount of \$1,000.00 for each
15 class member who suffered substantial economic or emotional damage as a result of the
16 defendant's conduct. The jury also awarded additional individual damages for emotional distress to
17 plaintiff Paul Miller in the amount of \$275,000.00.

18 Based upon its consideration of all of the testimony and evidence before it, and the
19 arguments of counsel, the Court issued its Tentative Statement of Decision on the non-jury issues
20 on October 13, 2004. Thereafter, the parties submitted objections and proposed changes to the
21 Tentative Statement of Decision, together with additional materials and evidentiary submissions,
22 and presented oral argument to the Court in support of their objections at a hearing on December 8,
23 2004. After considering the parties' written objections and the argument in support of those
24 objections, the Court issued its final Statement of Decision on December 30, 2004. A copy of the
25 Court's Statement of Decision is attached hereto as Exhibit 2 and made a part hereof.

26 The Court has determined, and continues to find, that all of the conditions for treatment of
27 this case as a class action pursuant to Code of Civil Procedure §382 and Civil Code §1781 have
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1 existed and continue to exist. The class was certified by the Court on October 16, 2001 and
2 includes the following persons:

3 All California residents who have, have had, or will have, at any time
4 after August 13, 1994, a checking or savings deposit account with
5 Bank of America into which payments of Social Security benefits or
6 other public benefits are or have been directly deposited by the
7 government or its agent.
8

9 Notice was given to the class during May and June, 2002 by means of an insert included
10 with the bank statements mailed to Bank of America customers having California checking or
11 savings accounts at that time. Following issuance of the notice and within the period permitted by
12 the Court for opting out of the class, 3,314 persons exercised their right to exclude themselves from
13 the class. A list of those persons is attached hereto as Exhibit 3 and is made a part hereof. All
14 other persons satisfying the definition of the class above are members of the class to whom this
15 judgment applies.

16 On February 19, 2004, at the close of the trial and approximately two years and four months
17 after issuance of the initial order certifying the class, Bank of America moved for decertification of
18 the class on the grounds that class treatment of the claims were inappropriate, that the class was
19 impermissibly broad and that plaintiff Paul Miller was not an adequate class representative. On
20 August 4, 2004, this Court, having considered the written memoranda in support of and in
21 opposition to the motion, and having heard oral argument from the parties on several dates, denied
22 the Bank's motion to decertify the class, finding that all of the criteria and conditions for class
23 certification were satisfied.

24 Plaintiff Paul Miller and the certified plaintiff class are entitled to judgment against
25 defendant Bank of America, N.A., originally sued as Bank of America N.T.S.A. ("the Bank"), in
26 the amount of \$284,385,741.00, collected through December 31, 2003, plus an additional \$1,000.00
27 per class member for each class member whose account was set off or assessed an NSF fee in
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1 violation of law, and that plaintiff Paul Miller is entitled to judgment against the bank in the
2 additional sum of \$275,000.00 in emotional distress damages awarded by the jury.

3 **NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED AS**
4 **FOLLOWS:**

5 (1) Definitions:

6 (A) As used throughout this Judgment, “NSF (non-sufficient funds) fee(s)”
7 means those fees which the Bank of America charges customers when a
8 debit is posted to the account and there are insufficient funds in the account
9 to cover the amount of the debit.

10 (B) As used herein, “Social Security benefits” means payments authorized by the
11 Social Security Administration for regular retirement and survivors’ benefits,
12 supplemental security income benefits, coal miners’ health benefits, and
13 disability insurance benefits.

14 (C) As used herein, “public benefits” means aid payments authorized pursuant to
15 subdivision (a) of section 11450 of the Welfare and Institutions Code,
16 payments for supportive services as described in Section 11323.2 of the
17 Welfare and Institutions Code, and general assistance payments made
18 pursuant to Section 17000.5 of the Welfare and Institutions Code.

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20 (2) Plaintiff and class members shall have judgment against and recover from defendant Bank
21 of America the sum of \$295,650,220 (representing \$284,385,741.00 in NSF fees
22 unlawfully collected through December 31, 2003, interest at the legal rate of ten
23 percent (10%) per annum on \$75,077,836.00 of that sum from the date of the
24 verdict, February 25, 2004, to the date of entry of judgment, and interest at the legal
25 rate of 10% per annum on the balance of \$209,307,905 from the date of the Court’s
26 Statement of Decision, December 30, 2004 to the date of entry of judgment), plus
27 interest at the legal rate of 10% per annum on this total from the date of the entry of
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1 this judgment until paid. Any unpaid residue after reasonable efforts at payment are
2 made to the Court's satisfaction shall be paid pursuant to California Code of Civil
3 Procedure §384.

4 (3) Plaintiff and class members shall have judgment against and recover from
5 defendant Bank of America the additional amount of \$1,000.00 per class
6 member whose account was assessed an NSF fee in violation of law, with
7 interest thereon at the rate of ten percent (10%) per annum from the date of
8 the entry of the verdict, February 25, 2004, until paid.

9 (4) Plaintiff Paul Miller shall have judgment against and recover from defendant
10 Bank of America the additional sum of \$275,000.00 for emotional distress
11 damages, with interest thereon at the rate of ten percent (10%) per annum
12 from the date of the entry of the verdict, February 25, 2004, until paid.

13 (5) Bank of America shall be and is permanently enjoined as follows:

14 (a) Bank of America shall cease and refrain from making any representation or
15 statement to California customers or potential customers, in writing or orally
16 through its employees or representatives, that it has the right to set off or take
17 NSF fees or other non-bank-fee money claims it has against customers from
18 directly deposited Social Security benefits and other public benefits in
19 customer deposit accounts in California.

20 (b) Bank of America shall cease and refrain from taking any directly deposited
21 Social Security benefits or other public benefits from customer accounts in
22 California to satisfy NSF fees and other monetary claims it has against
23 customers.

24 (6) Bank of America shall identify, locate and repay each class member from whom it
25 seized exempt Social Security benefits to pay itself NSF fees the full amount of
26 those fees, plus interest at the rate of 10% per annum, and make a full report to the
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1 Court on its efforts quarterly beginning thirty (30) days following the entry of this
2 judgment.

3 (7) Bank of America shall identify, locate and repay each class member from whom it
4 seized exempt Social Security benefits to pay itself NSF fees the additional statutory
5 damages of \$1,000.00, plus interest, and make a full report to the Court on its efforts
6 to do so quarterly beginning thirty (30) days following the entry of this judgment.
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8 (8) Pursuant to Civil Code §1781(g), Bank of America is ordered to prepare and give
9 notice of this judgment, in the same manner as the original notice, to each class
10 member who was previously served with notice of this action. Bank of America is
11 further ordered to provide such notice in the same manner to those class members
12 who did not have Bank of America checking or savings accounts at the time of the
13 original notice but now have such. The notice described herein shall be given on or
14 before the date which is 30 days from the date of entry of this judgment. The cost of
15 notice is to be borne by Bank of America.

16 (9) Enforcement of the provisions of paragraphs 5, 6, 7 and 8 of this judgment is
17 temporarily stayed pursuant to California Code of Civil Procedure §918 for a period
18 not exceeding 10 days beyond the last date on which a notice of appeal may be filed.

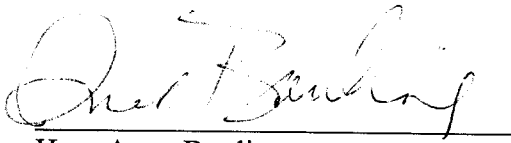
19 (10) The Bank shall preserve all documents, as defined in Evidence Code § 250, that are
20 necessary to enable it to identify, locate and repay plaintiff and class members.

21 (11) The Court retains jurisdiction to determine the amount of reasonable attorneys fees
22 and costs payable to plaintiffs and class counsel pursuant to Civil Code section
23 1780(d), Civil Code section 1021.5 or any other statutory or other legal basis, as
24 well as to determine the costs to which plaintiffs are entitled from Bank of America
25 pursuant to Code of Civil Procedure section 1032(b). The Court further retains
26 jurisdiction to make such other orders or rulings as are necessary to implement or
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1 enforce the terms of this judgment, including the Bank's efforts to identify, locate
2 and pay the amounts owed to class members described in paragraphs 6 and 7, above.

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4 (11) Cross-defendant Paul Miller, and the Cross-defendant class, are entitled to judgment
5 on Bank of America's cross-complaint for declaratory relief.

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7 DATED:

March 4, 2005 

8 Hon. Anne Bouliane
9 Judge of the Superior Court