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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELLE NGUYEN, ARDAVAN MOVASSAGHI, and ETIENNE BERNSTEIN individually and on behalf of all others similarly situated,

Plaintiffs,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No. 5:23-cv-04999-PCP

UNOPPOSED MOTION TO MODIFY PRELIMINARY APPROVAL ORDER AND SETTLEMENT SCHEDULE; [PROPOSED] ORDER

Hearing Date: December 17, 2026
Time: 10:00 am
Courtroom: 8

Judge: Hon. P. Casey Pitts

INTRODUCTION

Plaintiffs Elle Nguyen, Ardavan Movassaghi, and Etienne Bernstein, on behalf of themselves and the Settlement Class ("Plaintiffs"), respectfully move for a limited modification of the Court's September 1, 2026 Order Granting Preliminary Approval of Class Action Settlement (ECF No. 95) (the "Preliminary Approval Order"). The requested modification would: (1) extend the deadline for Plaintiffs to file their motions for final approval, attorneys' fees and costs, and service awards from November 2, 2026 to November 13, 2026; (2) conform the deadline for objections to the Settlement, requests for exclusion, and Adjustment Forms to November 27, 2026, consistent with the 45-day response period provided in the Notice mailed on October 13, 2026; (3) provide Settlement Class Members through December 4, 2026, 21 days after the filing of the attorneys' fee, cost, and service awards motion, to submit objections specifically directed to attorneys' fees, costs, and service awards; (4) extend the deadline for Plaintiffs and the Settlement Administrator to file their notice-status declaration from December 3 to December 8, 2026, so that the declaration may account for submissions received through the revised fee-objection deadline; and (5) make the corresponding modifications to the remaining briefing schedule described below. The Parties do not request any change to the December 17, 2026 Final Approval Hearing.

Good cause and excusable neglect support the requested relief under Federal Rules of Civil Procedure 16(b)(4) and 6(b)(1)(B). Plaintiffs' counsel inadvertently missed the November 2 filing deadline during a recent transition in responsibility for management of the matter, during which counsel failed to account for the opening-motion date established by the complete briefing schedule in the Preliminary Approval Order. The requested modification is limited, will not affect the Final Approval Hearing, and will not prejudice Defendant, which does not oppose either this motion or Plaintiffs' anticipated motion for attorneys' fees, costs, service awards, and final approval. The revised schedule also protects Settlement Class Members by preserving both the full 45-day period following the mailing for the Notice and the 21-day period contemplated for review of Plaintiffs' fee, cost, and service award application.

I. BACKGROUND

A. Preliminary Approval and the Existing Schedule.

On September 1, 2026, the Court granted preliminary approval of the Parties' class action settlement, approved the form and manner of notice, appointed Analytics Consulting LLC as Settlement Administrator, and set the schedule through final approval. ECF No. 95. As relevant here, the Preliminary Approval Order required Plaintiffs to file their motions for attorneys' fees and costs, service awards, and final approval by November 2, 2026; required objections, requests for exclusion, and disputes concerning settlement calculations by November 23, 2026; set November 25, 2026 as the opposition deadline and December 3, 2026 as the reply deadline; and set the Final Approval Hearing for December 17, 2026 at 10:00 a.m.

B. Notice Was Mailed on October 13, 2026, and Provides a November 27 Objection and Exclusion Deadline.

Following preliminary approval, Defendant timely provided the Settlement Administrator with the class settlement data required by the Settlement Stipulation's Data Disclosure provision on September 24, 2026. On September 29, 2026, the Settlement Administrator advised the Parties that the data did not include pre-2017 information for the Illinois Class or all additional fields referenced in the Court-approved Plan of Allocation.

Defendant thereafter worked to obtain those additional data fields, while the Parties and the Settlement Administrator worked to complete the data-verification process and meet the October 8, 2026 notice deadline. Defendant provided the additional Plan-of-Allocation fields later on October 8, 2026, after which the Parties and the Settlement Administrator completed the verification of the data required to calculate individualized settlement payments. Because October 12, 2026 was a postal holiday, the Settlement Administrator mailed the Notice on October 13, 2026.

Consistent with the Settlement's contemplated 45-day notice period, the Notice identifies November 27, 2026, as the deadline for Settlement Class Members to object, request exclusion, or submit an Adjustment Form.

The Settlement Website is live and provides Settlement Class Members access to case and settlement materials. As the Notice directs Settlement Class Members to check the Settlement Website for updates and information regarding the Settlement, Plaintiffs will post this Unopposed Motion to the Settlement Administrator on the Settlement Website on the date it is filed. Plaintiffs will likewise

provide their November 13 motions for final approval, attorneys' fees and costs, and service awards to the Settlement Administrator for posting on the date those motions are filed. If the Court grants the requested modification, the Settlement Administrator will promptly post the Court's Order on the Settlement Website, thereby advising Settlement Class Members that Plaintiffs' filing deadline has been modified and that Settlement Class Members will have through December 4, 2026 to submit objections specifically directed to Plaintiffs' request for attorneys' fees, costs, and service awards.

C. Plaintiffs Inadvertently Missed the November 2 Filing Deadline.

Plaintiffs' counsel inadvertently missed the November 2 filing deadline established by the Preliminary Approval Order. The oversight occurred during a recent transition in responsibility for management of the matter, during which counsel failed to account for the opening-motion date established by the complete briefing schedule in the Preliminary Approval Order. Plaintiffs' counsel accepts responsibility for the oversight and promptly sought to correct the schedule upon identifying it.

Plaintiff's counsel met and conferred with Defendant's counsel and confirmed that Defendant does not oppose modification of the schedule as outlined herein or Plaintiffs' anticipated motion for attorneys' fees, costs, service awards, and final approval. The Parties have not previously requested that the Court extend the November 2, 2026 filing deadline.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 16(b)(4) permits modification of a scheduling order "only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). Because the November 2 deadline has passed, Rule 6(b)(1)(B) additionally requires Plaintiffs to establish that their failure to act resulted from excusable neglect. Fed. R. Civ. P. 6(b)(1)(B). The determination whether neglect is excusable is "at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission," including "the danger of prejudice," "the length of the delay and its potential impact on judicial proceedings," "the reason for the delay, including whether it was within the reasonable control of the movant," and "whether the movant acted in good faith." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993). The Ninth Circuit applies the *Pioneer* framework in determining excusable neglect and has recognized that negligence does not categorically foreclose

relief. *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997).

This Court's Civil Standing Order likewise provides that case schedules will be modified only for good cause and requires any request to modify dates to identify prior extension requests and include a proposed order listing all future deadlines as modified. The accompanying proposed order supplies the complete revised schedule.

III. GOOD CAUSE AND EXCUSABLE NEGLECT SUPPORT THE LIMITED MODIFICATION

A. The Requested Modification Will Cause No Prejudice.

The requested modification will not prejudice Defendant or the Settlement Class. Defendant does not oppose the modification and, consistent with the Settlement Stipulation, does not intend to oppose Plaintiffs' anticipated motions for attorneys' fees, costs, service awards, and final approval so long as those requests do not exceed the amounts contemplated by the Settlement and disclosed to the Settlement Class. The requested modification will not alter the substantive terms of the Settlement or require continuation of the December 17 Final Approval Hearing.

Likewise, there is no prejudice to Settlement Class Members. The proposed schedule preserves the full 45-day period following mailing of the Notice for Settlement Class Members to object to the Settlement, request exclusion, or submit an Adjustment Form, and separately preserves the 21-day period contemplated by Plaintiffs' preliminary-approval submissions for Settlement Class Members to review and object to Plaintiffs' fee, cost, and service-award application.

B. The Limited Delay Will Not Disrupt the Proceedings.

The revised deadline to move for fees, costs, and service awards is 11 days after the original November 2 deadline, and it remains 34 days before the December 17 Final Approval Hearing. The proposed December 8 notice-status declaration deadline likewise remains 9 days before the hearing. The revised schedule therefore leaves adequate time for the Court to review the final approval and fee applications, consider any class member submissions, and address the Settlement at the hearing without altering the hearing date or delaying the proceedings.

C. The Missed Deadline Resulted from an Inadvertent Calendaring Oversight.

The missed deadline was inadvertent. During a recent transition in case-management

responsibility, Plaintiffs' counsel overlooked the deadline to move for fees, costs, and service awards. Counsel recognizes that calendaring and complying with Court-ordered deadlines are counsel's responsibility. The error was an oversight, Plaintiffs moved promptly to seek relief upon discovering it, and Plaintiff's proposed remedy will not alleviate any possible prejudice.

D. Plaintiffs Have Acted in Good Faith While Preserving Class-Member Rights.

The requested modification is made in good faith. Plaintiffs do not ask to cure counsel's error by shortening any period previously afforded to Settlement Class Members. Instead, the proposed schedule preserves both the full 45-day response period following mailing of the Notice and the 21-day period contemplated by Plaintiffs' preliminary approval submissions for review of the fee application, while maintaining the December 17 Final Approval Hearing. Plaintiffs have also proposed additional measures to ensure that Settlement Class Members are informed of the revised schedule, including posting this Unopposed Motion when filed, posting Plaintiffs' November 13 motions when filed, and promptly posting the Court's Order if the requested modification is granted.

IV. THE REVISED SCHEDULE PRESERVES THE 21-DAY PERIOD FOR SETTLEMENT CLASS MEMBERS TO REVIEW AND OBJECT TO THE FEE APPLICATION IS CONSISTENT WITH THE COURT'S EARLIER ORDER.

Rule 23(h) requires that notice of a motion for attorneys' fees be directed to class members in a reasonable manner and permits class members to object to the requested award. Fed. R. Civ. P. 23(h)(1)-(2). The Advisory Committee Note instructs that the schedule should provide *sufficient time* after the full fee motion is filed for potential objectors to examine the motion. *See* Fed. R. Civ. P. 23(h) advisory committee's note to 2003 amendment. Consistent with that principle, the Ninth Circuit has held that class members must have an opportunity to review and object to the completed fee application before their objections are due. *In re Mercury Interactive Corp. Securities Litigation*, 618 F.3d 988, 993-94 (9th Cir. 2010).

Plaintiffs recognize that their preliminary approval submissions contemplated filing the fee application at least 21 days before the objection and exclusion deadline, and the schedule established in the Preliminary Approval Order reflected that interval. The revised schedule preserves that complete 21-day review period. Plaintiffs will file their motion for attorneys' fees, costs, and service awards on November 13, 2026, and provide the motion to the Settlement Administrator for posting on the

Settlement Website that same day. Settlement Class Members will then have through December 4, 2026 to submit objections specifically directed to the fee, cost, and service-award application.

The existing November 27 deadline, as modified to correspond with the October 13 mailing of the Notice, will remain applicable to objections concerning the Settlement other than objections specifically directed to Plaintiffs' fee, cost, and service-award application, as well as to requests for exclusion and Adjustment Forms. December 4 will serve only as the extended deadline for objections specifically directed to Plaintiffs' anticipated fee, cost, and service-award application (to be filed on or before November 13). The revised schedule therefore preserves both the full 45-day response period following mailing of the Notice and the 21-day period contemplated for review of the fee application.

Because the revised fee-objection period will remain open through December 4, the Parties also request that the deadline for Plaintiffs and the Settlement Administrator to file the notice-status declaration be extended from December 3 to December 8, 2026. That limited extension will provide counsel and the Settlement Administrator sufficient time to review any submissions received through December 4 and finalize an accurate declaration reflecting the completed objection process, while preserving the December 17 Final Approval Hearing.

V. REQUESTED REVISED SCHEDULE

The Parties request that the opposition and reply deadlines established in the Preliminary Approval Order be eliminated. Under the Parties' Settlement Stipulation, Defendant agreed not to object to or oppose Plaintiffs' requests for attorneys' fees, costs, and service awards so long as Plaintiffs do not seek amounts exceeding those agreed upon by the Parties and disclosed to the Settlement Class. Plaintiffs do not intend to seek amounts exceeding those contemplated by the Settlement and Notice, and Defendant therefore does not intend to oppose Plaintiffs' anticipated motion. Accordingly, separate opposition and reply deadlines are unnecessary.

The Parties respectfully request that the remaining schedule be modified as follows:

Event	**Proposed Deadline**
Motions for final approval, attorneys' fees and costs, and service awards	November 13, 2026
Objections concerning the Settlement (other than fee-application objections), requests for exclusion,	November 27, 2026

and Adjustment Forms (45 days after mailing)	
Objections specifically directed to Plaintiffs' motion for attorneys' fees, costs, and service awards	December 4, 2026
Plaintiffs' and Administrator's notice-status declaration	December 8, 2026
Final Approval Hearing	December 17, 2026 at 10:00 a.m. PT (unchanged)

The November 25, 2026 opposition deadline and December 3, 2026 reply deadline established in the Preliminary Approval Order are vacated and replaced by the schedule above.

VI. CONCLUSION

For the foregoing reasons, the Parties respectfully request that the Court modify the Preliminary Approval Order and Settlement Schedule as set forth above and in the accompanying proposed order.

Dated: November 9, 2026

Respectfully submitted,
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Attorneys for Plaintiffs and the Settlement Class

[PROPOSED] ORDER

Having considered the Plaintiffs' Unopposed Motion to Modify Preliminary Approval Order and Settlement Schedule, and good cause appearing, the Court ORDERS as follows:

The Motion is GRANTED.

The deadlines set forth below supersede the corresponding deadlines established in the Preliminary Approval Order, ECF No. 95. In light of Defendant's agreement not to oppose Plaintiffs' requests for attorneys' fees, costs, and service awards that do not exceed the amounts contemplated by the Settlement and disclosed to the Settlement Class, the November 25, 2026 opposition deadline and December 3, 2026 reply deadline established in the Preliminary Approval Order are vacated.

The remaining schedule is modified as follows:

- **November 13, 2026:** Deadline for Plaintiffs' motions for attorneys' fees and costs, class representative service awards, and final approval
- **November 27, 2026**: Last day for Settlement Class Members to submit objections to the settlement (other than objections directly to Plaintiffs' fee, cost, and service award application), requests for exclusion, and/or Adjustment Forms to the Settlement Administrator
- **December 4, 2026**: Last day for Settlement Class Members to submit objections specifically directed to Plaintiffs' motion for attorneys' fees, costs, and service awards
- **December 8, 2026:** Deadline for Plaintiffs and the Settlement Administrator to file their declaration regarding the status of notice
- **December 17, 2026:** Hearing on Plaintiffs' motion for final approval of settlement

The November 27, 2026 deadline applies to objections concerning the Settlement other than objections specifically directed to Plaintiffs' motion for attorneys' fees, costs, and service awards, as well as to requests for exclusion and Adjustment Forms. Settlement Class Members may submit objections specifically directed to Plaintiffs' November 13, 2026 motion for attorneys' fees, costs, and

service awards through December 4, 2026.

Plaintiffs shall provide this Unopposed Motion to the Settlement Administrator for posting on the Settlement Website on the date it is filed. Plaintiffs shall likewise provide their November 13, 2026 motions for final approval, attorneys' fees and costs, and service awards to the Settlement Administrator on the date those motions are filed. Upon entry of this Order, the Settlement Administrator shall promptly post this Order, the Settlement Administrator shall promptly post it on the Settlement Website so that Settlement Class Members are advised of the modified filing and objection deadlines.

All other provisions of the Preliminary Approval Order remain in full force and effect.

IT IS SO ORDERED

Dated: _____

_____
The Honorable P. Casey Pitts
United States District Court Judge