

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re BANK OF AMERICA CORP.
SECURITIES, DERIVATIVE, AND
EMPLOYEE RETIREMENT INCOME
SECURITY ACT (ERISA) LITIGATION

Master File No. 09 MD 2058 (PKC)

ECF CASE

This Document Relates To:

Consolidated Securities Action

**REPLY MEMORANDUM IN FURTHER SUPPORT OF LEAD PLAINTIFFS'
MOTION FOR APPROVAL OF RECOMMENDATIONS REGARDING
POST-DISTRIBUTION ISSUES AND MODIFICATION OF
DISTRIBUTION ORDER TO ALLOW THE ACCEPTANCE OF LATE CLAIMS**

Dated: December 20, 2016

Lead Plaintiffs, the State Teachers Retirement System of Ohio; the Ohio Public Employees Retirement System; the Teacher Retirement System of Texas; Stichting Pensioenfonds Zorg en Welzijn, represented by PGGM Vermogensbeheer B.V.; and Fjärde AP-Fonden, respectfully submit this reply memorandum in further support of their motion for Approval of Recommendations Regarding Post-Distribution Issues and Modification of Distribution Order to Allow the Acceptance of Late Claims (ECF Nos. 1023 - 1025) (the “Motion”) filed on November 14, 2016, which included a request for the Court to approve the Claims Administrator’s determinations with respect to the Unresolved Calculation Disputes presented to the Court in the Motion.¹

As noted in the memorandum supporting the Motion and the supporting Cirami Post-Distribution Issues Declaration, there are 17 Claimants who requested Court review of their Calculation Disputes (“Unresolved Calculation Disputes”). On November 15, 2016, each of the Claimants with an Unresolved Calculation Dispute was sent a copy of the notice of Motion, the supporting memorandum, the Cirami Post-Distribution Issues Declaration, the proposed Order Regarding Post-Distribution Issues and Modification of Distribution Order to Allow the Acceptance of Late Claims (the “Post-Distribution Issues Order”), and the portion of the Appendix of Exhibits to the Cirami Post-Distribution Issues Declaration that relates to his, her or its Unresolved Calculation Dispute. The Claimants were advised in a cover letter mailed with these documents that they did not need to take any further action to have the Court consider their disputes, but that, if they wished to make an additional submission, it should be directed to Your Honor’s attention with a copy to Co-Lead Counsel, postmarked no later than December 6, 2016.

¹ Unless otherwise indicated herein, all terms with initial capitalization shall have the meanings ascribed to them in the Declaration of Stephen J. Cirami in Support of Lead Plaintiffs’ Motion for Approval of Recommendations Regarding Post-Distribution Issues and Modification of Distribution Order to Allow the Acceptance of Late Claims (“Cirami Post-Distribution Issues Declaration”) (ECF No. 1025), the Declaration of Stephen J. Cirami in Support of Lead Plaintiffs’ Motion for Approval of Distribution Plan (“Cirami Declaration” or “Cirami Decl.”) (ECF No. 1001), and the Stipulation and Agreement of Settlement dated November 30, 2012 (ECF No. 767-1).

To date, Co-Lead Counsel have received two submissions from disputing Claimants; none appear on the docket. The submissions received, one from Mr. Leroy M. Mommsen (Unresolved Calculation Dispute No. 6) and one from Mr. Rodrigue Dejean (Unresolved Calculation Dispute No. 14) are attached hereto in their entirety as Exhibits 1 and 2, respectively.² Co-Lead Counsel have reviewed the submissions of Messrs. Mommsen and Dejean and do not believe that further explanation of the propriety of the Claims Administrator's determinations with respect to these Claims is necessary. While we appreciate Claimants' desire for a different outcome, no new substantive arguments have been presented and the opening Motion papers set forth the explanation as to why the Claims Administrator's determinations with respect to these Claims are in accordance with the Court-approved Plan of Allocation for the proceeds of the Net Settlement Fund.

The proposed Post-Distribution Issues Order addressed all aspects of the Motion other than a determination with respect to the Unresolved Calculation Disputes.³ The time for the disputing Claimants to make a further submission has passed and, with the presentation of the supplemental submissions by Messrs. Mommsen and Dejean, the Court has before it the full record with respect to the Unresolved Calculation Disputes.

For all the reasons set forth in the Motion and in the Cirami Post-Distribution Issues Declaration, it is respectfully submitted that the Claims Administrator's determinations with respect

² For privacy reasons, the documents have been redacted to remove all personal information such as street addresses, email addresses, telephone numbers, account numbers, Taxpayer ID, Social Security or Social Insurance Numbers, and all transaction information not related to the Claimant's transactions in Bank of America securities or Merrill Lynch securities involved in the Merger.

³ The proposed Post-Distribution Issues Order provides for the deferral of a ruling on the Unresolved Calculation Disputes until after the time provided for those Claimants to make further submissions to the Court has expired and Co-Lead Counsel have submitted reply papers. (*See* Post-Distribution Issues Order ¶ 3(h) (ECF No. 1023-1)); for the Court's convenience another copy of that proposed Order is attached hereto as Exhibit 3).

to the Unresolved Calculation Disputes should be approved and the proposed Order Regarding Unresolved Calculation Disputes should be entered.

Dated: December 20, 2016

Respectfully submitted,

**BERNSTEIN LITOWITZ
BERGER & GROSSMANN LLP**

By: /s John Rizio-Hamilton
Hannah G. Ross
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& CHECK, LLP**
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Co-Lead Counsel

#1046761

Exhibit 1

Leroy M. Mommse:

Carlsbad, CA 92009

Rochelle Feder Hansen
Bernstein Litowitz Berger
& Grossmann LLP
1251 Avenue of the Americas
New York, NY 10020

Re, In re Bank of America Corp. Sec., Deriv. & ERISA Litig. Dispute.t

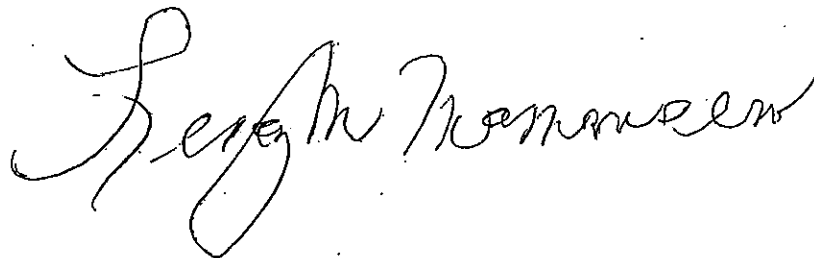
Dear Ms. Hansen

With reference to your Nov 15, 2016 letter (Copy enclosed), I am supplying you with a copy of a letter that has been posted to the court in the form you had proposed as available. I have kept the letter short, but want to have the court to recognize my desire to see my consideration for a favorable review:

Permit me to thank you for having forwarding the information to me, that enabled me to take this action.

Sincerely,

11/27/2016

A handwritten signature in black ink, appearing to read "Leroy M. Mommse". The signature is written in a cursive, flowing style with large loops and is positioned to the right of the typed name and date.

Leroy M, Mommsen
Carlsbad, CA 92009

The Honorable P. Kevin Castle
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

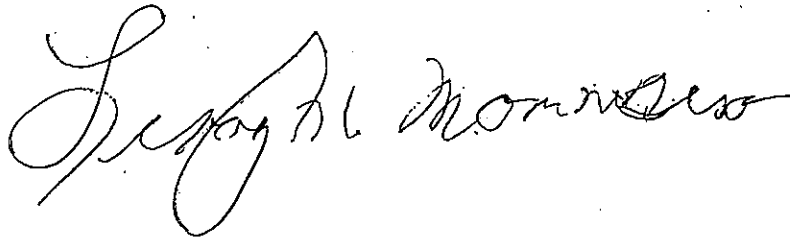
Re: In re Bank of America Corp. Sec., Deriv. & ERISA Litig., No.-09-MD-2058 (PKC)
Claim No. 16411080, Calculation Dispute No.6

Having been informed that my claim documents, which are the subject of this message, have been filed for review by your court. Accordingly I am taking the liberty of informing the court as to the financial details of this \$ 9970 Claim. The 3000 Bank of America shares were acquired by me, from year 1993 to 2008, at a cost of \$86.869, and were the families major holding. Thus a major event.

Now, after many years of delay, a large value Class Action Suit was awarded. Then the distributing group assumes that the amount available to the investors after deducting costs will be about 13%. Then makes distribution on that basis, which is unreasonable in my opinion. I await your judgment.

Sincerely,

11/27/2016

A handwritten signature in cursive script that reads "Leroy M. Mommsen". The signature is written in dark ink and is positioned to the right of the typed name and date.

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
ATTORNEYS AT LAW
NEW YORK • CALIFORNIA • LOUISIANA • ILLINOIS

ROCHELLE FEDER HANSEN
rochelle@blbglaw.com
212-554-1407

November 15, 2016

Via FedEx

Mr. Leroy Mommsen

Carlsbad, CA 92009

Re: *In re Bank of America Corp. Sec., Deriv. & ERISA Litig.*, No. 09-MD-2058 (PKC)
Claim No. 1641080, Calculation Dispute No. 6.

Dear Mr. Mommsen:

My firm is one of the Court-appointed Co-Lead Counsel in the above-noted action. We are writing to you because you disputed the determinations made with respect to your Claim pursuant to the Court's Order Approving Distribution Plan and/or the amount you received in the Initial Distribution, and you requested that the dispute be submitted to the Court for review. Your dispute has been presented to the Honorable P. Kevin Castel, United States District Judge of the United States District Court for the Southern District of New York, as part of Lead Plaintiffs' Motion for Approval of Recommendations Regarding Post-Distribution Issues and Modification of Distribution Order to Allow the Acceptance of Late Claims.

Enclosed are copies of the following documents that are relevant to your dispute that have been filed with the Court as part of the motion:

1. Notice of Lead Plaintiffs' Motion for Approval of Recommendations Regarding Post-Distribution Issues and Modification of Distribution Order to Allow the Acceptance of Late Claims, including the proposed Order approving the motion attached thereto;
2. Memorandum in Support of Lead Plaintiffs' Motion for Approval of Recommendations Regarding Post-Distribution Issues and Modification of Distribution Order to Allow the Acceptance of Late Claims;
3. Declaration of Stephen J. Cirami in Support of Lead Plaintiffs' Motion for Approval of Recommendations Regarding Post-Distribution Issues and Modification of Distribution Order to Allow the Acceptance of Late Claims ("Cirami Declaration"); and



BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

Mr. Leroy Mommsen
November 15, 2016
Page 2

4. Exhibit 6 contained in the Appendix of Exhibits to the Cirami Declaration which is that part of the Appendix that relates to your dispute.

Your dispute, which is referred to in the enclosed documents as Calculation Dispute No. 6 is discussed in paragraphs 22 - 25 of the Cirami Declaration. The documents relating to your dispute and your claim, including your request for judicial review which are included in Exhibit 6 in the Appendix to the Cirami Declaration, have, in the interest of your privacy, been redacted to remove personal information and transaction information that does not pertain to any of the relevant securities.

You do not need to take any further action in order for your dispute to be reviewed by the Court. However, if you want to submit an additional statement to the Court concerning the dispute, you may do so but it must be postmarked no later than **December 6, 2016** and it should include the claim number which is noted above. Any additional statement should be sent by United States Mail or overnight mail, to the following:

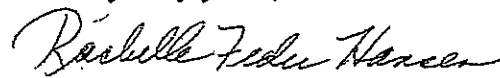
The Honorable P. Kevin Castel
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

AND

Rochelle Feder Hansen
Bernstein Litowitz Berger
& Grossmann LLP
1251 Avenue of the Americas
New York, NY 10020

If the Court decides to hold a hearing with respect to Lead Plaintiffs' motion, we will advise you of the date and time. If the Court does hold a hearing, you may attend if you wish to but you do not have to attend. The Court will consider your dispute regardless of whether you attend or not. We will also advise you of the Court's determination with respect to your claim.

Very truly yours,


Rochelle Feder Hansen

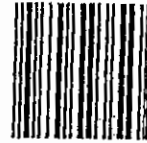
Enclosures

Mr. Leroy M. Mommson
Carlsbad, CA 92009-8445

SAN DIEGO
CA 92108
NOV 28 2016
PH 941



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NOV 28 16
AMOUNT

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Rochelle Feder Hansen
Bernstein Litowitz Berger
& Grossmann LLP
1251 Avenue of the Americas
New York, NY 10020.

10020-110456

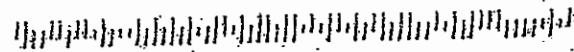


Exhibit 2

Miami, Florida 33161

November 21, 2016

The Honorable P. Kevin Castel

United States District Judge

Daniel Patrick Moynihan

United States Courthouse

500 Pearl Street

New York, NY 10007-1312

Re: *In re Bank of America Corp. Sec., Deriv. & ERISA Litig.*, No. 09-MD-2058
(PKC)

Claim No. 1044241, Calculation Dispute No. 14.

Dear Honorable Judge Castel:

After your divine resolution in the matter of Bank of America Corp., and you trusted council with the fair distribution of funds, they have failed by admitting errors in their calculation of funds to Lead Plaintiff Rodrigue Dejean. His entire claim was rejected.

In the late 80's I purchased computer shares directly from Barnett Bank without the assistance of a broker. Barnet Bank later merged with Bank of America Corp. which later became one of the largest banks of the nation. My shares increased in value thus resulting in substantial benefit for council.

Therefore Your Honor, as Lead Plaintiff I am requesting your discretionary resolution of this matter by awarding me a sum between \$100,000.00 and \$1,000,000.00.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rodrigue Dejean', written in a cursive style.

Rodrigue Dejean



Computershare
 PO Box 43078
 Providence, RI 02940-3078
 Within USA, US territories & Canada 800 642 9855
 Outside USA, US territories & Canada 781 575 2621
 www.computershare.com/bac

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RODRIGUE DEJEAN

MIAMI FL 33161-6940

Holder Account Number



Record Date
 Check Number
 SSN/TIN Certified

001CS0005.Dom_PG1.BAC224614_97868/036413/036413/

Bank of America Corporation - Dividend Payment

Sign up for Direct Deposit of Dividends. It's Quick! It's Easy! It's Secure! See reverse side for details.

Dividend Confirmation

Payment Date	Class Description	Participating Shares	Dividend Rate	Gross Dividend (\$)	Deduction Amount (\$)	Deduction Type	Net Dividend (\$)
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Rodrigue Dejean

Miami, FL 33161



Rochelle Feder Hansen
Bernstein Litowitz Berger & Grossmann LLP
1251 Avenue of the Americas
New York, NY 10020

1002031104 0018

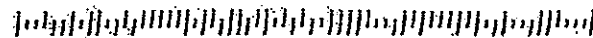


Exhibit 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re BANK OF AMERICA CORP.
SECURITIES, DERIVATIVE, AND
EMPLOYEE RETIREMENT INCOME
SECURITY ACT (ERISA) LITIGATION

Master File No. 09 MD 2058 (PKC)

ECF CASE

This Document Relates To:

Consolidated Securities Action

**[PROPOSED] ORDER REGARDING POST-DISTRIBUTION ISSUES
AND MODIFICATION OF DISTRIBUTION ORDER
TO ALLOW THE ACCEPTANCE OF LATE CLAIMS**

WHEREAS, Lead Plaintiffs, on notice to Defendants' Counsel, moved this Court for an order approving the recommendations of the Claims Administrator with respect to Post-Distribution Issues and for a limited modification of the Order Approving Distribution Plan (ECF No. 1002) (the "Distribution Order") entered by the Court in the above-captioned class action (the "Action"), and the Court having considered all the materials and arguments submitted in support of the motion, including the Declaration of Stephen J. Cirami in Support of Lead Plaintiffs' Motion for Approval of Recommendations Regarding Post-Distribution Issues and Modification of Distribution Order to Allow the Acceptance of Late Claims (the "Cirami Post-Distribution Issues Declaration"), and the Memorandum in Support of Lead Plaintiffs' Motion for Approval of Recommendations Regarding Post-Distribution Issues and Modification of Distribution Order to Allow the Acceptance of Late Claims ("Post-Distribution Issues Memorandum");

WHEREAS, pursuant to the terms of the Distribution Order, each Authorized Claimant who received a distribution from the Net Settlement Fund in connection with the Initial Distribution simultaneously received notice that should he, she or it disagree with the calculation of his, her or its

Recognized Claim or the amount of their Initial Distribution check they must send a written statement detailing the disagreement to Garden City Group, LLC (“GCG”) the Court-approved Claims Administrator, postmarked no later than thirty (30) days from the date of such notice;

WHEREAS, pursuant to the terms of the Distribution Order, Co-Lead Counsel caused notice to the Class of the Initial Distribution to be published once in the national editions of *The Wall Street Journal* and *The New York Times* and once in the *Financial Times*, on July 16, 2015 which informed Claimants who or which had submitted Claims that, if they had not received notice that (i) their Claim was being recommended for complete rejection; (ii) the amount of their Claim fell below the minimum level to receive a payment; or (iii) because their Claim had been received after November 5, 2014, it was not eligible for payment in the distribution, they must contact GCG within thirty (30) days from the date the notice was published; and

WHEREAS, the communications received subsequent to the Initial Distribution were reviewed by GCG and/or Co-Lead Counsel even if they were submitted after the deadlines established by the Distribution Order and even if they addressed issues that went beyond what was contemplated by the Distribution Order;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions contained in the Stipulation and Agreement of Settlement dated November 30, 2012 (ECF No. 767-1) (the “Stipulation”), the Declaration of Stephen J. Cirami in Support of Lead Plaintiffs’ Motion for Approval of Distribution Plan (ECF No. 1001) (the “Cirami Declaration”), and the Cirami Post-Distribution Issues Declaration and all capitalized terms used herein and not otherwise defined herein shall have the same meanings as ascribed to them in the Stipulation, the Cirami Declaration, or the Cirami Post-Distribution Issues Declaration.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Class Members.

3. Lead Plaintiffs' motion for approval of the Claims Administrator's recommendations regarding Post-Distribution Issues and modification of the Distribution Order to allow the acceptance of Late Claims is **APPROVED**. Accordingly:

(a) The Claims Administrator's administrative recommendations with respect to adjustments to be made to calculations of Claims that were covered by the Distribution Order as set forth in Exhibits F-1 and F-2 to the Cirami Post-Distribution Issues Declaration are adopted.

(b) The Claims Administrator's administrative recommendations with respect to Late Cures of Claims that were covered by the Distribution Order as set forth in Exhibits G-1, G-2 and G-3 to the Cirami Post-Distribution Issues Declaration are adopted.

(c) The Claims Administrator's administrative recommendations with respect to Alleged Submissions as set forth in Exhibits H-1 and H-2 to the Cirami Post-Distribution Issues Declaration are adopted.

(d) Whereas the payment amounts and additional payment amounts set forth in Exhibits F-1, F-2, G-1, G-2, and H-1 were calculated in the manner set forth in ¶ 3(c) of the Distribution Order so as to put these Claimants in parity with all other Claimants who or which were paid in the Initial Distribution, GCG is directed to pay the payment or additional payment amounts as set forth in Exhibits F-1, F-2, G-1, G-2, and H-1, subject to the requirements, that (a) initial Distribution Amounts must satisfy the \$20 minimum payment threshold as set forth in ¶ 3(c) of the of the Distribution Order and (b) initial Distribution Amounts that are under \$200 shall be paid in full.

(e) Each Authorized Claimant who is receiving a distribution from the Net Settlement Fund pursuant to the terms of this Order shall receive a notice explaining why the payment is being made. The notice to be sent to Authorized Claimants whose payment amount is being adjusted because of a prior calculation error shall be substantially in the form attached hereto as Exhibit 1, the notice to be sent to Authorized Claimants who are now receiving payment or additional payment because of an approved Late Cure shall be substantially in the form attached hereto as Exhibit 2, and the notice to be sent to Authorized Claimants who are now receiving payment because their Alleged Submission has been approved shall be substantially in the form attached hereto as Exhibit 3. Any Authorized Claimant whose Claim was reviewed as part of the Post Distribution Issues process and whose Distribution Amount pursuant to the terms of the Distribution Order calculated to less than \$20 and, therefore, such Claimant is not eligible to receive any distribution pursuant to this Order, shall receive a postcard notice of why payment is not being made substantially in the form attached hereto as Exhibit 4.

(f) In order to encourage Authorized Claimants who are receiving payments pursuant to subparagraphs 3(a) – (d) of this Order to cash their checks promptly, and to avoid or reduce future expenses relating to unpaid checks, all checks issued pursuant to this Order shall bear the following notation: “CASH PROMPTLY. VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED BY [DATE 60 DAYS AFTER ISSUE DATE].” Co-Lead Counsel and GCG are authorized to take appropriate action to locate and/or contact any Authorized Claimant who has not cashed his, her, or its check within said time.

(g) Authorized Claimants who are receiving payments pursuant to this Order who do not cash their checks within the time allotted, shall irrevocably forfeit all recovery from

the Net Settlement Fund. The funds allocated to all such checks shall be available to be redistributed to other Authorized Claimants in the Second Distribution.

(h) With respect to the 17 Claimants who have requested to have their post-distribution disputes put before the Court (the “Unresolved Calculation Disputes”), after the time provided for them to make any further submissions to the Court has expired and Co-Lead Counsel have submitted reply papers to the extent they wish to do so, the Court will enter a separate Order ruling on those disputes.

(i) The terms of the Distribution Order are modified to allow the acceptance of Late Claims as that term is defined in the Cirami Post-Distribution Issues Declaration and GCG shall begin the processing of such Claims. When all claims administration procedures with respect to the Late Claims have been completed, the recommendations of GCG with respect to those Claims shall be presented to the Court and those Claimants whose Late Claims are approved for payment shall be paid their distribution amounts on a *pro rata* basis that would bring them into parity with other Authorized Claimants who were paid in the Initial Distribution or pursuant to this Order to the extent possible.

(j) Other than the modification of the Distribution Order provided for in subparagraph (i) which allows for the processing and acceptance of Late Claims to the extent they are otherwise eligible for payment under the terms of the Plan of Allocation and the Distribution Order, in all other respects, the terms of the Distribution Order remain unchanged. Thus, other than as provided in this Order as to payments with respect to calculation disputes, Late Cures, Alleged Submissions and Late Claims, no additional Claims or modifications to Claims shall be accepted for any reason except as provided in subparagraph 3(j) of the Distribution Order.

4. This Court retains jurisdiction to consider any further applications concerning the administration of the Settlement, and such other and further relief as this Court deems appropriate.

SO ORDERED:

Dated: New York, New York

_____, 2016

The Honorable P. Kevin Castel
United States District Judge

#1015341