

Pauley, W.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PENNSYLVANIA PUBLIC SCHOOL	:	
EMPLOYEES' RETIREMENT SYSTEM,	:	
individually and on behalf of all others	:	11-CV-00733-WHP
similarly situated,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
BANK OF AMERICA CORPORATION, et al.,	:	STIPULATION AND
	:	ORDER CERTIFYING
Defendants.	:	CLASS
----- X		

WHEREAS, on June 20, 2011, the Court issued a Memorandum and Order naming Pennsylvania Public School Employees' Retirement System ("PSERS") as Lead Plaintiff in this action and approving PSERS's selection of Barrack, Rodos & Bacine as Lead Counsel;

WHEREAS, on July 30, 2013, the Court issued an Order concerning class certification in this action, which was amended by an endorsed letter filed August 19, 2013, which together established a schedule for service and submission of materials with respect to the class certification motion, directing that (a) the parties exchange expert reports on class certification by October 18, 2013 and submit a joint report regarding the proposed class certification motion by October 31, 2013, (b) PSERS file and serve its motion for class certification with supporting papers by November 15, 2013, (c) Defendant Bank of America Corporation and Individual Defendants Kenneth D. Lewis, Joe L. Price, Brian T. Moynihan, Charles H. Noski and Neil Cotty ("Defendants") file their opposition papers, if any, by December 20, 2013, and (d) PSERS file its reply papers by January 10, 2014;

SO ORDERED:


WILLIAM H. PAULEY III U.S.D.J. 2/14/14

WHEREAS, on October 31, 2013, the parties filed a Joint Status Report that stated, *inter alia*: “Defendants do not contest the efficiency of the market for Bank of America CS [Common Stock] and CES [Common Equivalent Securities] during the Class Period with respect to Lead Plaintiff’s motion for class certification. Accordingly, as noted in Lead Plaintiff’s letter of October 17, 2013, there was no need for the parties to exchange expert reports pertaining to the class motion.”

WHEREAS, the Joint Status Report further advised the Court that Defendants do not dispute that PSERS satisfied the requirements for class certification with the sole exception that Defendants reserved their right to contest PSERS’s adequacy or typicality under Federal Rule of Civil Procedure 23(a);

WHEREAS, on November 15, 2013, PSERS filed its motion for class certification, as well as a memorandum of law and two declarations in support of that motion;

WHEREAS, on December 13, 2013, Defendants filed a letter setting forth their asserted reservation of certain rights and advising the Court and PSERS, *inter alia*, that, “at that time, Defendants do not intend to contest that PSERS’s ‘claims or defenses ... are typical of the claims or defenses of the class’ and that PSERS can ‘fairly and adequately protect the interests of the class’”;

WHEREAS, Defendants’ decision not to oppose PSERS’s class certification motion means that briefing is complete on this motion, and that there is no need for the Court to conduct a hearing on that motion;

WHEREAS, the parties have conferred and agreed to the terms and conditions set forth in this Stipulation.

NOW THEREFORE, the parties, by and through their undersigned counsel, stipulate and agree to this Stipulation, and further agree to seek Court approval of this Stipulation and Proposed Order Concerning Class Certification, as follows:

1. PSERS brings this action on behalf of all persons or entities who purchased or otherwise acquired either Bank of America Corporation's Common Stock or Common Equivalent Securities during the Class Period of February 27, 2009 through October 19, 2010, and who suffered damages as a result (the "Class"). Excluded from the Class are: (i) Defendants; (ii) members of the immediate family of each of the Executive Defendants; (iii) any person who was an executive officer and/or director of Bank of America Corporation during the Class Period; (iv) any entity that served as an underwriter for Bank of America Corporation's offering of Common Equivalent Shares; (v) any person, firm, trust, corporation, officer, director, or any other individual or entity in which any Defendant has a controlling interest or that is affiliated with any of the Defendants; and (vi) the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party. The claims currently asserted by the Class allege the violation of §§10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78(j), 78(t), and Securities and Exchange Commission Rule 10b-5, 17 C.F.R. § 240.10b-5.

2. In its class certification motion, PSERS has moved for its certification as Class Representative, and for the appointment of the firm of Barrack, Rodos & Bacine as Class Counsel pursuant to Federal Rule of Civil Procedure 23(g).

3. Defendants, at this time, have not contested that PSERS has established each of the elements for certification of the Class under Federal Rule of Civil Procedure 23(a) and 23(b)(3), including: (1) the Class is so numerous that joinder of all members is impracticable; (2)

there are questions of law or fact common to the Class; (3) the claims or defenses of PSERS as the representative party are typical of the claims or defenses of the Class; (4) PSERS as the representative party and Barrack, Rodos & Bacine as its counsel and the Court-appointed Lead Counsel will fairly and adequately protect the interests of the Class; (5) questions of law or fact common to Class members predominate over any questions affecting only individual members; (6) and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

4. Notwithstanding Defendants' decision not to contest typicality and adequacy at this time, Defendants reserve all their rights with respect to defenses against PSERS's claims, and the parties reserve their rights to move to alter or amend this Court's Order Certifying Class pending final judgment in this action pursuant to Federal Rule of Civil Procedure 23(c)(1)(C).

5. This Stipulation does not limit or otherwise affect claims or defenses asserted or that can be asserted in this action.

6. The parties respectfully request that the Court enter an Order approving and adopting the foregoing stipulation, which the parties agree shall constitute an Order certifying the Class sought by PSERS in its motion filed November 15, 2013, certifying PSERS as the Class Representative, and appointing PSERS's counsel, Barrack, Rodos & Bacine, as Lead Counsel under Federal Rule of Civil Procedure 23(g), all subject to Rule 23(c)(1)(C) and the conditions stated herein, including the parties' asserted reservations of rights.



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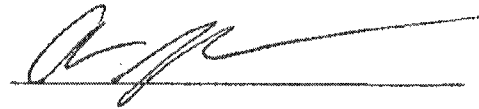
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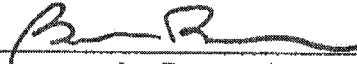
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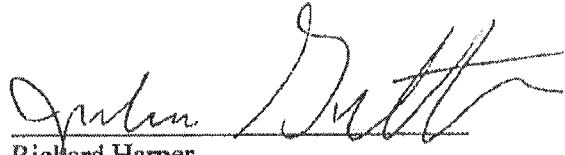
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