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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ILIANA PEREZ, FLAVIO GUZMAN)
MAGANA, JOSUE JIMENEZ MAGAÑA, and)
EMILIANO GALICIA FELIX, individuals, on)
behalf of themselves and all others similarly)
situated,)

Plaintiffs,

v.

DISCOVER BANK, a Delaware corporation,)

Defendant.)

Case No. 3:20-cv-06896-SI
[Assigned to Hon. Susan Illston]

~~PROPOSED~~ ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT

1 WHEREAS, plaintiffs Iliana Perez, Josue Jimenez Magaña and Emiliano Galicia Felix
2 (together, “Plaintiffs”) and defendant Discover Bank (“Discover”) (together, the “Parties”) have
3 agreed, subject to Court approval following notice to the proposed Settlement Class (as described
4 in Paragraph 6 below) and a final approval hearing, to settle this Action upon the terms and
5 conditions set forth in the Settlement Agreement and Release dated January 12, 2024 (the
6 “Settlement Agreement”);

7 WHEREAS, for purposes of this Order, capitalized terms shall have the meaning ascribed
8 to them in the Settlement Agreement;

9 WHEREAS, on February 23, 2024, a hearing was held on the motion of Plaintiffs to:

10 (1) conditionally certify the Settlement Class; (2) preliminarily approve the parties’ proposed class
11 action settlement; (3) appoint Plaintiffs Iliana Perez, Josue Jimenez Magaña and Emiliano Galicia
12 Felix as the Class Representatives, their counsel as counsel for the Settlement Class and Epiq as
13 Settlement Administrator; (4) set the deadlines for filing claims, written exclusions or objections to
14 the Settlement; (5) approve the forms of notice to the Settlement Class and the claim form; and (6)
15 schedule a hearing on the final approval of the Settlement on August 30, 2024 (the “Preliminary
16 Approval Motion”);

17 NOW, THEREFORE, based upon this Court’s review of the Settlement Agreement and all
18 of the files, records and proceedings herein, and it appearing to the Court, upon preliminary
19 examination, that the Settlement Agreement and Settlement appear fair, reasonable and adequate,
20 and within the range of possible approval, and that a hearing should and will be held after notice to
21 the Settlement Class to confirm that the Settlement Agreement and Settlement are fair, reasonable
22 and adequate and to determine whether the settlement should be approved and final judgment
23 entered in this Action based upon the Settlement Agreement;

24 IT IS HEREBY ORDERED:

25 1. **Nature of Action.** Plaintiffs allege that Discover engaged in lending discrimination
26 on the basis of alienage or immigration status in violation of federal and California law by
27 excluding DACA recipients from access to a variety of consumer credit products. Discover
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1 disputes and denies all of Plaintiffs' claims and contends that it has fully complied with all
2 applicable laws at issue in this matter.

3 2. **Settlement.** The Parties have negotiated a potential settlement of the Action to
4 avoid the expense, uncertainties and burden of protracted litigation and to resolve the Released
5 Claims (as defined in the Settlement Agreement) against Discover and the Releasees.

6 3. **Review.** The Court has carefully reviewed the Settlement Agreement, including the
7 plan of allocation and the release of claims, as well as the files, records and proceedings to date in
8 the Action. The Court has also reviewed the declaration of Ossai Miazad in support of preliminary
9 approval.

10 4. **Jurisdiction.** This Court has jurisdiction over the subject matter of the Action and
11 over all parties to the Action, including all Members of the Settlement Class, and venue in this
12 Court is proper.

13 5. **Preliminary Approval.** Based on the review the Court has conducted, the Court
14 does hereby preliminarily approve the Settlement Agreement and the Settlement set forth therein as
15 fair, reasonable and adequate, subject to further consideration at the Final Approval Hearing
16 described below. The Court finds on a preliminary basis that the Settlement as set forth in the
17 Settlement Agreement: (1) falls within the range of reasonableness and was the product of
18 informed, good faith, arms' length negotiations between the Parties and their counsel; and (2)
19 therefore meets the requirements for preliminary approval. The Court finds and concludes that the
20 assistance of an experienced mediator in the settlement process supports the finding that the
21 Settlement is non-collusive.

22 6. **Settlement Class.** The Court conditionally certifies, for settlement purposes only
23 (and for no other purpose and with no other effect upon the Action, including no effect upon the
24 Action should the Settlement Agreement not receive Final Approval or should the Effective Date
25 not occur), the following Settlement Class:

26 All individuals who: (1) according to Discover's records, applied for
27 credit from Discover's student, personal or home loan lines of
28 business between July 22, 2018, and the date of preliminary approval

1 and were either declined credit or received credit after meeting
2 Discover's requirement to have a United States citizen or lawful
3 permanent United States resident co-signer; and (2) were recipients
4 of valid and unexpired DACA, resided in the United States and were
5 not citizens of the United States or lawful permanent United States
6 residents at the time of the Discover loan application.

7 Excluded from the Settlement Class are Discover and all officers, directors and employees of
8 Discover and their legal representatives, heirs or assigns and any Judges to whom the Action is
9 assigned and their staffs and immediate families.

10 The Court finds, for settlement purposes only, that class certification under Federal Rule of
11 Civil Procedure 23(a) and (b)(3) is appropriate in that, in the settlement context: (1) the Members
12 of the Settlement Class are so numerous that joinder of all Settlement Class Members in the class
13 action is impracticable; (2) there are questions of law and fact common to the Settlement Class
14 which predominate over any individual question; (3) the claims of the Class Representatives are
15 typical of the claims of the Settlement Class; (4) the Class Representatives will fairly and
16 adequately represent and protect the interests of the Settlement Class Members because their
17 interests are co-extensive with those of the Settlement Class Members, and they have retained
18 experienced counsel to represent them and the Settlement Class Members; (5) common questions
19 of law and fact appear to predominate over questions affecting only individual Settlement Class
20 Members; and (6) a class action is superior to other available methods for the fair and efficient
21 adjudication of the controversy.

22 7. **Designation of Class Representatives and Class Counsel.** The Court finds and
23 concludes that Iliana Perez, Josue Jimenez Magaña and Emiliano Galicia Felix have claims typical
24 of and are adequate representatives of the members of the Class they propose to represent. The
25 Court hereby appoints each of them to serve as Class Representatives for the Settlement Class. The
26 Court finds and concludes that Outten & Golden LLP and the Mexican American Legal Defense
27 and Educational Fund have extensive experience in prosecuting discrimination and civil rights class
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1 actions. The Court hereby appoints Outten & Golden LLP and the Mexican American Legal
2 Defense and Educational Fund as Class Counsel.

3 8. **Final Approval Hearing.** The Final Approval Hearing shall be held before this
4 Court on August 30, 2024, at 10 a.m., via video conference, unless in-person appearance is
5 subsequently ordered by the Court, to determine, among other things: (1) whether the proposed
6 Settlement of the Action on the terms and conditions provided for in the Settlement Agreement is
7 fair, reasonable and adequate and should be approved by the Court; (2) whether a Final Approval
8 Order and Judgment should be entered by the Court; (3) whether Settlement Class Members should
9 be bound by the Release set forth in the Settlement Agreement; (4) any amount of fees and
10 expenses that should be awarded to Class Counsel and any award to the Class Representatives for
11 their representation of and service to the Settlement Class. The Court will consider any Settlement
12 Class Member's objections to the Settlement and/or any application by Class Counsel for payment
13 or reimbursement of attorneys' fees, costs and expenses and any application for an award to the
14 Class Representatives and rule upon such other matters as the Court may deem appropriate. The
15 Parties shall include the date of the Final Approval Hearing in the Notice to be mailed to the
16 Settlement Class. The Final Approval Hearing may be postponed, adjourned or continued by order
17 of the Court without further notice to the Settlement Class.

18 9. **Class Notice.**

19 (a) The Court approves the form, substance and requirements of the Notice,
20 Claim Form, Text Message, Reminder Notice and Official Documentation Request attached hereto
21 as Exhibits A through E. The Court finds that the Notice meets the requirements of Rule 23 of the
22 Federal Rules of Civil Procedure and due process. The Notice is based on the model forms
23 supplied by the Federal Judicial Center and the Northern District of California's Procedural
24 Guidance for Class Action Settlements, and it fairly, plainly, accurately and reasonably informs
25 potential Settlement Class Members of appropriate information about: (1) the nature of this action,
26 the definition of the Settlement Class, the identity of Class Counsel and the essential terms of the
27 Settlement, including the plan of allocation and the programmatic relief, and includes the address
28 for a website maintained by the Settlement Administrator that has links to the notices, motions for

1 approval and for attorneys' fees and any other important documents in the case; (2) Plaintiffs'
2 forthcoming application for the Plaintiffs' Service Awards and an award of Class Counsel's
3 Attorneys' Fees and Expenses; (3) how Settlement Class Members' individual settlement payments
4 will be calculated; (4) this Court's procedures for final approval of the Settlement; (5) how to
5 submit a Claim Form or object to or opt out of the Settlement; (6) how to obtain additional
6 information regarding this Action and the Settlement; and (7) the date of the Final Approval
7 Hearing and notice that the date may change without further notice to the Settlement Class and that
8 Settlement Class Members may check the settlement website or the Court's PACER site to confirm
9 the of the Final Approval Hearing.

10 (b) The Court further finds and concludes that the proposed plan for distributing
11 the Notice is a reasonable method calculated to reach all individuals who would be bound by the
12 Settlement. Under this plan, the Settlement Administrator will distribute the Notice to all
13 individuals on the Notice List by e-mail and text message to their last known readily available e-
14 mail addresses and phone numbers. Where either an email address or phone number is not readily
15 available, the Settlement Administrator will distribute the Notice by U.S. First Class Mail to the
16 individual's last known mailing address (if available). There is no additional method of
17 distribution that is cost-effective and would be reasonably likely to notify potential Settlement
18 Class Members who may not otherwise receive Notice under this proposed distribution plan. In
19 addition, the Settlement Administrator will send reminder notices by email and text message
20 (where the email address and phone number are readily available) to individuals who have not
21 submitted a claim form as the response deadline approaches.

22 (c) The Court further finds and concludes that the Notice List may contain
23 individuals with and without DACA status who were denied the applicable types of credit by
24 Discover. The Court finds that, because the Notice List may also contain individuals without
25 DACA status, it may be necessary for Settlement Class Members to demonstrate that they have
26 DACA status and that the proposed Notice plan does so in a reasonable method by requiring, upon
27 request, the submission of Official Documentation no later than twenty-one (21) days after the
28 Claims Deadline. The Court further finds that the Settlement contains reasonable protections to

1 maintain the confidentiality of such Official Documentation, including ensuring that Settlement
2 Class Members submit it only to the Settlement Administrator, which will treat it as confidential.
3 (“Official Documentation” means a copy or copies of official United States Government
4 documents showing that, at the time of a loan application with Discover, a Settlement Class
5 Member was a recipient of valid and unexpired DACA, including but not limited to a Work
6 Authorization Card containing the code “C-33” showing valid and unexpired DACA at the time of
7 any denied application.)

8 (d) The Court finds that the proposed Notice and Notice plan are the most
9 practicable under the circumstances and are reasonably calculated, under all the circumstances, to
10 apprise potential Settlement Class Members of the pendency of the Action, to apprise potential
11 Settlement Class Members of their right to exclude themselves from the proposed Settlement Class
12 and to apprise Settlement Class Members of their right to object to the proposed Settlement and
13 their right to appear at the Final Approval Hearing. The Court further finds that the Notice
14 constitutes due, adequate and sufficient notice to all persons entitled thereto and that it meets the
15 requirements of due process and Federal Rule of Civil Procedure 23.

16 10. **Settlement Administrator.** The Court approves Epiq to serve as Settlement
17 Administrator and supervise and administer the notice procedure, as more fully set forth below:

18 (a) No later than ten (10) days after the entry of this Order, the Settlement
19 Administrator shall establish the Settlement Website, which shall contain copies of the Settlement
20 Agreement and Exhibits, including the Notice, Claim Form and Text Message.

21 (b) No later than thirty (30) days after the entry of this Order (the “Notice
22 Mailing Date”), the Settlement Administrator shall email the Notice with the Claim Form (where
23 an email address is readily available) and send the Text Message (where a phone number is readily
24 available) to individuals on the Notice List. Where an email address and phone number are not
25 both available, the Settlement Administrator will send the Notice by U.S. First Class Mail as well.

26 (c) Following the mailing of the Notice, the Settlement Administrator shall
27 provide counsel with written confirmation of the mailing.

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1 (d) No later than 30 days after the Notice Mailing Date, the Settlement
2 Administrator shall send a reminder notice by email and text message (where an email address and
3 phone number are readily available).

4 (e) The Settlement Administrator shall otherwise carry out its duties as set forth
5 in the Settlement Agreement and this Order.

6 11. **Class Action Fairness Act.** The Court finds that the Settlement Administrator has
7 provided notice of the proposed settlement in conformity with 28 U.S.C. § 1715 and that
8 Discover’s obligations under the Class Action Fairness Act are satisfied.

9 12. **Submission of Claim Forms.** Settlement Class Members who wish to receive
10 payment under the Settlement shall complete, sign and return their Claim Forms in accordance with
11 the instructions contained therein. Unless the Court orders otherwise, all Claim Forms must be
12 postmarked no later than fifty (50) days before the Final Approval Hearing. If requested, any
13 Official Documentation required to support a Claim Form must be submitted no later than twenty-
14 one (21) days after the Claim Deadline. Any Settlement Class Member who does not timely and
15 validly submit a Verified Claim Form within the time provided shall be barred from receiving
16 payment under the Settlement, unless otherwise ordered by the Court, but shall nevertheless be
17 bound by any Final Judgment entered by the Court.

18 13. **Exclusion from the Class.** Any Settlement Class Member may, upon request, be
19 excluded from (or “opt out” of) the Settlement Class. To opt out, the Settlement Class Member
20 must send to the Settlement Administrator, at the address listed in the Notice and on the Settlement
21 Website, a written request to opt out that is postmarked no later than the opt-out deadline specified
22 in the Notice. The request to opt out must: (a) identify the case name; (b) identify the name and
23 address of the person requesting exclusion; (c) be personally signed by the person requesting
24 exclusion; (d) contain a statement that indicates a desire to be excluded from the Settlement Class,
25 such as “I hereby request that I be excluded from the proposed Settlement Class”; and (e) affirm via
26 sworn statement that the individual had valid and unexpired DACA status at the time he or she was
27 denied a loan from Discover. If requested, the opt-out request must also include Official
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1 Documentation evidencing the Settlement Class Member's valid and unexpired DACA status at the
2 time of the denial of the application. Mass or class opt outs shall be void.

3 14. **Copies of Requests to Opt Out.** The Settlement Administrator shall provide Class
4 Counsel and Defense Counsel with a list of all timely requests to opt out within ten (10) business
5 days after the Opt-Out Deadline.

6 15. **Entry of Appearance.** Any member of the Settlement Class who does not exclude
7 himself or herself from the Settlement Class may enter an appearance in the Action, at his or her
8 own expense, individually or through counsel of his or her own choice. If he or she does not enter
9 an appearance, he or she will be represented by Class Counsel.

10 16. **Binding Effect on Class.** All Settlement Class Members who do not exclude
11 themselves from the Settlement Class by properly and timely submitting a request to opt out shall
12 be bound by all determinations and judgments in the Action, whether favorable or unfavorable to
13 the Settlement Class.

14 17. **Written Objections.** Any Settlement Class Member who wishes to object to the
15 Settlement may do so by sending a written objection to the Clerk of the United States District Court
16 for the Northern District of California, Phillip Burton Federal Building and United States
17 Courthouse, 450 Golden Gate Avenue, San Francisco, California 94102, no later than fifty (50)
18 days prior to the Final Approval Hearing. To be valid, the objection must include: (1) the case
19 name and number (Perez v. Discover Bank, Case Number 3:20-CV-06896-SI); (2) the name,
20 address and telephone number of the Settlement Class Member objecting and, if represented by
21 counsel, of his/her counsel; (3) the reasons for the objection; and (4) a statement of whether he/she
22 intends to appear at the Final Approval Hearing, either with or without counsel; and (5) a sworn
23 statement that the individual had valid and unexpired DACA status and was denied credit or
24 received credit only after meeting Discover's requirement to have a U.S. citizen or permanent
25 resident co-signer. If requested, the Objection must also affirm that Official Documentation has
26 been provided to the Settlement Administrator. The Court shall have the ultimate determination of
27 whether an Objection has been appropriately made, and the Court may seek in camera review of
28 Official Documentation if requested.

1 18. **Appearance of Objectors at Final Approval Hearing.** Any Settlement Class
2 Member who files and serves a written objection in accordance with Paragraph 17 of this Order
3 may appear, in person or by counsel, at the Final Approval Hearing to show cause why the
4 proposed Settlement should not be approved as fair, adequate and reasonable. Any Settlement
5 Class Member intending to appear must file with the Clerk of the Court, no later than fifty (50)
6 days prior to the Final Approval Hearing, a notice of intention to appear that includes copies of any
7 papers, exhibits or other evidence that the objector will present to the Court in connection with the
8 Final Approval Hearing. Any Settlement Class Member who does not file a notice of intention to
9 Appear in accordance with this Paragraph shall not be entitled to appear at the Final Approval
10 Hearing.

11 19. **Service of Motion for Final Approval.** The motion in support of final approval of
12 the Settlement shall be filed and served no later than thirty-five (35) calendar days prior to the Final
13 Approval Hearing. Any responsive papers shall be filed and served no later than fourteen (14)
14 calendar days prior to the Final Approval Hearing.

15 20. **Fees, Expenses and Awards.** Class Counsel’s application for Attorneys’ Fees and
16 Expenses shall be filed and served no later than thirty (30) calendar days after entry of this Order.
17 Discover may challenge the amount of the Attorneys’ Fees and Expenses sought. Neither Discover
18 nor the Releasees shall have any responsibility for any application for Attorneys’ Fees and
19 Expenses submitted by Class Counsel, and such matters will be considered separately from the
20 fairness, reasonableness and adequacy of the Settlement. At or after the Final Approval Hearing,
21 the Court will determine whether any application for Attorneys’ Fees and Expenses and any
22 Service Awards to the Class Representatives for their service to the Settlement Class should be
23 approved. Any orders or proceedings relating thereto shall not affect the finality of the Judgment
24 approving the Settlement Agreement and the Settlement.

25 21. **Releases.** If the Settlement is finally approved, the Releasers shall release the
26 Releasees from all Released Claims.

27 22. **Use of Order.** This Order, the fact that a settlement was reached and the Settlement
28 Agreement and any of its provisions, related negotiations, statements or proceedings shall not be

1 construed as, offered as, admitted as, received as, used as or deemed to be an admission or
2 concession of any liability or wrongdoing whatsoever or a breach of any duty on the part of
3 Discover. This Order is not a finding of the validity or invalidity of any of the claims asserted or
4 defenses raised in the Action. In no event shall this Order, the fact that a settlement was reached or
5 the Settlement Agreement or any of its provisions, related negotiations, statements or proceedings
6 relating to it in any way be used, offered, admitted, or referred to in the Action, in any other action
7 or in any judicial, administrative, regulatory, arbitration or other proceeding, by any person or
8 entity, except by the Parties and only the Parties in a proceeding to enforce the Settlement
9 Agreement.

10 23. **Continuance of Final Approval Hearing.** The Court reserves the right to continue
11 the date of the Final Approval Hearing without further notice to the Settlement Class Members and
12 retains jurisdiction to consider all further applications arising out of or connected with the proposed
13 Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by
14 the Parties, if appropriate, without further notice to the Settlement Class.

15 24. **Termination of Settlement.** If the Settlement Agreement fails to become effective
16 or is terminated or deemed null and void as provided in Section 13 of the Settlement Agreement,
17 then this Order may not be introduced as evidence or referred to in any actions or proceedings by
18 any person or entity and shall be treated as vacated *nunc pro tunc* and each party shall be restored
19 to his, her or its respective position in this Action as of the date of execution of the Settlement
20 Agreement.

21 25. **No Merits Determination.** By entering this Order, the Court does not make any
22 determination as to the merits of this case.


23 26. **Authority.** The Court hereby authorizes the Parties to take such further steps as
24 necessary and appropriate to establish the means necessary to implement the terms of the
25 Settlement Agreement.

26 27. **Retention of Jurisdiction.** This Court retains exclusive jurisdiction over the Action
27 to consider all further matters arising out of or connected with the Settlement Agreement and the
28 Settlement.

1 28. **Stay of Proceedings.** All proceedings in this Action are stayed until further Order
2 of this Court, except as may be necessary to implement the Settlement or comply with the terms of
3 the Settlement Agreement. Pending final determination of whether the Settlement should be
4 approved, all Settlement Class Members who do not timely and validly exclude themselves from
5 the Settlement Class, and anyone who purports to act on their behalf, are enjoined from
6 commencing, maintaining or participating in any action or proceeding in any court or tribunal
7 asserting any of the Released Claims, either directly or in a representative or any other capacity.

8 **IT IS SO ORDERED.**

9 Dated: February 29, 2024

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11 _____
12 Hon. Susan Illston
13 United States District Judge

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