

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

FRANKIE LIPSETT,  
Plaintiff,

vs.

BANCO POPULAR NORTH AMERICA  
d/b/a POPULAR COMMUNITY BANK,

Defendant.

Civil Action No.: 1:22-cv-03901-MMG

**SUPPLEMENTAL DECLARATION OF CAMERON R. AZARI, ESQ REGARDING  
IMPLEMENTATION AND ADEQUACY OF NOTICE PLAN**

I, Cameron R. Azari, Esq., hereby declare and state as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am a nationally recognized expert in the field of legal notice and have served as an expert in hundreds of federal and state cases involving class action notice plans.

3. I am a Senior Vice President of Epiq Class Action & Claims Solutions, Inc. (“Epiq”) and the Managing Director of Hilsoft Notifications, a business unit of Epiq that specializes in designing, developing, analyzing, and implementing large-scale, un-biased, legal notice plans.

4. The facts in this declaration are based on my personal knowledge, as well as information provided to me by my colleagues in the ordinary course of my business at Epiq.

**OVERVIEW**

5. This declaration provides updated settlement administration statistics following the successful implementation of the Settlement Notice Plan (“Notice Plan”) and notices (the “Notice” or “Notices”) for *Lipsett v. Banco Popular North America*, Case No. 1:22-cv-03901-MMG, in the United States District Court for the Southern District of New York. Previously I executed my *Declaration of Cameron R. Azari, Esq. Regarding Notice Plan* (“Notice Plan Declaration”) on July 25, 2024 (ECF No. 51-2), which described the Notice Plan, detailed Hilsoft’s class action notice experience, and attached Hilsoft’s *curriculum vitae*. I also provided my educational and professional experience relating to class actions and my ability to render opinions on overall adequacy of notice

plans. Subsequently, I executed my *Declaration of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Notice Plan* (“Implementation Declaration”) on November 25, 2024, which described the successful implementation of the Notice Plan and provided settlement administration statistics.

### **NOTICE PLANNING METHODOLOGY**

6. Federal Rules of Civil Procedure, Rule 23 directs that notice must be “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort” and that “the notice may be by one or more of the following: United States mail, electronic means, or other appropriate means.” Fed. R. Civ. P. 23(c)(2)(B). The Notice Plan satisfied these requirements.

7. This Notice Plan as designed and implemented reached the greatest practicable number of identified Settlement Class Members. The Notice Plan included individual notice by email and/or mail to identified Settlement Class Members. With the address updating protocols that were used, the Notice Plan individual notice efforts reached approximately 97.5% of the identified Settlement Class Members. The reach was further enhanced by a Settlement Website. In my experience, the reach of the Notice Plan was consistent with other court-approved notice plans, was the best notice practicable under the circumstances of this case, and satisfied the requirements of due process, including its “desire to actually inform” requirement.<sup>1</sup>

### **CAFA NOTICE**

8. As detailed in my Implementation Declaration, Epiq sent 42 CAFA Notice Packages (“CAFA Notice”), as required by the federal Class Action Fairness Act of 2005 (CAFA), 28 U.S.C. § 1715, on August 2, 2024. Further details regarding the CAFA Notice mailing were provided in the *Declaration of Kyle S. Bingham on Implementation of CAFA Notice*, dated August 10, 2024.

---

<sup>1</sup> *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950) (“But when notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . .”).

**NOTICE PLAN**

***Individual Notice***

9. As detailed in my Implementation Declaration, Epiq received one data file with 13,524 records for identified Settlement Class Members, including the names, current or last known postal addresses, and email addresses, if available (“Class List”). Epiq deduplicated and rolled-up the records and loaded the unique, identified Settlement Class Member records into its database. These efforts resulted in 13,521 identified Settlement Class Member records.

10. As detailed in my Implementation Declaration, an Email Notice was sent to all identified Settlement Class Members for whom a valid email address was available and who have agreed to receive electronic communications from Defendant. A Postcard Notice was sent via United States Postal Service (“USPS”) first class mail to all identified Settlement Class Members with an associated physical address for whom a valid email address was not available, for those identified Settlement Class Members who have *not* agreed to receive notices from Defendant via email, and for whom the Email Notice was returned as undeliverable after several attempts.

***Individual Notice – Email***

11. As detailed in my Implementation Declaration, Epiq sent 2,546 Email Notices to identified Settlement Class Members for whom a valid email address is available and have agreed to receive electronic communications from Defendant. Some Settlement Class Members shared a common email address. As a result, one Email Notice, addressed to multiple Settlement Class Members, was sent to the shared email address.

12. If the receiving email server could not deliver the message, a “bounce code” was returned along with the unique message identifier. For any Email Notice for which a bounce code was received indicating that the message was undeliverable for reasons such as an inactive or disabled account, the recipient’s mailbox was full, technical autoreplies, etc., at least two additional attempts were made to deliver the Notice by email.

***Individual Notice – Direct Mail***

13. As detailed in my Implementation Declaration, Epiq sent 10,975 Postcard Notices to all identified Settlement Class Members with an associated physical address for whom a valid email address is not available and to those identified Settlement Class Members who have not agreed to receive notices from Defendant via email. Subsequently, on September 26, 2024, Epiq sent 243 Postcard Notices to all identified Settlement Class Members with an associated physical address for whom the Email Notice was returned as undeliverable after several attempts. The Postcard Notices were sent via USPS first-class mail.

14. The return address on the Postcard Notices was a post office box that Epiq maintains for this case. The USPS automatically forwarded Postcard Notices with an available forwarding address order that has not expired (“Postal Forwards”). Postcard Notices returned as undeliverable were re-mailed to any new address available through USPS information, (for example, to the address provided by the USPS on returned mail pieces for which the automatic forwarding order has expired, but is still within the time period in which the USPS returns the piece with the address indicated), and to better addresses that were found using a third-party lookup service. Upon successfully locating better addresses, Postcard Notices were promptly remailed. As of December 20, 2024, 443 Postcard Notices have been remailed.

15. Additionally, a Long Form Notice, in English or Spanish, was mailed to all persons who requested one via the toll-free telephone number or by other means. As of December 20, 2024, Epiq mailed 32 Long Form Notices in English and 34 Long Form Notices in Spanish as a result of such requests.

***Notice Results***

16. As of December 20, 2024, an Email Notice and/or Postcard Notice was delivered to 13,196 of the 13,521 unique, identified Settlement Class Members. This means the individual notice efforts reached approximately 97.5% of the identified Settlement Class.

***Settlement Website***

17. The Settlement Website ([www.LipsettOverdraftSettlement.com](http://www.LipsettOverdraftSettlement.com)) continues to be available 24 hours per day, 7 days per week. Relevant documents are posted on the Settlement Website, including the Complaint, Postcard Notice, Long Form Notice (in English and Spanish), Settlement Agreement, Motion for Preliminary Approval Order, Preliminary Approval Order, and Motion for Final Approval. In addition, the Settlement Website includes relevant dates, answers to frequently asked questions (“FAQs”), instructions for how Settlement Class Members could opt-out (request exclusion) from or object to the Settlement prior to the deadlines, contact information for the Settlement Administrator, and how to obtain other case-related information. The Settlement Website is available in English and Spanish. As of December 20, 2024, there have been 4,523 unique visitor sessions to the Settlement Website and 6,682 web pages have been presented.

***Toll-Free Telephone Number***

18. The toll-free telephone number (1-877-701-2656) continues to be available for the Settlement. Callers are able to hear an introductory message and have the option to learn more about the Settlement in the form of recorded answers to FAQs. The automated telephone system is available 24 hours per day, 7 days per week. As of December 20, 2024, there have been 430 calls to the toll-free telephone number representing 892 minutes of use.

19. A postal mailing address continues to be available, providing Settlement Class Members the opportunity to request additional information or ask questions.

***Requests for Exclusion and Objections***

20. The deadline to request exclusion from the Settlement or to object to the Settlement was December 9, 2024. As of December 20, 2024, Epiq has received no requests for exclusion. As of December 20, 2024, Epiq is not aware of any objections to the Settlement.

## CONCLUSION

21. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, by federal and local rules and statutes, and further by case law pertaining to notice. This framework directs that the notice plan be designed to reach the greatest practicable number of potential class members and, that the notice or notice plan provide class members with easy access to the details of how the class action may impact their rights. All of these requirements were met in this case.

22. The Notice Plan individual notice efforts via email and/or mail to identified Settlement Class Members reached approximately 97.5% of the Settlement Class. The reach was further enhanced by a Settlement Website. The Federal Judicial Center (“FJC”) issued a *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide*, which is relied upon for federal cases. This Guide states that, “the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%.”<sup>2</sup> Here, we have developed and implemented a Notice Plan that readily achieved a reach beyond the high end of that standard.

23. The Notice Plan provided the best notice practicable under the circumstances, conformed to all aspects of Federal Rule of Civil Procedure 23 regarding notice, comported with the guidance for effective notice articulated in the Manual for Complex Litigation, Fourth and applicable FJC materials, and satisfied the requirements of due process, including its “desire to actually inform” requirement.

24. The Notice Plan schedule afforded enough time to provide full and proper notice to the Settlement Class Members before any opt-out or objection deadlines.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 20, 2024.

  
\_\_\_\_\_  
Cameron R. Azari, Esq.

---

<sup>2</sup> FED. JUDICIAL CTR, JUDGES’ CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 3 (2010), available at <https://www.fjc.gov/content/judges-class-action-notice-and-claims-process-checklist-and-plain-language-guide-0>.