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17 E-mail: michael@oliniklaw.com

18 *Attorneys for Plaintiff Daniel McSwain and*
19 *the Proposed Class*

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **COUNTY OF SAN DIEGO - CENTRAL DIVISION**

22 DANIEL MCSWAIN, TRUSTEE OF THE
23 DANIEL S. MCSWAIN TRUST DATED JULY
24 17, 2012, on behalf of the trust and all others
25 similarly situated, and the general public;

26 Plaintiff,

27 v.

28 AXOS BANK, fka BANK OF INTERNET USA;
and DOES 1-10, INCLUSIVE,

Defendant.

Case No: 37-2019-00015784-CU-BC-CTL

NOTICE OF ORDER GRANTING
PLAINTIFF'S MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **NOTICE IS HEREBY GIVEN THAT** on July 22, 2020, the Court granted Plaintiff's Motion
3 for Preliminary Approval of Class Action Settlement. A true and correct copy of the Court's minute
4 order following the July 22, 2020 hearing is attached hereto as **Exhibit A**. A true and correct copy of
5 the Court's Order Granting Preliminary Approval is attached hereto as **Exhibit B**.

6 **FURTHER NOTICE IS GIVEN** that a Final Approval Hearing is set for November 25, 2020
7 at 9:00 a.m. in Department 73.

8 Plaintiff was instructed to give notice.

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11
12 Dated: July 23, 2020


Michael T. Houchin

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21 *Attorneys for Plaintiff Daniel McSwain and the Proposed Class*
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EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 07/22/2020

TIME: 09:00:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Andrea Taylor

REPORTER/ERM: Not Requested

BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: **37-2019-00015784-CU-BC-CTL** CASE INIT.DATE: 03/25/2019

CASE TITLE: **McSwain vs AXOS Bank [E-FILE]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: Daniel McSwain Trustee of The Daniel S McSwain Trust dated July 17 2012

CAUSAL DOCUMENT/DATE FILED: Motion for Approval of Class Settlement, 06/23/2020

APPEARANCES

Michael G Olinik, counsel, present for Plaintiff(s) telephonically.

Michael T Houchin, counsel, present for Plaintiff(s) telephonically.

Lilach Halperin, counsel, present for Plaintiff(s) telephonically.

Alejandro Moreno, counsel, present for Defendant(s) telephonically.

Edward D Vogel, counsel, present for Defendant(s) telephonically.

Due to the COVID-19 pandemic, this hearing will be conducted remotely. Absent an order of the court, personal appearances at the hearing will not be allowed. For information on arranging telephonic or video appearances, contact CourtCall at (888)882-6878, or at www.courtcall.com.

The Court confirms the tentative ruling as follows:The Court confirms the tentative ruling as follows:The Motion (ROA # 50) of Plaintiff Daniel McSwain, Trustee of the Daniel S. McSwain Trust Dated July 17, 2012 ("Plaintiff" or "McSwain") to (1) preliminarily approve the settlement of the Action, (2) certify the provisional Settlement Class, (3) approve and appoint the law firms of The Law Offices of Ronald A. Marron, APLC and The Law Office of Michael G. Olinik as counsel for the provisional Class, (4) approve the form of the notice provided to the provisional Settlement Class, (5) approve the method of providing Notice to the provisional Settlement Class, and (6) set deadlines for providing notice to the Class and for Class members to submit requests for exclusion / opt-out or objections to the proposed settlement, is GRANTED.

The Court finds that the terms and conditions of the proposed class action settlement are fair, reasonable and adequate.

The Court will sign the (proposed) order granting preliminary approval - ROA # 55 - as completed, at the hearing of this Motion.

Court sets Final Approval Hearing for 11/25/2020 at 9:00 a.m. in Department 73.

Plaintiff to serve notice of the Court's ruling.

EXHIBIT B

1 **LAW OFFICES OF RONALD A. MARRON**
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18 *Attorneys for Plaintiff Daniel McSwain and*
19 *the Proposed Class*

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **COUNTY OF SAN DIEGO - CENTRAL DIVISION**

22 DANIEL MCSWAIN, TRUSTEE OF THE
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24 17, 2012, on behalf of the trust and all others
25 similarly situated, and the general public;

26 Plaintiff,

27 v.

28 AXOS BANK, fka BANK OF INTERNET USA;
and DOES 1-10, INCLUSIVE,

Defendant.

Case No: 37-2019-00015784-CU-BC-CTL

[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL

Date: July 22, 2020

Time: 9:00 a.m.

Dept.: C-73

Judge: Hon. Joel R. Wohlfeil

ELECTRONICALLY RECEIVED
Superior Court of California,
County of San Diego

06/23/2020 at 12:52:58 PM

Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

FILED
Clerk of the Superior Court

JUL 22 2020

By: A. TAYLOR

On July 22, 2020 at 9:00 a.m., in Department C-73 of the San Diego Superior Court, Plaintiff

Daniel McSwain, Trustee of the Daniel S. McSwain Trust Dated July 17, 2012's Unopposed Motion

for Certification of the Settlement Class & Preliminary Approval of Class Settlement was heard.

Based on the papers filed by the parties and oral argument, for good cause shown,

1 **IT IS HEREBY ORDERED:**

2 1. The Court preliminarily approves the Settlement Agreement of the parties and finds
3 that the range of the settlement is reasonable and merits final approval;

4 2. The Parties are directed to send Notice of this settlement to the Settlement Class in the
5 manner specified in Section 6 of the Settlement Agreement, which is attached as **Exhibit 1** to this
6 proposed order and incorporated herein;

7 3. Plaintiff Daniel McSwain, Trustee of the Daniel S. McSwain Trust Dated July 17, 2012
8 is determined to be a member of the Settlement Class and is appointed Class Representative pursuant
9 to Cal. Code Civ. P. § 382 to represent the members of the Settlement Class in this action;

10 4. The Court hereby certifies the Settlement Class pursuant to Cal. Code Civ. P. § 382 for
11 the purposes of settlement only. The Settlement Class is defined as: all persons who obtained a loan
12 from Defendant and/or had a loan serviced by Defendant at any time within the Class Period which
13 was secured by a one to four family residential property located in the State of California and had an
14 escrow or impound account on such loan that received money in advance for payment of taxes and
15 assessments on the property, for insurance, or for other purposes relating to the property, and which at
16 any time within the Class Period had a positive balance in such account. The Settlement Class
17 specifically excludes (1) any judicial officer presiding over the Litigation, (2) Defendant and Released
18 Parties, and each of their current or former officers, directors, and employees; (2) legal
19 representatives, successors, or assigns of any such excluded person, and (4) any person who properly
20 executes and sends a timely Request for Exclusion.

21 5. The Court hereby appoints The Law Offices of Ronald A. Marron, APLC and the Law
22 Office of Michael G. Olinik as class counsel for purposes of this settlement;

23 6. The Final Approval Hearing in this matter shall be scheduled for 11-25, 2020
24 at 9:00 a.m. in Department C-73 of the San Diego Superior Court, Hall of Justice, 330 West
25 Broadway, San Diego, CA 92101;

26 7. The briefing schedule for the Final Approval Hearing is as follows:

27 Moving Papers must be filed and served no later than 10-9, 2020.

28 Any opposition must be filed and served no later than 10-26, 2020.

1 Any and all objections must be filed and served no later than 10-26, 2020.

2 Any reply papers must be file and served no later than 11-18, 2020;

3 8. The Notice to the Class must be sent pursuant to Paragraph 6 of the Settlement
4 Agreement no later than 30 days from the date that this order is signed;

5 9. The proposed Notice to the Settlement Class is hereby approved. The Notice meets the
6 requirements of California Law and the Due Process Clause of the United States Constitution; is the
7 best practicable notice under the circumstances, and is reasonably calculated to apprise Settlement
8 Class members of the pendency of the Litigation and their right to object or opt out of participation in
9 the Settlement;

10 10. All Settlement Class members who wish to opt out of this Settlement Agreement must
11 submit their Requests for Exclusion to Class Counsel timely on or before 10-26, the
12 Objection/Exclusion Deadline, as specified in Section 5 of the attached Settlement Agreement;

13 11. Any Settlement Class member who wishes to object to the fairness, reasonableness, or
14 adequacy of the Settlement, Class Counsel's Fees, or Incentive Awards must file with the Court and
15 deliver to Class Counsel and Defendant's counsel a written statement of their Objection, as well as the
16 specific reason for such Objection, including legal support the Settlement Class Member wishes to
17 bring to the Court's attention, and evidence the Settlement Class Member wishes to introduce in
18 support of their Objection no later than 10-26-20, the Objection/Exclusion
19 Deadline;

20 12. Any Settlement Class member that does not timely submit a written Request for
21 Exclusion or Objection shall be bound by all proceedings, orders, and judgments in this action;

22
23
24 Dated: 7-22-20


Hon. Joel R. Wohlfeil

JUDGE OF THE SUPERIOR COURT