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Attorneys for Plaintiffs and Proposed FLSA Collective and California Class

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Luis Duque and Daniel Thibodeau, individually, on behalf of others similarly situated, and on behalf of the general public,

Plaintiffs,

vs.

Bank of America, National Association, and DOES 1-50,

Defendant.

Case No.: 8:18-cv-01298-PA-MRW

PLAINTIFFS' NOTICE OF MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT

Date: October 15, 2018
Time: 1:30 p.m.
Place: Courtroom 9A
Hon. Percy Anderson

NOTICE OF MOTION & MOTION TO THE COURT AND ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that a hearing will be held on Plaintiffs' Unopposed Motion for Preliminary Approval of Class and Collective Action Settlement on October 15, 2018 at 1:30 p.m. in the Courtroom of the Honorable United States District Court Judge Percy Anderson, located at Courtroom 9A, 350 W. 1st Street, Los Angeles, CA,. At the hearing, representative Plaintiffs Luis Duque and Daniel Thibodeau, through their attorneys and on behalf of all others similarly situated, will and hereby do move the Court to: preliminarily approve the $1,950,000 Settlement between the Plaintiffs and Defendant Bank of America, National Association; name Bryan Schwartz Law as Class Counsel and Messrs. Duque and Thibodeau as Class Representatives; name Rust Consulting as the Claims Administrator; authorize the mailing of notices to the California Class and Collective Action Members; and schedule a final approval hearing date.

The Motion is based upon the Unopposed Motion for Preliminary Approval of Class And Collective Action Settlement and Memorandum of Points and Authorities in Support Thereof; the Declaration of Bryan J. Schwartz, Esq. ("Schwartz Decl."), in support of the motion, and the exhibits thereto, including the Joint Stipulation For Settlement and Release of Class and Collective Action Claims and the Proposed Class and Collective Action Notices; the Declarations of Daniel Thibodeau ("Thibodeau Decl.") and Luis Duque ("Duque Decl.") (collectively, "Plaintiffs' Decls."); as well as the Declarations of Sharon Gamble and Felipe Fuentes (collectively, "Opt-In Decls."); all other exhibits and attachments submitted in support of the Motion; any oral argument of counsel; the complete files, records, and pleadings in this matter; and such additional matters as the Court may consider. A Proposed Order is submitted herewith.

Dated: August 21, 2018

BRYAN SCHWARTZ LAW

By: *__/s/ Bryan J. Schwartz_____*
BRYAN J. SCHWARTZ
RACHEL M. TERP
DECAROL A. DAVIS
Attorneys for the Proposed FLSA Collective and California Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a wage-and-hour class and collective action against Defendant Bank of America, National Association ("BANA"), brought by Client Advocates, Senior Client Advocates, Operations Consultants, and Senior Operations Consultants ("Advocates") who BANA classified as exempt during the relevant period. Advocates process individual customer service inquiries from consumers, regulatory agencies, Attorneys General offices, non-profits, and other miscellaneous business channels. In this unopposed motion, the Plaintiffs seek preliminary approval of a proposed $1,950,000 settlement of this matter (the "Settlement") on behalf of approximately 321 employees who worked as Advocates nationwide. The Joint Stipulation For Settlement and Release of Class and Collective Action Claims and the Proposed Class and Collective Notices are attached hereto as Exhibit A to the Schwartz Decl. (hereinafter "Ex. A" or "Settlement Agreement").

While other Advocates have previously sued BANA for nearly identical claims on an individual basis, no court has decided whether Advocates or employees in similar roles are exempt under state and federal administrative exemptions. Plaintiffs and Defendant each vigorously maintain they could have prevailed as to the exemptions if the matter had been adjudicated to conclusion. In the meantime, Plaintiffs would have had to win and maintain through trial class and conditional certification, and survive any resulting appeals. Because BANA previously reclassified the vast majority of Advocates as non-exempt by late 2015, attorneys' fees and litigation costs could have easily dwarfed the total possible damages if this case had continued. Many employees who signed severance agreements might not have been able to participate.

Instead, despite the lack of clear precedent, and less than a year after Plaintiffs filed the initial class action complaint, the Settlement will provide 321 Advocates with an average gross recovery of approximately $6,074 each on their years-old claims. The

Court should readily grant preliminary approval of the Settlement and approve the notices, class counsel, class representatives, and settlement administrator.

II. PROCEDURAL HISTORY

On November 2, 2017, Plaintiffs filed *Gamble v. Bank of America*, Case No. 2:17-cv-08016-PA-MRW (C.D. Cal.) (Dkt. No. 1). (Schwartz Decl. ¶ 3). Plaintiffs withdrew that lawsuit and, on January 5, 2018, filed *Duque, et al. v. Bank of America ("Duque I")*, 18-cv-00016-PA-MRW (C.D. Cal.) (Dkt. No. 1), with different lead Plaintiffs, because of Gamble's severance and release agreement as well as health concerns that might arguably have affected her ability to represent a class. (Schwartz Decl. ¶ 3).

On February 1, 2018, Defendant agreed to substitute service. *Duque I*, 18-cv-00016-PA-MRW (Dkt. No. 15). Local Civil Rule 23-3 requires parties file class certification motions within 90 days after service of class pleadings, so May 2, 2018, was the default deadline for a class certification motion.

The Parties conducted their FRCP 26(f) conference on March 29, 2018, and promptly exchanged written discovery requests. (Schwartz Decl. ¶ 4). Plaintiffs noticed a FRCP 30(b)(6) deposition and three Class Member depositions. (*Id.*).

In early April 2018, the Parties agreed to mediate on May 9, 2018. (Schwartz Decl. ¶ 5). To permit the parties to prepare for the approaching mediation, rather than simultaneously conducting discovery and briefing class certification, the parties stipulated that Plaintiffs would withdraw their class and collective action without prejudice in exchange for tolling the statute of limitations pending mediation. (*Id.*)[1] Magistrate Judge Michael Wilner suggested this withdrawal without prejudice during a discovery conference concerning the difficulty of scheduling timely depositions. (Schwartz Decl. ¶ 5). On April 13, 2018, Plaintiffs filed a Joint Stipulation to Dismiss Entire Action Without Prejudice. *Duque I*, 18-cv-00016-PA-MRW (Dkt. No. 28). The Parties made progress at mediation, and on May 23, 2018, the Parties fully-executed a

[1] The Parties attempted twice to push back the deadline to move for class certification, but both stipulated requests were denied. *Duque I*, 18-cv-00016-PA-MRW (Dkt. Nos. 17 & 26).

Memorandum of Understanding. (Schwartz Decl. ¶ 6). After months of additional, arm's-length negotiations, the Parties executed a final, long-form Settlement Agreement on July 26, 2018. (*Id.*; Schwartz Decl., Ex. A).

III. PLAINTIFFS' STATEMENT OF FACTS

During the relevant period, Advocates worked processing customer complaints for BANA's Regulatory Complaints and Social Media Servicing group. (Complaint ¶ 1 (Dkt. No. 1); Plaintiffs' Decls. ¶ 2). By late 2015, BANA had reclassified all but a handful of Advocates to non-exempt positions. (Schwartz Decl. ¶ 7).

Client Advocates and Senior Client Advocates produced written responses to verbal and written inquiries that typically originated from individual customers, or regulatory agencies, Attorneys' General offices, non-profit organizations, and other business channels which first received customers' complaints. (Plaintiffs' Decls. ¶ 4; Opt-In Decls. ¶ 4). Defendant set policies, procedures, and quality guidelines for Client Advocates' communications. (Plaintiffs' Decls. ¶¶ 3-17; Opt-In Decls, ¶¶ 3-17). After receiving a communication, the Client Advocate would generate an itemized list of the customer's inquiries, send each inquiry to the appropriate line of business ("LOB"), and wait to receive the LOBs' responses. (Plaintiffs' Decls. ¶ 5; Opt-In Decls. ¶ 5). Once the Client Advocate received an answer from each LOB, the Client Advocate would input the inquiry response into a letter. (Plaintiffs' Decls. ¶ 5; Opt-In Decls. ¶ 5). The quality assurance department or a Client Advocate's managers reviewed letters. (Plaintiffs' Decls. ¶ 6; Opt-In Decls. ¶ 6). Once approved, the Client Advocate sent the letter to the customer. (Plaintiffs' Decls. ¶ 6; Opt-In Decls. ¶ 6).

Operations Consultants served as intermediary team members between Client Advocates and the LOBs to which Client Advocates directed itemized inquiries. (Thibodeau Decl. ¶ 24; Duque Decl. ¶ 25). After a Client Advocate submitted an inquiry response request to a LOB through BANA's electronic system, Operations Consultants monitored the requests to ensure the LOB timely processed and returned the response. (Thibodeau Decl. ¶ 24; Duque Decl. ¶ 25). Operations Consultants also reviewed past-

due requests to determine if they were complete but not properly closed out. (Thibodeau Decl. ¶ 24; Duque Decl. ¶ 25).

Had the matter proceeded through litigation, Defendant would have argued (among other things) that customer complaint processing duties, including regarding regulatory issues, are an exempt administrative function, related to quality control, government relations, legal and regulatory compliance, and other traditionally exempt functional areas. *See* 29 C.F.R. § 541.201(b). Defendant would have maintained that the Advocates' work is directly related to servicing the general business operations of Defendant and its customers, requiring discretion and independent judgment. *See, e.g.*, *Cash v. Cycle Craft Co, Inc.*, 508 F.3d 680 (1st Cir. 2007) (administrative exemption applied where plaintiff "focused on improving customer service generally, by coordinating with various Boston Harley departments to ensure that customers were satisfied with their purchase and that they would provide Boston Harley with positive feedback reports;" plaintiff "exercised discretion in reacting to the unique needs of Boston Harley's customers"); DOL Opinion Letter, FLSA 2006-23NA ("The EA2's primary duty involves the performance of office or non-manual work directly related to the management or general business operations of the employer. The EA2 assists the union president, responds to inquiries on his behalf . . . ."). [2] Moreover, Defendant would have contended that Advocates essentially represent Defendant in communicating with customers, regulatory bodies, and the public.

On the other hand, Plaintiffs would have argued that Advocates were simply in the nature of customer service representatives, integral to providing BANA's core banking services, churning out thousands of rote, formulaic communications a year. *See, e.g.*, *Miller v. Team Go Figure, LLP*, 2014 WL 1909354, *12 (N.D. Tex. May 13, 2014) ("evidence exists from which a reasonable juror could conclude that Miller's customer service work . . . was intertwined with the very service and product TGF provided");

[2] *See* https://www.dol.gov/whd/opinion/FLSANA/2006/2006_10_26_23NA_FLSA.pdf, at p. 6 of 9 (last viewed July 23, 2018).

Owens v. CEVA Logistics/TNT, 2012 WL 6691115, at *9–10 (S.D. Tex. Dec. 21, 2012) (and cases cited therein) (rejecting argument that customer service work is exempt work, when such customer service work is intertwined with the service provided). Plaintiffs would have argued that Advocates are production workers, rather than policy-makers setting Defendant's course. *See generally McKeen-Chaplin v. Provident Sav. Bank*, 862 F. 3d 847 (9th Cir. 2017) (adopting administrative-production dichotomy for evaluating administrative exemption).

Because it is uncertain which view of the facts the trier-of-fact would embrace, and to avoid the costs and burdens of protracted litigation, the Parties reached this settlement.

IV. PROPOSED SETTLEMENT TERMS

A. Class Definitions

The Settlement resolves the claims of "Class Members," a term which refers to both the California Class and the FLSA Collective action. (Ex. A ¶ 1).

The "California Class" is defined in the Settlement as "all persons who were classified as exempt by BANA and worked as Client Advocates, Senior Client Advocates, Operations Consultants, Senior Operations Consultants and/or other job titles performing the same or similar customer complaint processing duties in the Regulatory Complaints and Social Media Servicing group, within the State of California from January 5, 2014 through December 31, 2015 [the date by which the reclassification to non-exempt was largely complete]." (Ex. A ¶ 2). The "FLSA Collective" is the same, except that it adheres to the three-year, maximum FLSA statute of limitations, *i.e.*, from January 5, 2015 through December 31, 2015. (Ex. A ¶ 3).

B. Prompt, Meaningful Relief to the Class

The Settlement calls for a payment of $1,950,000, none of which will revert to Defendant unless the Settlement fails to receive Court approval or more than five percent of Class Members exclude themselves. (Ex. A ¶¶ 17, 49, 90-92). The Settlement also

calls for Defendant to pay the employer's share of payroll taxes. (Ex. A ¶ 17, 49). From the $1,950,000 common fund, the Settlement:

- deducts one-fourth of the Settlement Amount as attorneys' fees ($487,500) (Ex. A ¶ 52; Schwartz Decl. ¶ 18);
- reimburses actual litigation costs, estimated to be not more than $20,000 (Ex. A ¶ 52; Schwartz Decl. ¶ 18);
- provides service awards of $5,000 each to Class Named Plaintiffs Luis Duque and Daniel Thibodeau (Ex. A ¶ 53; Schwartz Decl. ¶ 14);
- provides enhancement payments of $2,500 each to opt-in Plaintiff (Sharon Gamble, Felipe Fuentes, and Alina Abad) for the additional value of their FLSA claims and their courage in stepping forward (Ex. A ¶ 53; Schwartz Decl. ¶ 16); and
- pays Rust Consulting $16,500 in settlement administration fees and expenses to the Claims Administrator. (Ex. A ¶ 8; Schwartz Decl. ¶ 20).

The remaining amount, approximately $1,408,500, will provide an average net payment of $4,388 each to the 321 Class Members. (Schwartz Decl. ¶ 9). Each Class Member's allocation will be a *pro rata* share of this amount based upon the number of weeks worked by the Class Member during the brief class period. (Ex. A ¶ 55). California Class members' workweeks will be worth 1.5 the value of FLSA Collective action members' workweeks, in light of the expanded rights and remedies available under California law. (Ex. A ¶ 6). Workweeks of those who signed severance and release agreements will reflect a 10% discounted share based upon the risks a court would hold as valid the waiver of state and/or federal wage and hour claims, or would not permit them to join the FLSA collective action. (*Id.*). *See Chindarah v. PickUp Stix*, 171 Cal.App.4th 796 (2009) (allowing waiver of Labor Code claims); *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612 (2018) (permitting waiver of FLSA collective action rights).

The Claims Administrator will void any checks uncashed after ninety days, and, if the total amount of unclaimed funds exceeds $10,000, the Claims Administrator will

allocate the amount in a second distribution to participating Class Members who cashed their initial checks. (Ex. A ¶ 60). The Claims Administrator will void any second distribution checks not negotiated after ninety days (or any initially unclaimed funds, if totaling $10,000 or less), and will allocate the unclaimed funds to the *cy pres* recipient, Legal Aid at Work, assuming this organization representing low-wage workers is approved by this Court following the Ninth Circuit's standards. (*Id.*).

C. Fair Notice and an Appropriate Scope of Release

The agreed-upon California Class Notice and FLSA Collective Notice explain their purpose and describe the litigation, the terms of the Settlement, and each California Class and FLSA Collective member's options with regard to participating in the Settlement. (Exs. 1 & 2 to Ex. A). The California Class and FLSA Collective Notices explain the consequences of doing nothing, the final approval hearing, and how Class Members can obtain additional information, object, or opt out. (*Id.*).

Class Members may opt out of the Settlement and exclude themselves from the litigation and the Settlement by the claims period deadline. (Exs. 1 & 2 § 16). Class Members who do not timely exclude themselves from the Settlement Class will receive settlement payments by mail. (Exs. 1 & 2 § 17). The back of the check will state that by depositing the check, the payee opts-into the FLSA collective action, and agrees to release all relevant wage and hour claims at issue in this suit. (Exs. 1 & 2, p. 2) Class Members who do affirmatively exclude themselves will not receive a payment, will not be subject to any release of claims, and will be deemed never to have participated in the litigation or Settlement. (Exs. 1 & 2 §§ 15-16). FLSA Collective action members who do not cash their checks will not release FLSA claims. 29 U.S.C. § 216(b); (Exs. 1 & 2 § 17).

As explained in more detail in the California Class Notice, California Class members who do not cash the check will be subject to the judgment and its associated release of claims unless they timely exclude themselves from the suit. (Ex. 2 § 17).

California Class members who do not exclude themselves may object to the Settlement. (Ex. 2 §§ 21-22).

Only the Plaintiffs receiving enhancements must execute a general release of all claims existing as of the date of final approval. (Ex. A ¶¶ 87-88; Exs. 1 & 2 § 20).

V. FACTORS IN PARTIES' DECISION TO SETTLE

The uncertain outcome, likelihood of appeal, and delay in payment absent a settlement favor this resolution. The Parties considered the following:

A. Litigation Concerning Exemption Defenses Presents Uncertainty.

Plaintiffs argue the administrative exemptions under FLSA and California law do not apply to Advocates. *See* 29 U.S.C. § 213(a)(1); 8 Cal. Code Regs. § 11040. But, no mandatory authority directly addresses whether employers may classify the specific jobs at issue here as exempt. Some courts have found workers performing client services or processing customer information to be non-exempt. *See, e.g.*, *Martin v. Ind. Mich. Power Co.*, 381 F.3d 574, 578-584 (6th Cir. 2004) (directing summary judgment in favor of help-desk IT employee on administrative exemption); *McKeen-Chaplin*, 862 F.3d at 582 (underwriters who verified customers' applications for compliance with employer's criteria non-exempt). However, some courts have held workers with public or customer relations duties exempt. *See, e.g.*, *Copas v. East Bay Mun. Util. Dist.*, 61 F. Supp. 2d 1017 (N.D. Cal. 1999) (holding a public relations officer performing public information functions an exempt administrative employee); *Verkuilen v. MediaBank, LLC*, 646 F.3d 979, 982-983 (7th Cir. 2011) (account manager who consulted with customers was exempt); *Cash*, 508 F.3d at 680 (exempt customer relations manager).

Absent clear, binding authority, misclassification cases always present a significant risk of losing on the merits, even after extensive litigation. *See In re Farmers Ins. Exch.*, 481 F.3d 1119, 1132 (9th Cir. 2007) (finding claims adjusters exempt and reversing a $52.5 million plaintiffs' verdict); *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156 (2012) (abrogating *In re Novartis Wage and Hour Litig.*, 611 F.3d 141 (2d Cir. 2010)). In *Novartis*, after winning at the Second Circuit, plaintiffs settled for $99

million and received final approval *less than a month* before the *Christopher* decision, which would have left them empty-handed.

BANA likely would have argued the Supreme Court's recent jurisprudence only lends support to their right to claim an exemption defense. *See, e.g., Encino Motorcars v. Navarro*, 138 S. Ct. 1134 (2018) (abrogating jurisprudence that courts should construe FLSA exemptions narrowly). This Settlement removes the risk to Plaintiffs of an unfavorable interpretation of the administrative exemptions. The many uncertainties of complex litigation involving misclassification under the wage laws weigh strongly in favor of granting preliminary approval of this Settlement.

B. Defendant May Have Succeeded in its Good-Faith Defenses.

Under FLSA and the California Labor Code, Plaintiffs must prove BANA's alleged violations were willful for maximum recovery. *See Alvarez v. IBP, Inc.*, 339 F.3d 894, 910 (9th Cir. 2003) (defining FLSA standard for willfulness); *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 325 (defining willfulness standard under Labor Code § 203); *Willner v. Manpower Inc.*, 35 F. Supp. 3d 1116, 1131 (N.D. Cal. 2014) (defining standard for a "knowing and intentional" violation under Labor Code § 226). Absent the Settlement, Defendant might have persuaded the trier of fact that BANA based its misclassification of Advocates upon a mistaken but good-faith belief.

If Plaintiffs were unable to establish the requisite level of intent, the statute of limitations under FLSA would reduce to two years. *See* 29 U.S.C. § 255(a). A two-year statute of limitations would have annihilated Plaintiffs' federal claims, which only allege misclassification through the end of 2015.

Additionally, BANA successfully asserting a good-faith defense would bar Plaintiffs' claims under Labor Code § 203 and § 226 and eliminate liquidated damages for the FLSA collective. *See* 29 U.S.C. § 260.

C. Plaintiffs May Have Recovered Less in Interest and Penalties.

The Parties agree that two thirds of the Settlement payments relate to interest and penalties. (Ex. A ¶ 56). This estimate is reasonable because the penalty claims asserted

are a significant proportion of the estimated damages exposure and because California's statutory prejudgment interest rate is ten percent and would have begun to accrue as early as January 2014. *See Bell v. Farmers Ins. Exch.*, 135 Cal.App.4th 1138, 1150 (2006) (affirming the ten percent prejudgment interest rate provided by Civil Code § 3289 applied to the accrual of unpaid wages under Labor Code § 218.6).

Absent the Settlement, Plaintiffs would risk failing to recover interest and penalties, in full or in part. Liquidated damages and prejudgment interest are not *both* awarded after a successful judgment in a FLSA case. *See Ford v. Alfaro*, 785 F.2d 835, 842 (9th Cir. 1986). The Ninth Circuit has also permitted only partial prejudgment interest. *See Martin v. Applied Data Sys.*, 972 F.2d 1340 (9th Cir. 1992). Defendants asserting a good-faith defense have long argued that a court may deny both interest and liquidated damages. *See Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 715 (1945).

California penalty recoveries are capped and limited by shorter statutes of limitations. *See Pineda v. Bank of Am., N.A.*, 50 Cal.App.4th 1389, 1398 (2010) (one year under Cal. Lab. § 226 and up to three years under Cal. Lab. § 203); Cal. Lab. § 226(e)(1) ($4,000 maximum recovery). Defendant also would have argued for decertification of penalty claims based upon individualized willfulness considerations.

Therefore, the Court should favorably view the Settlement Agreement's significant penalty and interest compensation.

D. The Fluctuating Work Week Method Could Have Drastically Reduced Recovery for the Collective.

FLSA Collective members' recovery could also have been significantly reduced if Defendant was successful in advancing a fluctuating work week ("FWW") method for calculating overtime. Defendant would argue that the proper overtime rate in this case should be half (rather than one and a half) Plaintiffs' regular rate of pay for the FLSA claims. *See, e.g., Ransom v. M. Patel Enters., Inc.*, 734 F.3d 377, 386-87 (5th Cir. 2013) (applying FWW method in FLSA misclassification suit); *Overnight Motor Transp. Co. v. Missel*, 316 U.S. 572 (1942) (applying half rather than one-and-a-half times regular

rate of pay for overtime hours worked in FLSA context); 29 C.F.R. § 778.114. Plaintiffs would have opposed application of the FWW by invoking such authority as *Russell v. Wells Fargo*, 672 F. Supp. 2d 1008 (N.D. Cal. 2009), but some courts have declined to grant summary judgment against or have otherwise adopted the application of the FWW method in FLSA misclassification cases. *See, e.g., Siegel v. Bloomberg L.P.*, 2015 WL 223781, at *7 (S.D.N.Y. Jan. 16, 2015); *Urnikis-Negro v. Am. Family Prop. Servs.*, 616 F.3d 665, 680 (7th Cir. 2010). Absent binding Ninth Circuit precedent on the applicability of the FWW in FLSA misclassification suits, Plaintiffs' possible failure to win this issue at the district court level or on appeal would have lost a significant portion of their recovery attributable to overtime under FLSA.

E. Further Delay Could Have Killed FLSA Collective Participation.

This Settlement ensures recovery for a larger swath of the FLSA Collective than might otherwise have been available. The Settlement provides relief to all FLSA Collective members who opt into the case by cashing the settlement checks mailed to them. If the case had not settled and litigation had continued, nearly all FLSA Collective members who had not opted into the case by December 31, 2018 would have had no work weeks within the statute of limitations, absent a Court ruling granting equitable tolling. *See* 29 U.S.C. § 216(b) (requiring employees to affirmatively opt in by giving their consent in writing to become a party to an FLSA action); 29 U.S.C. § 255(a) (FLSA statute of limitation is three years for willful violations); *Belanus v. Clark*, 795 F.3d 1021 (9th Cir. 2015) (denying request for equitable tolling and acknowledging view that "equitable tolling is limited to rare and exceptional circumstances").

F. Without Settlement, Recovery Would Be Long Delayed.

The uncertain outcome of trial and appeals is a strong incentive for the Parties to settle. Full relief on Plaintiffs' claims, including all penalties, could result in a greater recovery. But if Defendant prevailed on liability at trial for any claim (*e.g.*, the meal and rest break claims), succeeded in cross-examining Class Members on damages, or prevailed regarding any affirmative defense, the courts eviscerate Plaintiffs' victory.

Even if Plaintiffs prevailed at trial and Class Members' participation in individualized damages hearings were high, post-judgment appeals would almost certainly follow. Without a settlement, the Class would not recover for years, but this Settlement provides meaningful recoveries within months. Under the Settlement, Defendant will deliver the total Settlement amount to the third-party administrator within fifteen days of final approval. (Ex. A ¶ 74). Class Members will receive payments by mail without having to undergo a claims process, maximizing the likelihood of one hundred percent Class Member recovery. (Ex. A ¶ 76).

VI. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

The Settlement is fair, adequate, and reasonable, and the Court should grant preliminary approval. Because the eventual fairness hearing will provide the Court with another opportunity to review the Settlement with Class Members' input, the Court should grant preliminary approval and authorize the Parties to distribute notice if the Settlement is "within the range of possible approval." *Harris v. Vector Marketing Corp.*, 2011 WL 1627973, at *7 (N.D. Cal. Apr. 29, 2011) (citing cases). Further, courts entitle settlements reached as a result of arm's-length bargaining between experienced, well-informed counsel after thorough investigation to a presumption of fairness. *See Staton v. Boeing*, 327 F.3d 938, 960 (9th Cir. 2003).

Plaintiffs' counsel recommends this Settlement (Schwartz Decl. ¶ 7), warranting "a presumption of reasonableness." *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979); *see also Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (stating "we put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution, and have never prescribed a particular formula by which that outcome must be tested").

As detailed in the Settlement Agreement and the Declaration of counsel, the Settlement is the result of months of good-faith negotiations and after Plaintiffs' investigation and informal discovery by their attorneys, and a mediation with Steven G. Pearl, Esq. (Schwartz Decl. ¶¶ 4-6, 8, 10, 22).

Plaintiffs support the Settlement because their prospects of collecting a greater amount if they proceed to trial are highly uncertain. First, Plaintiffs risk an unfavorable interpretation of the administrative exemption or other exemptions to coverage under FLSA and California law. Second, Plaintiffs must establish BANA's willfulness and the absence of good faith to extend FLSA's statute of limitations and obtain certain penalties under the California Labor Code. Third, Plaintiffs could fail to recover interest and penalties in full or in part. Fourth, the Court's possible application of the fluctuating work week method could drastically reduce recovery for Class Members. And fifth, FLSA Collective members faced a fast-diminishing coverage period.

The Parties therefore conclude the Settlement is the best outcome for the Parties under the circumstances. It will allow the Parties to avoid further protracted, costly litigation and will provide certain and significant compensation to Class Members (approximately $4,400 each net, on average). In addition to significant compensation, Defendant has agreed to bear the employer's share of payroll taxes, and there is *no reversion* to Defendant unless the Settlement fails. *See La Parne v. Monex Deposit Co.*, 2010 WL 4916606 (C.D. Cal. Nov. 29, 2010) (Carter, J.) (favoring a non-reversionary settlement under similar circumstances); *Allen v. Bedolla*, 787 F.3d 1218, 1224 (9th Cir. 2015) (explaining that reversionary settlements may signal to the court that class counsel has not prioritized the interests of the class). The Settlement agreement readily meets the Ninth Circuit's standard and should be preliminarily approved. *See Officers for Justice v. Civil Serv. Comm'n of City & County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982) (stating "the universally applied standard is whether the settlement is fundamentally fair, adequate and reasonable").[3]

[3] A study published by NERA Economic Consulting, "Trends in Wage and Hour Settlements: 2015 Update," evaluated patterns in 613 federal wage and hour settlements from 2007 to 2015. (Ex. B to Schwartz Decl., and available online). The authors found that few cases settle for more than $5,000 per plaintiff, and more recently recoveries have averaged just hundreds of dollars per person per year of work. (*See id.* at 9). The study confirms the exceptional here – where nearly $5,000/person is recovered, on average, for a liability period of just 1-2 years.

A. The Settlement Satisfies Rule 23 for Purposes of Settlement.

The proposed Settlement meets the class action requirements of Rule 23 and Ninth Circuit jurisprudence for settlement purposes, justifying preliminary approval. The Class Members are numerous, Plaintiffs are typical of the relevant Class Members and adequate representatives, common questions of law and fact predominate for each class, and a class action is the superior means of resolution of the claims here.

1. The Class Is Sufficiently Numerous.

Plaintiffs satisfy the numerosity requirement of Rule 23(a)(1) if "the class is so large that joinder of all members is impracticable." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). Here, there are approximately 321 Class Members. (Ex. A ¶ 5). This suffices. *See Ellis v. Costco Wholesale Corp.*, 285 F.R.D. 492, 506 (N.D. Cal. 2012) (holding purported class of 40 members satisfied numerosity).

2. Common Questions of Law or Fact Are Present in the Class.

Plaintiffs satisfy the commonality requirement of Rule 23(a)(2) if "either 'shared legal issues with divergent factual predicates' or 'a common core of salient facts coupled with disparate legal remedies within the class' are present." *Ellis*, 285 F.R.D. at 506 (citing *Hanlon*, 150 F.3d at 1019-20). "'Even a single common question' will suffice to satisfy Rule 23(a)." *Id.* (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011) (internal brackets omitted)).

Here, common questions of law exist, turning on common questions of fact and applying to all Class Members, including: 1) whether the administrative exemption or another exemption under state or federal law justify BANA's decision to classify Advocates as exempt; and 2) whether BANA willfully classified Advocates as exempt. Any differences among Class Members are immaterial to these common questions of law and fact (as to the latter, *e.g.*, BANA's uniform procedural guidelines).

As evidenced by the Plaintiffs' and Opt-Ins' declarations, California Advocates performed the same customer complaint processing duties, in the same manner,

according to the same employer-imposed requirements. (Plaintiffs' Decls.; Opt-In Decls).

3. Plaintiffs' Claims Are Typical of Class Members' Claims.

Plaintiffs satisfy the typicality requirement of Rule 23(a)(3) if the "claims or defenses of the representative parties are typical of the claims or defense of the class." Fed. Rule Civ. P. 23(a)(3). "Courts assess typicality by determining 'whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other Class Members have been injured by the same course of conduct." *See Ellis*, 285 F.R.D. at 533. Here, all Class Members suffered the same alleged injury. BANA did not pay California Advocates overtime, or meal or rest break premiums. Plaintiffs' claims are not unique.

4. Plaintiffs Are Adequate Representatives of the Class.

Plaintiffs satisfy the adequacy requirement of Rule 23(a)(4) if they do not have conflicts of interest with the proposed class and qualified, competent counsel represent them. *See Ellis*, 285 F.R.D. at 535. The Representative Plaintiffs have no conflict of interest with the proposed Classes. (Schwartz Decl. ¶ 22; Duque Decl. ¶ 28; Thibodeau Decl. ¶ 27). Counsel with a successful track record in class action litigation in this and many other courts nationwide represent Plaintiffs. (Schwartz Decl. ¶ 21). The Court should therefore appoint Plaintiffs and undersigned counsel to represent the Classes.

5. Common Questions of Law and Fact Predominate and Class Resolution Is Superior.

Under Rule 23(b)(3), Plaintiffs may maintain a class action if "the court finds that the questions of law or fact common to Class Members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). "In evaluating whether common issues predominate, the operative question is whether a putative class is 'sufficiently cohesive' to merit representative adjudication." *Ellis*, 285 F.R.D. at 537 (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997)).

Common issues need not be dispositive of the litigation, but "must 'present a significant aspect of the case [that] can be resolved for all members of the class in a single adjudication' so as to justify 'handling the dispute on a representative rather than individual basis.'" *Id.* (quoting *Hanlon*, 150 F.3d at 1022).

Here, the case's central question is whether BANA misclassified Class Members as exempt from overtime and similar compensation based on the administrative exemptions. This question is a "significant aspect of the case [that] can be resolved for all members of the class in a single adjudication." *Id.* Plaintiffs contend the class is cohesive in that all Advocates were misclassified under the administrative exemptions.

Plaintiffs also submit that resolution of the issues in this case on a class-wide basis is superior to other methods of adjudication. The alternative to a single class action—hundreds of individual actions—would be inefficient and unfair because many Class Members would not recover and the transaction costs would potentially eclipse the value of the recovery. *See, e.g.*, *Custom Led, LLC v. eBay, Inc.*, 2013 WL 4552789 (N.D. Cal. Aug. 27, 2013) (Tigar, J.) (finding a class action superior because a "class action would achieve the resolution of the putative Class Members' claims at a lower cost and would reduce the likelihood of inconsistent determinations").

B. The Settlement Is Fair, Adequate, and Reasonable.

"At the preliminary approval stage, the Court may grant preliminary approval of a settlement and direct notice to the class if the settlement: (1) appears to be the product of serious, informed, non-collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant preferential treatment to class representatives or segments of the class; and (4) falls within the range of possible approval." *Harris*, 2011 WL 1627973, at *7. Here, the pertinent factors support granting preliminary approval and authorizing distribution of the Class Notice.

1. The Settlement Is Non-Collusive and Was the Product of Extensive Negotiations.

The Settlement is the product of arm's-length, non-collusive negotiations,

including a day-long mediation with a highly experienced class-action mediator and months of additional negotiations. (Schwartz Decl. ¶¶ 5-6); *see Satchell v. Fed. Exp. Corp.*, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007) (stating the "assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive"). Although the Parties reached an agreement relatively early in the litigation, Plaintiffs were well-informed about the strengths and weaknesses of their case, based on extensive correspondence and investigative interviews with putative class and collective action members, informal discovery produced by Defendants in preparation for mediation including job descriptions, and comprehensive data which informed Plaintiffs' damages analysis. (Schwartz Decl. ¶¶ 2-13).

Experienced counsel, who have fought for terms most advantageous to the Class throughout the course of litigation, represent Plaintiffs and the putative Class Members. (Schwartz Decl. ¶¶ 19, 21). Among other advantageous terms, Plaintiffs' counsel insisted that the settlement payment be non-reversionary (*i.e.*, maximizing payments to Class Members and aligning the Parties' interests in a successful settlement administration) and that Defendant pay the employer's share of payroll taxes. (Schwartz Decl. ¶¶ 13).

2. The Settlement Agreement Has No Deficiencies.

The Settlement will pay more than $6,000 per person, gross, on average. (Schwartz Decl. ¶ 9). Other than the named Plaintiffs and specified opt-in Plaintiffs, for whom Plaintiffs' counsel requests service awards, the Class Members are waiving only their wage-and-hour claims. (Ex. A ¶¶ 82-88); *see Hendricks v. Starkist Co.*, 2016 WL 5462423, at **4, 8 (N.D. Cal. Sept. 29, 2016) (approving class settlement where the scope of the release was limited to "the factual predicate in the operative complaint"). In addition, Class Members do not waive their FLSA claims unless they opt into the suit by endorsing their Settlement check. *Cf. Kakani v. Oracle Corp.*, 2007 WL 1793774, at *6 (N.D. Cal. June 19, 2007) (denying preliminary approval of proposed wage and hour settlement in part because release not tailored to the facts of the case).

3. Named and Opt-In Plaintiffs' Modest Enhancements Are Justified.

The Settlement will treat all Class Members fairly according to the same formula described above, which emphasizes the number of each Class Member's work weeks during the relevant time period. The differences in allocation reflect the strength of each Class Member's claim, based on whether they have stronger, California claims or not, and whether a Class Member signed a release of claims. *See, e.g.*, *Hanlon*, 150 F.3d at 1020-21 (noting that differential treatment of Class Members based on factors such as variations in state law is appropriate).

Case law and the facts of this case justify the Class Representatives' modest service awards. *See, e.g.*, *Staton*, 327 F.3d 977 (recognizing that service awards to named plaintiffs in a class action are permissible and do not render a settlement unfair or unreasonable); *Glass v. UBS Fin. Servs., Inc.*, 2007 WL 221862, at *16 (N.D. Cal. Jan. 26, 2007) (approving payments of $25,000 to each named plaintiff); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (awarding named plaintiff in wage and hour class action $10,000 as a service award, and an additional $5,000 award solely for the general release that the named plaintiff executed as part of the settlement agreement); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (awarding $50,000 to a lead plaintiff).

In *Van Vranken*, the court articulated the following relevant factors to assess the appropriateness of a Class Representative's enhancement: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representatives; 3) the amount of time and effort spent by the class representatives; 4) the duration of the litigation, and; 5) the personal benefit (or lack thereof) enjoyed by the class representatives as a result of the litigation. *See id*. at 299.

These factors (with the exception of the duration of the litigation) all support the service payments to the Class Representatives here. The $5,000 service awards for Plaintiffs Duque and Thibodeau and $2,500 awards for opt-in Plaintiffs Gamble, Fuentes,

and Abad (all together totaling approximately 0.009% of the common fund) are well within the range of service awards commonly approved by district courts. *See, e.g.*, *Buccellato v. AT&T Operations, Inc.*, 2011 WL 3348055, at *2 (N.D. Cal. June 30, 2011) (approving service award of $20,000 for one class representative, $5,000 for four others, and collecting cases).

First, Plaintiffs Duque and Thibodeau experienced reputational risk and harms as a result of bringing this case, by placing themselves into the public spotlight and feeling like they are losing a source of job references and future employment opportunities based on participation in this lawsuit. (Thibodeau Decl. ¶ 25; Duque Decl. ¶ 26); *see also Rutti v. Lojack Corp.*, 2012 WL 3151077, at *5 (C.D. Cal. July 31, 2012) (citing research, noting the "strong disincentives for employees to participate in a class action against their current or former employer, particularly when the suit requires an affirmative opt-in, as does the FLSA"); *Ross v. U.S. Bank Nat. Ass'n*, 2010 WL 3833922, at *4 (N.D. Cal. Sept. 29, 2010) (justifying service awards based on plaintiffs' "willingness to serve as representatives despite the potential stigma that might attach to them in the banking industry from taking on those roles").

Second, Class Representatives Thibodeau and Duque spent significant time on this case, including filing the January 5, 2018 complaint in the prior case, and the most recent July 2018 Complaint in the present case, reaching out to putative Class members, providing investigatory leads for counsel to pursue, preparing to produce document and interrogatory responses with the assistance of counsel before the prior case was dismissed, reviewing pleadings and agreements, consulting extensively with Plaintiffs' counsel about the case, both before and after filing the cases, providing key information that counsel used in preparing for mediation, reviewing and providing feedback on the terms of the proposed settlement agreement, and staying up-to-date on developments in the case. (Schwartz Decl. ¶ 14; Thibodeau Decl. ¶ 26; Duque Decl. ¶ 27). Further, Class Representative Thibodeau took a day off of work and drove to/from Los Angles to attend the successful full-day mediation. (Schwartz Decl. ¶ 14; Thibodeau Decl. ¶ 26).

Without the Class Representatives stepping forward to assert their claims publicly, far fewer Advocates would now recover for their missed overtime and related compensation. Others declined to serve as class representatives for fear of retaliation, public notoriety, unwillingness to commit the time, and/or for other personal circumstances. (Schwartz Decl. ¶ 15).

Third, the personal benefit that the Class Representatives would receive if they received the same settlement payment as other Class Members would not come close to compensating them for the foregoing personal costs they have paid in order to benefit the Class. Had the Class Representatives proceeded individually, rather than sacrificing for the Class, they might have recovered more than their recovery here.

Additionally, the opt-in Plaintiffs in this case were critical to the successful outcome of this case. All three opt-in Plaintiffs consulted with undersigned counsel, and were willing to provide valuable evidence in this case. (Schwartz Decl. ¶ 16). The opt-in Plaintiffs preserved their FLSA claims by stopping the ticking statute of limitations in *Duque I*, 18-cv-00016-PA-MRW (Dkt. Nos, 6, 14, 27) making their claims more valuable, warranting additional compensation.

Finally, the Class Representatives are executing a much broader waiver of claims than other Class Members, warranting additional compensation. (Ex. A ¶¶ 87-88); *see Dent v. ITC Serv. Grp., Inc.*, 2013 WL 5437331, at *4 (D. Nev. Sept. 27, 2013) (awarding service payment in part because wage-hour plaintiff signed a general release).

For these reasons, awarding $5,000 each to named Plaintiffs Duque and Thibodeau and $2,500 each to opt-in Plaintiffs Gamble, Fuentes, and Abad is reasonable for service awards in a case of this nature, that viably promotes the public policy interest in encouraging those with wage-and-hour claims to assert them despite the fears, personal burdens, and time associated with doing so. (Schwartz Decl. ¶ 17).

4. The Settlement Falls Within the Range of Possible Approval.

The primary inquiry at this stage is whether Plaintiffs' expected recovery absent settlement balances appropriately against the value of the Settlement. *See Harris*, 2011

WL 1627973, at *9. Courts "preview the factors that ultimately inform final approval:" (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status; (4) the amount offered in settlement; (5) the extent of discovery completed; (6) the experience and views of counsel; (7) the presence of a government participant (not applicable here); and (8) the reaction of Class Members. *Id.*

First, Plaintiffs believe their claims on the merits are strong, but Plaintiffs face the risk of an unfavorable interpretation of the administrative exemptions, as well as adverse decisions on questions of willfulness and good faith.

Second, the complexity and the expense of a Class trial would be considerable and would almost certainly result in appeals by one or both sides, including possible interlocutory appeals at various stages of the proceedings.

Third, the risk of failing to obtain or maintain class status through trial is substantial, and Defendant has represented it would seek to oppose class and conditional certification. (Ex. A ¶ 33).

Fourth, as previously discussed, the amount offered under the Settlement provides relatively high average per person net recovery for a wage-and-hour class action. Counsel secured this proposed Settlement within a year of the filing of the initial complaint. Moreover, though the Court need not consider it (*Rodriguez*, 563 F.3d at 965), the Settlement compares favorably with the estimated full relief for Plaintiffs' and Class Members' claims. As explained in further detail in counsel's appended declaration, the estimated value of the claims, according to a comprehensive analysis, is arguably under $5.1 million, in the inconceivable event that all 321 class and collective members actually participated and opted into the case (with only a discount for severance-agreement releasors). (Schwartz Decl. ¶¶ 10-11; *id.* at Exhibit C). The $1,950,000 recovered is arguably more than 38% percent of the total, best-day exposure in the case (*id.*) – a strong result, warranting this Court's approval. Compare this result to *Ma v. Covidian Holding, Inc.*, 2014 WL 360196 (C.D. Cal. Jan. 31, 2014), in which a settlement providing "9.1%

of the total value of the action [was] 'within the range of reasonableness.'" *Id.* at *5. On the other hand, settlements disapproved by courts have been dramatically different from this one. For example, in *Lusby v. Gamestop Inc.*, 2013 WL 1210283 (N.D. Cal. Mar. 25, 2013) (Lloyd, M.J.), the rejected settlement would have been $750,000 for 13,872 people, paying a net of only $0.26 per shift.

Fifth, the Plaintiffs have engaged in informal discovery, including investigations and obtaining documents and class data from Defendants necessary to assess the value of each Class Member's claims, such as information regarding Class and Collective Members' pay information, dates of employment, and whether or not the Class Member signed a severance agreement. (Schwartz Decl. ¶¶ 4, 6, 10-11; *id*. at Exh. C).

Sixth, the firm representing Plaintiffs is highly experienced in wage and hour class actions, having had wage and hour settlements approved repeatedly by this Court and numerous other courts in the Ninth Circuit and elsewhere. (*Id*. ¶ 21). In the view of undersigned counsel, this Settlement is in the best interests of the Class in light of the risk and delay of a class action trial and appeal, as compared with the immediate and substantial recovery in the Settlement. (*Id*. ¶¶ 7, 13).

Seventh, Class Members' reactions to the Settlement will be better gauged at the final fairness hearing and the close of the opt-out deadline.

5. Attorneys' Fees of Twenty-Five Percent Are Justified.

Before final approval, Plaintiffs' counsel intends to seek, and Defendant will not oppose, attorneys' fees of one-quarter of the $1,950,000 Settlement.[4] (Ex. A ¶ 52). Plaintiffs will separately and more extensively brief their fee and cost request later, but Plaintiffs request preliminary approval of the presumptively reasonable one-quarter amount. *See, e.g.*, *Bellinghausen*, 306 F.R.D. at 265 (holding twenty-five percent the presumptively reasonable benchmark amount).

The United States Supreme Court "has recognized consistently that a litigant or a

[4] The actual settlement value is greater because of the employer's separate contribution of its share of payroll taxes.

lawyer who recovers a common fund . . . is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The Ninth Circuit's benchmark for presumptively reasonable fees in this context is twenty-five percent of the gross settlement amount, and courts that depart from the benchmark should indicate their reasons for doing so. *See Glass*, 2007 WL 221862, at *14. When determining fees, Courts consider not only the results achieved, but also the risk of litigation, the contingent nature of the fee, and the financial burden carried by the Plaintiffs. *See, e.g.*, *In re Omnivision Techs., Inc.*, 2007 WL 4293467, at *9 (N.D. Cal. 2007) (citing *Vizcaino v. Microsoft*, 290 F.3d 1043, 1048-50 (9th Cir. 2002)). "[C]lass counsel should [not] necessarily receive a lesser fee for settling a case quickly; in many instances, it may be a relevant circumstance that counsel achieved a timely result for class members in need of immediate relief." *Vizcaino*, 290 F.3d at 1050 n.5. This is particularly true in the context of unpaid wages, where there is a recognized public policy interest in the prompt payment of wages. *See Biggs v. Wilson*, 1 F.3d 1537, 1541-42 (9th Cir. 1993).

Here, the outstanding, prompt result achieved and the non-reversionary nature of the Settlement justify Plaintiffs' counsel's request for the benchmark fee award of twenty-five percent of the common fund ($487,500). The Court should readily grant preliminary approval to the settlement with the benchmark award. With their fee petition, Plaintiffs' counsel will provide a breakdown of their hours worked and fees incurred for a lodestar cross-check. If the Court so orders, Plaintiffs will make their fee and cost petition public more than fifteen days in advance of the deadline for Class Members to opt out of or object to the Settlement. *See* [Proposed] Order submitted herewith.

6. The Class and Collective Notices Are Sufficient.

The Class and Collective Notices and the proposed method of distribution are appropriate. *See* Fed. R. Civ. P. 23(c)(2)(B); *Churchill Village, L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). *See also* 29 U.S.C. §§ 216(b), 256. The Claims Administrator will send the proposed Notices via first-class mail to the last known mailing address of Class Members and, prior to mailing the Notices, an experienced

Claims Administrator will consult the United States Postal Service's National Change of Address Database to review the accuracy of and, if possible, update Class Members' mailing addresses. (Ex. A ¶ 67). The Class and Collective Notices (Exs. 1 & 2 to Ex. A) provide the details of the case and Settlement and the specific options available to Class Members as described above. The Notices will provide Class Members with information from which they can make an informed decision about whether to opt out (or withdraw their consent to join the collective action), object, or take no further action and receive a payment from the Settlement. (*Id.*) The Class and Collective Notices are adequate.

7. The Requested *Cy Pres* Beneficiary Is Appropriate.

Under *Dennis v. Kellogg Co.*, the Ninth Circuit requires "that there be a driving nexus between the plaintiff class and the *cy pres* beneficiaries." 697 F.3d 858, 865 (9th Cir. 2013) (internal quotations omitted). This is a workers' rights suit seeking overtime wages in California, among other claims, and Legal Aid at Work (www.legalaidatwork.org) is the leading provider of direct legal services in employment law for low-wage workers in California. There is a strong nexus, and the Court should approve this *cy pres* recipient.

C. The FLSA Settlement Is Fair and Reasonable.

Congress enacted FLSA to protect workers from the poor wages and oppressive hours than can result from unequal bargaining power with employers. *See Barrentine v. Arkansas-Best Freight Sys.*, 450 U.S. 728, 739 (1981). When an employee brings a private action for wages under 29 U.S.C. § 216(b), the parties must present any proposed settlement for approval. *Lynn's Food Stores, Inc. v. U.S.*, 679 F.2d 1350, 1353 (11th Cir. 1982). If the settlement is a "fair and reasonable resolution of a bona fide dispute over FLSA provisions," a stipulated judgment is appropriate. *Id.* at 1355. Settlements of FLSA claims are permissible because initiation of the action "provides some assurance of an adversarial context." *Id.* at 1354. Employees are likely to be represented by an attorney who can protect their rights, so "the settlement is more likely to reflect a reasonable compromise of disputed issues than a mere waiver of statutory rights brought about by

an employer's overreaching." *Id*. If the settlement reflects a reasonable compromise over disputed issues, approval is permissible. *Id*. This Settlement of FLSA claims is fair and reasonable, and the Court should approve it.

VII. CONCLUSION

Plaintiffs submit the Settlement is fair, adequate, and reasonable, and in the best interests of Plaintiffs and the Class. Under the applicable class and collective action standards, Plaintiffs request the Court: (a) preliminarily approve the Settlement; (b) certify the proposed Classes for settlement purposes only; (c) name Bryan Schwartz Law as Class Counsel, and Luis Duque and Daniel Thibodeau as Class Representatives; (d) name Rust Consulting as Claims Administrator; (e) approve the Class and Collective Notices to be sent to the Settlement Class, and (f) schedule a final approval hearing.

Dated: August 21, 2018

BRYAN SCHWARTZ LAW

By: */s/ Bryan J. Schwartz*
BRYAN J. SCHWARTZ
RACHEL M. TERP
DECAROL A. DAVIS

Attorneys for Plaintiffs and Proposed Collective and California Classes

ATTACHMENTS

Declaration of Bryan Schwartz

Exhibit A: Settlement Agreement

Exhibit 1. FLSA Notice

Exhibit 2. Cal. Class Notice

Exhibit B: NERA Study

Declaration of Luis Duque

Declaration of Daniel Thibodeau

Declaration of Sharon Gamble

Declaration of Filipe Fuentes

[Proposed] Order

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Luis Duque and Daniel Thibodeau, individually, on behalf of others similarly situated, and on behalf of the general public, Plaintiffs, vs. Bank of America, National Association, and DOES 1-50, Defendant.	Case No.: 8:18-cv-01298-PA-MRW **DECLARATION OF BRYAN J. SCHWARTZ ISO PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT** Date: October 15, 2018 Time: 1:30 p.m. Courtroom: 9A Hon. Percy Anderson

Bryan J. Schwartz, Esq., declares as follows:

1. I am counsel of record for Plaintiffs in the above-captioned matter. I am over 18 years of age, and I am competent to testify. I would testify, if called upon to do so, to the following matters on the basis of my personal knowledge, except as to those matters that are stated as upon information and belief, which are matters of which I am informed and which I believe to be true. I submit this declaration in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class and Collective Action Settlement.

2. The parties were well-informed about the strengths and weaknesses of their respective positions prior to reaching the settlement agreement that was finally, fully-executed on July 26, 2018. A true and correct copy of the proposed settlement agreement ("Settlement Agreement") is attached hereto as **Exhibit A**.

3. On November 2, 2017, Plaintiffs previously filed the nearly identical case *Gamble v. Bank of America*, Case No. 2:17-cv-08016 (C.D. Cal.). Plaintiffs withdrew that lawsuit and, on January 5, 2018, filed *Duque, et al. v. Bank of America* (*Duque I*), 8:18-cv-00016-PA-MRW (C.D. Cal.), with different lead Plaintiffs, because of Gamble's severance and release agreement that might arguably have affected her ability to represent a class, and because she was experiencing issues with her health.

4. The Parties conducted their Federal Rule of Civil Procedure ("FRCP") 26(f) conference on March 29, 2018, and promptly exchanged written discovery requests thereafter. Plaintiffs noticed a FRCP 30(b)(6) deposition and three Class Member depositions.

5. Between January and July 2018, the Parties engaged in arms'-length, non-collusive discussions regarding possible mediation and eventually settlement. In early April 2018, the Parties agreed to mediate on May 9, 2018 with experienced class-action mediator Steven G. Pearl, Esq. To permit the parties to prepare for the

approaching mediation, rather than simultaneously conducting discovery and briefing class certification, the parties twice asked the Court to continue the class certification deadline. The Court denied these requests. Magistrate Judge Michael Wilner suggested the Parties withdraw *Duque I* without prejudice, during a discovery conference concerning the difficulty of scheduling timely depositions, and refile after mediation to either seek settlement approval (as the parties are now doing) or (if mediation had been unsuccessful) to resume litigation.

6. The Parties propounded formal discovery (which led to the conference with Judge Wilner) and ultimately prepared for the mediation by exchanging extensive informal discovery. Following the day-long May 9, 2018 mediation with Steven G. Pearl, Esq., the parties executed a Memorandum of Understanding on May 23, 2018. Then, the Parties spent two more months in additional negotiations, finalizing the long-form Settlement Agreement now presented to the Court for approval, on July 26, 2018.

7. As Plaintiffs' counsel, I recommend approval of the Settlement and consider it an exceptional result for the Plaintiffs under the circumstances. Plaintiffs' counsel strongly believe the Settlement is fair and appropriate, is in the best interests of the Settlement Class, and will result in significant compensation to the participating Class members who worked processing customer complaints for Bank of America's Regulatory Complaints and Social Media Servicing group through December 31, 2015.

8. Comprehensive data provided by Defendant to Plaintiffs indicates that all but a handful of Advocates were reclassified to non-exempt status by Bank of America by December 31, 2015. As such, their federal wage law claims had largely vanished (due to the ticking statute of limitations). Many of the Class's state law claims were waived in severance and release agreements under *Chindarah v. PickUp Stix*, 171 Cal.App.4th 796 (2009). Absent a global settlement for all eligible class

members, Plaintiffs' investigation illustrated that interest from the putative class members in this action would have been very limited, because it was based upon events that occurred so long ago.

9. The Settlement Agreement provides over $6,074 in average gross recovery per Class member (Gross Settlement Amount: $1,950,00) / (Est'd Number of Class Members: 321). Even after all fees, costs, settlement administrator expenses, and Plaintiffs' enhancements are taken out, the Settlement provides roughly $4,388 on average to each of the 321 Class members. [(Gross Settlement Amount: $1,950,000) – (Requested Attorneys' Fees: $487,500) – (Attorneys' Litigation Costs: $20,000) – (Plaintiffs' Service Awards: $10,000) – (Opt-Ins Service Awards: $7,500) – (Administrative Costs: $16,500)] / (Est'd Number of Class Members: 321). The Settlement is favorable when compared with other class action settlements. A true and correct copy of NERA Economic Consulting's "Trends in Wage and Hour Settlements: 2015 Update" is attached hereto as **Exhibit B.** The study shows that wage/hour class settlements tend to pay just hundreds of dollars per class member year of eligibility – and here, the settlement amount will pay, on average, thousands of dollars per class member year.

10. Defendant's production of comprehensive wage and employment data allowed Plaintiffs to estimate Defendant's theoretical monetary exposure based on the specific rights provided by federal and California labor laws. The information included pay information, dates of employment, and whether or not the class member signed a severance agreement. My office identified the total number of workweeks for the Class, as well as overtime rates, penalties, state-specific interest rate, and similar forms of possible recovery for the workweeks identified, assuming five hours of overtime and five missed breaks per week (a combination of meals and rest breaks). The estimated value of the claims, according to this analysis, is under $5.1 million, in the inconceivable event that all 321 class and collective members

actually participated and opted into the case (with only a discount for severance-agreement releasors), and the unlikely event that each class member would also be able to prove five unpaid overtime hours and five missed meal/rest periods. I base the optimistic assumptions regarding claimed overtime and missed breaks on Plaintiffs' experiences and documents, and the investigatory interviews and correspondence with putative class and collective action members. The Gross Settlement Amount of $1,950,000 is thus arguably more than 38% of the total exposure in the case, omitting penalties. *Cf. Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 955 (9th Cir. 2009) (holding courts may calculate settlement reasonableness without considering treble damage penalties).

11. In addition to what I stated above, Plaintiffs' counsel weighed the following factors, among others, in deciding to agree to this Settlement as a fair, adequate, and reasonable result for the Class:

a. Plaintiffs believe their claims on the merits are strong, but Plaintiffs face several risks, including but not limited to:

- an unfavorable interpretation of the white-collar exemptions, especially the administrative exemption;
- adverse decisions on questions of willfulness and good faith, given the lack of authority on point for these types of job positions;
- recovering less in interests and penalties;
- an unfavorable application of the fluctuating workweek method for calculating overtime;
- diminished participation by FLSA Collective members absent settlement;
- releases, arbitration, and other agreements which would have limited putative class members' ability to participate; and

- delayed recovery by having a judgment tied up for years on appeal or reversed by the Ninth Circuit or Supreme Court.

b. The Settlement involves *no reversion* to Defendant, and requires Defendant to pay its own payroll tax share (terms which Plaintiffs' counsel insisted upon).

c. Class litigation requires very high expenses.

12. Class Representatives and named Plaintiffs Luis Duque and Daniel Thibodeau will receive modest enhancement awards of $5,000 each for their efforts in coming forward to represent the Class, investigating their claims and potential counsel, providing information and documents to Plaintiffs' counsel, reviewing the complaints and other pleadings for Plaintiffs' counsel, preparing document and interrogatory responses with the assistance of counsel before the prior case was dismissed, preparing for and participating in mediation, working on drafting declarations, and communicating with undersigned counsel regarding settlement.

13. Without the Class Representatives stepping forward to assert their claims, almost no Advocates would now recover for their missed overtime and related compensation in 2015. Others declined to serve as Class Representatives for fear of retaliation, public notoriety, unwillingness to commit the time, and other personal circumstances. Class Representatives Thibodeau and Duque are also executing a much broader waiver of claims than other Class Members, warranting additional compensation.

14. The three opt-in Plaintiffs in this case, Sharon Gamble, Felipe Fuentes, and Alina Abad will also receive modest enhancement awards of $2,500 each because their efforts were critical to the successful outcome of this case. The opt-in Plaintiffs worked on declarations in this case. They reached out to putative Class members, provided investigatory leads for counsel to pursue, and contributed valuable information about the claims. Opt-in Plaintiff Sharon Gamble was willing

to serve as a named plaintiff in the litigation. Ms. Abad provided valuable information about the Operations Consultant position.

15. These enhancement awards also promote the public policy interest in encouraging those with wage and hour claims to assert them despite the fears, personal burdens, and time associated with doing so.

16. If approved, Plaintiffs' counsel will receive fees at the Ninth Circuit's benchmark, one quarter of the $1,950,000 Settlement ($487,500) plus actual litigation costs not to exceed $20,000 (not including Settlement administration fees and expenses). My firm has spent hundreds of hours on this strictly-contingency matter, uncompensated, diverting the firm's attention from other cases, and will spend many more before the matter is concluded. Plaintiffs will make their fee and cost petition public more than fifteen days in advance of the deadline for Class Members to opt out of or object to the Settlement.

17. Undersigned counsel has fought for terms most advantageous to the entire Class, including insisting that, among other things, the Settlement be non-reversionary (*i.e.*, go entirely to the Class Members), that all Class members get paid regardless of any severance agreements, that Defendant bears its own share of payroll taxes, and that Defendant delivers the total Settlement amount to the third-party administrator within fifteen days of final approval. Counsel firmly believes that the Settlement is the best possible outcome for the Class under the circumstances.

18. Both parties request that the Court appoint Rust Consulting, a reputable claims administration firm, which submitted the lowest competitive bid and has provided my firm solid service in successfully administering other complex wage and hour class litigation settlements. The payment to the Claims Administrator is not expected to exceed $16,500 to cover the costs of Settlement administration.

19. I have extensive experience and am qualified to act as Class Counsel, having done so successfully in many similar actions. I do not have any conflicts with the Class. I have the financial ability to represent this Class through the litigation. Some of my qualifications are as follows:

a. I am an experienced wage and hour class action litigator and zealous plaintiffs' advocate with extensive experience litigating employment class actions. Numerous federal judges have approved me as class counsel in separate wage and hour actions against corporations, including Judges Philip Gutierrez, David Carter, Josephine Staton, and Virginia Phillips of the Central District of California, and Judges Saundra Brown Armstrong, Susan Illston, Jeffrey White, Edward Chen, Lucy Kohn, Yvonne Gonzalez-Rogers, Richard Seeborg, and Claudia Wilken of the United States District Court for the Northern District of California, along with District Courts in other jurisdictions nationwide. I was also approved as class counsel repeatedly in wage and hour class actions by the complex divisions of the Superior Court of California in Orange, Marin, Alameda, Los Angeles, Santa Clara, and San Francisco counties.

b. Among the dozens of wage and hour collective and class actions in which my firm has been approved as Class Counsel are the recent cases of: *Boyd, et al. v. Bank of Am. Corp.*, 13-cv-561-DOC (C.D. Cal.); *Lee, et al. v. JPMorgan Chase,* 13-cv-00511-JLS-JPR (C.D. Cal.); *Boesch, et al. v. Chubb Ltd. d/b/a Chub Group of Ins. Co., et al.*, 16-cv-03536-YGR (N.D. Cal.); *Gillespie, et al. v. Lumenis Inc.*, 17-cv-02080-EMC (N.D. Cal.); *Austin, et al. v. Cosco Fire Protection, Inc.*, Case No. RG16831960 (Alam. Co. Super. Ct.); *Greene, et al. v. Shift Operations,*

et al., CGC 16-552307 (S.F. Super. Ct.); and *Buckingham, et al. v. Bank of America, N.A.*, 15-cv-6344-RS (N.D. Cal.).

c. I am a 2000 graduate of UC Berkeley's Boalt Hall School of Law, a former law clerk to the Hon. Franklin Van Antwerpen (a late member of the U.S. Court of Appeals for the Third Circuit and Eastern District of Pennsylvania), an advisor and immediate past Chair of the Labor & Employment Law Section of the State Bar of California (now called the California Lawyers Association) (with over 7,500 members), a former member of the Executive Board of the California Employment Lawyers Association (CELA), a member of the Board of Directors of the Legal Aid At Work (formerly known as Legal Aid Society–Employment Law Center), and the immediate past President of the Foundation for Advocacy Inclusion and Resources (FAIR – a non-profit established by CELA leaders to increase diversity in the profession). Prior to attending law school, I graduated *magna cum laude* from Cornell University in 1994.

d. I previously worked with the plaintiffs'-side employment firms of Passman & Kaplan and Nichols Kaster and have run my own firm for more than 9.5 years.

e. I appeared before the California Supreme Court as the author of the CELA and Consumer Attorneys of California brief in *Brinker Restaurant Corp. v. Superior Court (Hohnbaum)* 53 Cal.4th 1004 (2012), and CELA's briefs in *Kirby v. Immoos Fire Protection* 53 Cal.4th 1244 (2012), and *Duran v. US Bank, NA* 137 Cal.Rptr.3d 391 (2012), each a matter that affects millions of workers statewide.

f. I regularly speak and publish articles about employment law topics in professional journals, on the radio, and at law schools,

conferences, trainings for new lawyers, and in webinars, having done so on dozens of recent occasions.

g. As to my nationwide speaking engagements at conferences and seminars (which I often chair, co-chair, or moderate) on a variety of employment law subjects, I have spoken on dozens of occasions about wage and hour class actions and other employment law issues. I have chaired and co-chaired the State Bar Labor & Employment Law Section's Advanced Wage and Hour Seminar on numerous occasions, and have spoken to CELA, JAMS, the National Employment Lawyers Association (NELA), the California Lawyers Association, the ABA, the Impact Fund, and numerous other organizations.

h. I have published numerous recent articles for *Plaintiff*, the *Advocate*, the *Daily Journal*, the *California Labor and Employment Law Review*, and other publications.

i. In my speaking and publications, for many years I have had a special focus on wage and hour class action settlements and class action settlement ethics, including, for example: 2018 Impact Fund, 16th Annual Class Action Conference, "*Class Action Settlement Ethics*," Moderator/Panelist (February 16, 2018); 2017 National Employment Lawyers Association Wage & Hour Seminar, *Litigating Wage & Hour Cases: Challenges & Opportunities*, "How to Settle Without Settling," Panelist (April 2017); 2016 Impact Fund, 14th Annual Class Action Conference, "Class Action Settlement Ethics," Moderator/Panelist (February 2016); JAMS San Francisco Seminar, "Updates on the Legal Landscape of Wage & Hour Cases and the Increasing Focus on PAGA," Speaker (November 2014); Impact Fund, 12th Annual Class Action Conference, "Class Action Settlement

Issues" Moderator / Panelist (February 2014); "Class-action settlement principles to take with you into mediation," *Plaintiff Magazine*, Author (April 2014); and, "How to Win Court Approval For Your Class-Action Settlement – Learn to Avoid Delays That Occur if the Court Rejects or Requires Modification of Your Settlement," *Plaintiff Magazine*, Co-Author, (April 2010).

j. I have been recognized since 2015 by *Daily Journal* as one of the top 75 labor and employment lawyers in California and am selected every year as a "Super Lawyer" by *Super Lawyers* magazine.

20. My firm's attorneys and support staff devoted to this case are highly qualified as well. They do not have any conflicts with the Class. Some of their qualifications are as follows:

a. Bryan Schwartz Law's Senior Associate, Rachel M. Terp, is a 2012 graduate of UC Berkeley, School of Law. She has been recognized as a "Rising Star" in Northern California by Super Lawyers Magazine in 2017 and 2018. Recently, she was approved as class counsel in *Greene, et al. v. Shift Operations, et al.*, CGC 16-552307 (S.F. Super. Ct., Jul. 24, 2018), and has contributed on numerous other cases for which Bryan Schwartz Law has been approved as class and/or collective counsel, including, *Gillespie, et al. v. Lumenis Inc.*, 17-cv-02080-EMC (N.D. Cal.); *Mar v. Genuine Parts Co., et al.*, 15-cv-01405-MCE-AC (E.D. Cal.); *Boyd, et al. v. Bank of America, et al.*, 13-cv-0561-DOC (C.D. Cal.); *Yim, et al. v. Carey Limousine NY, Inc., et al.*, 14-cv-4883-JO (E.D.N.Y.); *Quiles, et al. v. Koji's Japan Inc., et al.*, 30-2010-00425532-CU-OE-CXC (Orange Sup. Ct.); *Garcia et al. v. Landmark Hospitality Inc., et al.*, CGC-13-532871 (S.F. Sup. Ct.); and

Amenya et al. v. Henry Industs., Inc., Case No. RG15754205 (Alameda Sup. Ct.).

b. Attorney DeCarol Davis is an associate at Bryan Schwartz Law, and a 2017 graduate of UC Berkeley, School of Law.

c. Legal assistant Julie Law has worked at Bryan Schwartz Law for over two years. She is a 2016 graduate of UC Berkeley.

21. My firm conducted comprehensive interviews with the representative Plaintiffs to verify they are adequate and have no conflicts of interest with their respective Class. Based on the information obtained from the representative Plaintiffs and additional independent investigation performed by my firm, I am informed and believe the representative Plaintiffs are adequate to represent their respective Class and the representative Plaintiffs do not have any conflicts of interest with their respective Class. The representative Plaintiffs were apprised of and knowingly undertook their fiduciary responsibilities to the Class.

22. Based on information provided by Defendant, I understand that there are 150 California Class members and 171 FLSA-only Collective Members. This many individual claims would be impracticable to join into one action.

23. The requested *cy pres* beneficiary, Legal Aid at Work (formerly named Legal Aid Society - Employment Law Center) is the leading provider of direct legal services in employment law for low-wage workers in California, particularly in wage and hour cases. More information about this organization's work can be found at: https://legalaidatwork.org/our-mission-and-how-we-work/ (last accessed June 22, 2018).

24. I conferred with opposing counsel, and opposing counsel does not oppose this Motion.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

Dated: August 21, 2018

/s/ Bryan J. Schwartz
Bryan J. Schwartz
BRYAN SCHWARTZ LAW

Attachment A: Settlement Agreement & Notices
Attachment B: NERA study evaluating 613 federal W&H settlements from 2007 to 2015

EXHIBIT A

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Attorneys for Plaintiffs on behalf of themselves
and Collective and California Class

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LUIS DUQUE and DANIEL THIBODEAU, individually, on behalf of others similarly situated, and on behalf of the general public, Plaintiffs, vs. BANK OF AMERICA, National Association, and DOES 1-10, Defendant.	Case No.: 8:18-cv-00016-PA-MRW (Dismissed Without Prejudice) **JOINT STIPULATION FOR SETTLEMENT AND RELEASE OF CLASS AND COLLECTIVE ACTION CLAIMS**

STIPULATION

This Stipulation for Settlement and Release of Class Action and Collective Action Claims ("Agreement") is entered into between Plaintiffs and proposed Class Representatives Luis Duque and Daniel Thibodeau ("Plaintiffs" or "Class Representatives") on behalf of themselves and other similarly situated employees who were classified as exempt and worked as Client Advocates, Senior Client Advocates, Operations Consultants, Senior Operations Consultants and/or other job titles performing the same or similar customer complaint processing duties in the Regulatory Complaints and Social Media Servicing group (hereinafter, "Advocates"), on the one hand, and Defendant Bank of America, N.A. ("BANA" or "Defendant") on the other hand. For purposes of this Agreement, Plaintiffs and Defendant are referred to individually as a "Party" and collectively as the "Parties."

DEFINITIONS

A. Class Definitions

1. "Class Members" shall be comprised of the membership of (1) the "California Class" and (2) the Fair Labor Standards Act ("FLSA") Collective. A "Class Member" means any person who is a member of the California Class and/or the FLSA Collective. "Class Members" means all members of the California Class and the FLSA Collective. An individual can be a member of the California Class and the FLSA Collective.

2. The "California Class" shall be: all persons who were classified as exempt by BANA and worked as Client Advocates, Senior Client Advocates, Operations Consultants, Senior Operations Consultants and/or other job titles performing the same or similar customer complaint processing duties in the Regulatory Complaints and Social Media Servicing group, within the State of California from January 5, 2014 through December 31, 2015.

3. The "FLSA Collective" shall be: all persons who were classified as exempt by BANA and worked as Client Advocates, Senior Client Advocates, Operations Consultants, Senior Operations Consultants and/or other job titles performing the same or similar customer complaint processing duties in the Regulatory Complaints and Social Media Servicing group, from January 5, 2015 through December 31, 2015 and who join the Collective Action through the procedures set forth in this Agreement.

4. "Class Period" means from January 5, 2014 through December 31, 2015 for the California Class; and January 5, 2015 through December 31, 2015 for the FLSA Collective. Together these may be referenced as the "Class Periods."

5. The Parties understand there are approximately 321 individuals that are Class Members under this Agreement.

B. Additional Definitions

When used in this Agreement, along with the defined terms set forth above and elsewhere in this Agreement, the following terms have the meanings specified below:

6. "Adjusted Eligible Workweeks" for each Class Member shall mean the number of weeks in which each Class Member was actively employed (*i.e.*, not on a leave of absence) as an exempt Advocate during the Class Period, according to Defendant's personnel records, adjusted depending upon whether the Class Member was employed in California or a different state for that week. For each week worked by a member of the California Class during the Class Period, the number of weeks shall be increased by 50% (multiplied by 1.5). This California Class multiplier is intended to account for the increased potential value of the claims of members of the California Class in light of additional claims asserted on

behalf of those individuals, and variances between California state wage and hour laws and the FLSA. If a Class Member signed a severance agreement and Release of Claims, then his or her workweeks will be reduced by 10% (after any increases to the same described earlier in this paragraph if he or she is a California Class Member), to account for the litigation risk associated with such a release. If a Class Member is a member of both the FLSA Collective and the California Class for an overlapping period of time, then the Class Member's allocation will be determined by reference to the higher multiplier.

7. "Agreement" means this Joint Stipulation for Settlement and Release and the terms and conditions assented to by the Parties in this document.

8. "Claims Administrator" means Rust Consulting), which, subject to the Court's approval, will disseminate notices, prepare settlement distribution calculations, distribute checks, issue tax reporting documents, and conduct any necessary reporting to the Parties and/or the Court, as set forth in this Agreement. The fees and costs of the Claims Administrator are capped at $20,000.00, per an agreement with Class Counsel, and shall be referred to as the "Claims Administration Charges." The parties selected Rust, having soliciting bids from multiple claims administrators.

9. "Class Counsel" means, subject to the Court's approval, Bryan Schwartz Law.

10. "Class Counsel Attorneys' Fees and Costs" means the attorneys' fees and costs awarded by the Court to Class Counsel.

11. "Class Representatives" means Plaintiffs Luis Duque and Daniel Thibodeau.

12. "Class Representative Enhancements" means the payments, as

determined and approved by the Court, to the Class Representatives from the Gross Settlement Amount that are in addition to their individual Net Pro Rata Distributions, defined in Paragraph 55.

13. "Court" means the United States District Court for the Central District of California.

14. "Date of Preliminary Approval" means the date when the Court issues an order granting preliminary approval of the settlement reflected in this Agreement.

15. "Effective Date" means the date when the Court issues an order granting final approval of this Agreement and enters Judgment in accordance with this Agreement, and the Judgment becomes final as follows:

(a) If no timely objections to the Agreement were filed, as described in Paragraph 70, *infra,* the Judgment becomes final the date it is entered by the Court; or

(b) If any objections to the Agreement are filed and overruled and no appeal is filed, the Judgment becomes final one court day after the date upon which any appeal from the Judgment must be filed passes without any appeal being filed; or

(c) If an appeal is filed, the Judgment becomes final one court day after all proceedings arising out of the appeal or appeals are concluded and the Lawsuit is remanded back to the Court PROVIDED THAT the final resolution affirms the terms of the Judgment without any material modification (for purposes of this Agreement, modifications to any Class Representative Enhancements

and/or the Class Counsel Attorneys' Fees and Costs are not considered material modifications).

16. "Final Fairness Hearing" means the hearing at which the Court determines whether this Settlement is fair, reasonable and adequate.

17. "Gross Settlement Amount" means One Million Nine Hundred Fifty Thousand Dollars ($1,950,000), the total sum that Defendant will be paying for the settlement of the Lawsuit and the Released Claims (as defined below) in accordance with the terms of this Agreement, except that Defendant will separately pay the amount of the employer's share of any payroll taxes that arise from any payments to any Class Members pursuant to this Agreement.

18. "Lawsuit" means this action, styled as *Luis Duque, et al. v. Bank of America, N.A.* initially filed on January 5, 2018, in the United States District Court, Central District of California, Case No. 8:18-cv-00016-PA-MRW, as subsequently amended by Plaintiffs, and as dismissed without prejudice on April 13, 2018, pursuant to the Parties' joint stipulation for dismissal without prejudice.

19. "Net Settlement Fund" means the amount remaining after deducting each of the following from the Gross Settlement Amount: the Reserve Fund, the Class Representative Enhancements, the Opt-In Plaintiff Enhancements, the Claims Administration Charges, and the Class Counsel Attorneys' Fees and Costs.

20. "Opt-In Plaintiffs" means Sharon Gamble, Felipe Fuentes, and Alina Abad.

21. "Opt-In Plaintiff Enhancements" means the payments, as determined and approved by the Court, to the Opt-In Plaintiffs from the Gross Settlement Amount that are in addition to their individual Net Pro

Rata Distributions.

22. "Preliminary Approval Hearing" means the hearing at which the Court will be requested to make the preliminary determinations set forth in Paragraph 44, below. The date for this hearing will be set forth in Plaintiffs' motion for preliminary approval, or such other date as the Court may designate.

23. "Released Claims" means all claims, demands, rights, liabilities, and causes of action that were asserted in the First Amended Complaint ("FAC") in the Lawsuit and any additional wage and hour claims that could have been brought based on the facts alleged in the FAC. The Released Claims include all claims relating to or arising out of the designation and treatment of the Class Representatives and Class Members as "exempt" from overtime compensation and all other alleged wage and hour and/or wage payment claims while they worked as Advocates, including claims for violations of any state or federal statutes, rules, or regulations. This includes, but is not limited to, claims that, during the Class Periods, Defendant failed to pay minimum wages, straight-time wages, overtime or any other wages due under California state laws; failed to pay minimum wages, straight-time wages, overtime or any other wages due under the Fair Labor Standards Act; failed to provide legally-required meal and rest periods or pay wages due for such failure; failed to timely furnish accurate itemized wage statements; engaged in conduct subjecting Defendant to any statutory or civil penalties under any statute, ordinance, or otherwise arising from or related to the classification of Plaintiffs and Class Members as exempt from overtime, including, without limitation, California Labor Code sections 203 and 226; engaged in any unfair business practices arising from the misclassification alleged; and failed to pay all wages due to

Class Representatives and Class Members upon termination of employment. In addition, with respect to the Class Representatives, "Released Claims" includes a general release of any and all claims arising out of or related to their employment with Defendant, seeking any such employment, or the termination thereof, including without limitation any claims for wrongful termination in violation of public policy, employment discrimination, and violation of any federal, state, or other local statute related to employment.

24. "Released Parties" means Defendant and its past, present or future officers, directors, shareholders, employees, agents, principals, heirs, assigns, executors, administrators, representatives, trustees, accountants, auditors, consultants, insurers and reinsurers of such identified Released Parties and their respective successors and predecessors in interest, parents, subsidiaries, divisions affiliates, and attorneys, both individually and collectively.

25. "Reserve Fund" shall mean a fund in the amount of $100,000.00, set aside from the Gross Settlement Amount, to be utilized in resolving any disputes regarding data used in connection with the settlement, including, for example, disputes regarding the number of workweeks, existence of severance agreements, and inclusion or exclusion as Class Members. The Reserve Fund shall be set aside until the time of final allocation to Class Members, when the remaining balance of the Reserve Fund not used in resolving disputes will be allocated on a *pro rata* basis to Class Members.

BACKGROUND AND FACTUAL RECITALS

26. On November 2, 2017, Class Counsel filed a prior lawsuit – *Sharon Gamble v. Bank of America, N.A.* – in the Central District of

California, Case No. 2:17-cv-08016-PA-MRW (the "Gamble Lawsuit"). The claims in the Gamble Lawsuit were identical to those asserted in this action. The Gamble Lawsuit was dismissed without prejudice on January 4, 2018.

27. On January 5, 2018, a putative class action and collective action complaint was filed in the United States District Court, Central District of California, Case No. 8:18-cv-00016-PA-MRW, entitled *Duque, et al. v. Bank of America, N.A.* (the "Complaint"). Plaintiffs subsequently filed a First Amended Complaint (the "FAC").

28. The FAC asserts causes of action for: (1) Violation of the FLSA, 29 U.S.C. §§ 201, *et seq*., (2) Violation of California Labor Code §§ 510, 1194, and related Industrial Welfare Commission ("IWC") Wage Order(s), (3) Failure to Provide and/or Authorize Meal and Rest Periods (Cal. Lab. Code §§ 512, 226.7 and related IWC Wage Order(s)), (4) Failure to Provide Itemized Wages Statements (Cal. Lab. Code §226), (5) Waiting Time Penalties (Cal. Lab. Code §§ 201-204), and (6) Violation of California Business and Professions Code § 17200, *et seq.*

29. In March 2018, Plaintiffs initiated formal discovery, including interrogatories, requests for admissions, document requests, and a Fed.R.Civ.P. 30(b)(6) deposition notice.

30. On April 13, 2018, at the suggestion of Magistrate Judge Michael Wilner ("Judge Wilner"), the Parties stipulated for Plaintiffs to dismiss their suit without prejudice, and with tolling, in order to pursue settlement negotiations without the pressure of impending litigation deadlines, including a class certification motion deadline in early May 2018. The Parties agreed that, if a settlement could be reached, Plaintiffs would refile and the Parties would stipulate to the jurisdiction of Judge Wilner for

all purposes. The Parties agreed that, contemporaneously with the execution of this settlement, Plaintiffs will refile their suit, materially identical to the FAC, along with the stipulation to the Magistrate's jurisdiction.

31. The Parties have engaged in extensive, arm's length settlement negotiations regarding settlement of the Lawsuit, including a full-day mediation before mediator Steve Pearl, Esq. on May 9, 2018, and pre-mediation exchanges of documents, data, and other information.

32. On or about May 18, 2018, the Parties agreed in general terms to a proposed settlement to resolve all class action and collective action claims asserted on behalf of the Advocates, agreeing to resolve all disputes and claims between them, including all of the wage and hour claims that have been or could have been raised during the course of the Lawsuit (*i.e.,* the Released Claims).

33. Defendant at all times has denied Plaintiffs' claims and maintains this position. Defendant agreed to the certification of the California Class and FLSA Collective for purposes of this settlement and, were it not for this Agreement, would oppose class certification of the California Class and would oppose conditional certification of the FLSA Collective.

34. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims against the Released Parties arising from or related to the designation and treatment of the Class Representative and Class Members as "exempt" from overtime compensation and all other alleged wage and hour and/or wage payment claims while they worked as Advocates, including all of the Released Claims, and that this Agreement shall constitute a full and complete settlement and release of all the Released Parties from all Released Claims.

35. The Parties expressly acknowledge that nothing in this Agreement, nor the fact of the Agreement itself, shall be construed or deemed an admission of liability, culpability, negligence or wrongdoing of any kind by Defendant or any of the Released Parties, nor shall it constitute an admission on behalf of Defendant or any of the Released Parties of any fact or allegations against them, including any allegation that this matter is suitable for class treatment. Defendant specifically denies any liability.

36. Defendant denies all the claims and contentions alleged by Plaintiffs in the Lawsuit. Nonetheless, Defendant has concluded that further litigation of the Released Claims encompassed by this Agreement would be protracted and expensive, and would also divert management and employee time. Defendant has taken into account the uncertainty and risks inherent in litigation and has, therefore, concluded that it is desirable that the Released Claims in the Lawsuit be settled in the manner and upon the terms and conditions set forth in this Agreement.

37. Plaintiffs and Class Counsel believe that the claims asserted in this Lawsuit have merit. Plaintiffs and Class Counsel, however, recognize and acknowledge the significant expense and length of continued proceedings necessary to prosecute the litigation of the Released Claims against Defendant through trials and through appeals. Plaintiffs and Class Counsel are also mindful of the possible defenses to the Released Claims and to class and collective action certification. After careful consideration, review of discovery exchanged to date, and mediation, Plaintiffs and Class Counsel have concluded that it is desirable that the Released Claims in the Lawsuit be settled in the manner and upon the terms and conditions set forth in this Agreement. Both Plaintiffs and Class Counsel believe that the

settlement set forth in this Agreement is fair, reasonable and adequate, and confers substantial benefits upon the Class Members.

38. The Parties recognize the inherent risk in proceeding with wage and hour class and collective action litigation based on the current uncertainty of California and federal wage and hour law. The Parties agree that the settlement set forth herein adequately balances the risk of proceeding with the Released Claims against any potential recovery for the Class Members and, therefore, the Agreement represents a fair and just compromise of the Released Claims.

39. The Parties and their respective counsel deem the Agreement to be fair and reasonable and have arrived at the Agreement in arm's-length negotiations taking into account all relevant factors, present or potential.

40. The Parties enter into this Agreement on a conditional basis. This Agreement will become final and effective only upon the occurrence of all of the following events: (i) the Court enters an order granting preliminary approval of the material terms of the settlement reflected in the Agreement; (ii) the Court enters an order granting final approval of the material terms of the settlement reflected in the Agreement; and (iii) the Effective Date occurs. Unless the Court orders otherwise, this Agreement shall be deemed null and void *ab initio* upon the failure of any of these three conditions to occur.

41. The Parties stipulate to class and collective certification for purposes of this Agreement only. Plaintiffs and Class Counsel shall apply to the Court for approval of the Agreement, and for certification of the California Class and FLSA Collective only for purposes of effectuating this Agreement. If the Court does not grant preliminary approval or final approval of the settlement reflected in the Agreement, the Parties agree that

certification of the California Class and FLSA Collective will automatically be deemed not to have been granted and Plaintiffs will move for class and collective certification as if this Agreement had not occurred, without prejudice to either side's arguments in support of or against certification. Except that, Defendant agrees that it waives and will not raise any defense related to the timeliness of a class certification motion based upon time elapsed during the settlement negotiations and approval processes.

SETTLEMENT APPROVAL PROCEDURE

42. The Parties and their respective counsel shall take all steps that may be requested by the Court relating to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain Court approval and implement this Agreement. The procedure for obtaining Court approval of and implementing this Agreement shall be as set forth below.

43. Contemporaneously with the execution of this Agreement by all Parties and their counsel, Plaintiffs shall re-file the Lawsuit in the USDC, Central District of California, filing a complaint substantively identical to the FAC, and identifying the previously-filed Lawsuit. The Parties shall then stipulate to the use of Judge Wilner for all purposes, including seeking preliminary and final approval of the Agreement. In the event that Judge Wilner declines the assignment of the Lawsuit, the Parties shall mutually agree on and stipulate to another magistrate judge within the Central District of California to serve as the judge for all purposes including seeking preliminary and final approval of the Agreement.

44. Within fourteen (14) days after the Lawsuit has been assigned to Judge Wilner (or such other magistrate judge if Judge Wilner declines assignment of the Lawsuit), Plaintiff shall move the Court for preliminary

approval of the settlement, and request an order that accomplishes the following:

(a) Preliminarily approving this settlement as fair, reasonable, and adequate;

(b) Preliminarily appointing and approving each Plaintiff as a Class Representative for the California Class;

(c) Preliminarily appointing and approving Class Counsel;

(d) Preliminarily appointing and approving the Claims Administrator;

(e) Approving the procedure for sending notice to the Class Members as set forth in this Agreement, or as modified by the Court;

(f) Approving the notices to be sent to the Class Members in substantially the same form as **Exhibit A** to this Agreement, or as modified by the Court (the "Notice of Settlement");

(g) Approving the text of opt-in and release language to be included on the back of the settlement checks to Class Members in substantially the same form as **Exhibit B** to this Agreement, or as modified by the Court (the "Settlement Check Opt-In and Release")

(h) Authorizing the Claims Administrator to mail the approved Notice of Settlement to the Class Members at their last known or provided address by posting the notice through regular mail, and by e-mail, to the extent e-mail addresses are available for Class Members.

45. Defendant shall not oppose Plaintiffs' motion for preliminary or

final approval of the settlement so long as the motions and supporting papers are consistent with the terms of this Agreement and facts of this case. Class Counsel shall provide Defendant's counsel with drafts of the motions for preliminary and final approval, all supporting documentation, and a proposed order at least seven (7) business days prior to the filing of such motions with the Court, so that Defendant may have a reasonable opportunity to review and provide comments prior to filing with the Court.

46. This Agreement will not become effective, and Defendant shall have no obligation to make any payments contemplated by this Agreement, unless the Court conducts a Final Fairness Hearing, enters an Order, as described below, approving without material modification all of the terms of this Agreement, and the Effective Date occurs.

47. Class Counsel shall be responsible for ensuring that at least the following documents are filed with the Court in advance of the Final Fairness Hearing so that the Court will have a sufficient basis upon which to evaluate and approve the settlement:

(a) A final report by the Claims Administrator providing details regarding the execution of the approved notice process, the rate of opt-outs and objections (if any), and other information vital to the Court's assessment of the fairness of the Agreement at the Final Fairness Hearing;

(b) A duly-noticed motion, accompanying memorandum of points and authorities prepared by Class Counsel (and reviewed by Defendant's counsel), and such other pleadings, evidence or other documents as may be necessary for the Court to determine that the settlement

documented by this Agreement is fair, adequate and reasonable;

(c) A proposed Order for the Court's signature (i) approving the settlement documented by this Agreement as being fair, adequate and reasonable; (ii) permanently enjoining all of the Class Members from pursuing, or seeking to reopen any Released Claims against any Released Parties; and (iii) ordering a Judgment of dismissal of the Lawsuit with prejudice be entered consistent with this Agreement; and

(d) A Proposed Judgment and Notice of Entry of Judgment (collectively, "Judgment").

48. Defendant shall not oppose Plaintiffs' motion for final approval of the settlement so long as the motions and supporting papers are consistent with the terms of this Agreement and facts of this case. Class Counsel shall provide Defendant's counsel with the draft motion for final approval, all supporting documentation, and a proposed order and Judgment thereon, at least seven (7) business days before the motions and supporting papers are filed with the Court, so that Defendant's counsel may review and provide comments to Class Counsel.

SETTLEMENT CALCULATIONS AND PAYMENTS

49. Without admitting any liability whatsoever, Defendant will settle Plaintiffs' and Class Members' claims released by this Agreement by depositing One Million Nine Hundred Fifty Thousand Dollars ($1,950,000.00) (the Gross Settlement Amount), plus the full amount necessary to pay the employer's share of payroll taxes on the wage portions of settlement payments, as estimated by the Claims Administrator, into a

qualified settlement fund, which shall be established and administered by the Claims Administrator (the "Qualified Settlement Fund"). The timing of Defendant's funding of the Qualified Settlement Sum is set forth in Paragraph 74. All amounts paid as part of this settlement shall be paid out of the Qualified Settlement Fund. These amounts shall include (1) all payments to Class Members under this Agreement, including all amounts required to be paid as federal, state and local payroll taxes; (2) the Reserve Fund (3) the Class Representative Enhancements, (4) the Opt-In Plaintiff Enhancements, (5) the Claims Administration Charges, (6) the Class Counsel Attorneys' Fees and Costs, and (7) any other amounts required to be paid under this Agreement. Under no circumstances, except for the voiding of this Agreement in its entirety as discussed in Paragraphs 90-92, below, shall any portion of the Gross Settlement Amount revert to Defendant.

50. All amounts to be paid by Defendant under this Agreement shall be paid from the Qualified Settlement Fund, and, Defendant shall have no financial obligation under this Agreement or otherwise to make any payment whatsoever beyond its obligation to make payments to the Qualified Settlement Fund in an amount equal to the designated Gross Settlement Amount, except for the employer's share of any payroll taxes that are due by virtue of any payments made to Class Members under the terms of this Agreement.

51. Claims Administration Charges. The Claims Administration Charges for administration of the settlement include, but are not limited to, printing and mailing/emailing of the Notice of Settlement to Class Members, processing disputes, requests for exclusion, and objections in accordance with this Agreement, calculating preliminary and final payment amounts and tax withholdings for Class Members, responding to inquiries from Class

Members, issuing and mailing settlement payments and checks, reasonable efforts to locate Class Members, and preparing any required tax returns and tax reports. All Claims Administrator Charges, whether foreseen or unforeseen, will be paid from the Gross Settlement Amount. All Claims Administration Charges shall also be paid from the Gross Settlement Amount.

52. Class Counsel Attorneys' Fees and Costs. Defendant will not oppose an application by Class Counsel for an award of attorneys' fees up to one-fourth (25%) of the Gross Settlement Amount (*i.e.*, up to $487,500.00), nor oppose an application by Class Counsel for an award of actual litigation costs incurred by Class Counsel in connection with the litigation of the Lawsuit, all of which will be paid out of the Gross Settlement Amount. The Parties expressly agree that the Court's approval or denial of any request for attorneys' fees and costs are not material conditions to the Agreement, and are to be considered by the Court separately from the fairness, reasonableness, adequacy, and good faith of the settlement. Any order or proceeding relating to the application by Class Counsel for an award for attorneys' fees and costs shall not operate to terminate or cancel this Agreement. Any appeal by Class Counsel regarding fees or costs shall not operate to stall the Effective Date and compliance with the Agreement – any unawarded fees disputed shall be retained in trust by the Administrator until the conclusion of any such appeal. To the extent the Court awards less than the amount of attorneys' fees and costs requested by Class Counsel, and Class Counsel does not appeal or is unsuccessful in any appeal, the remaining amount will be redistributed to the Class Members on a *pro rata* basis. To the extent there are additional Administrator costs arising from any appeal by Class Counsel of this nature, Class Counsel shall be solely

responsible for paying them out of any awarded fees and costs.

53. Class Representative and Opt-In Plaintiff Enhancements. Defendant will not oppose an application for payment of a Class Representative Enhancement to Plaintiffs Luis Duque and Daniel Thibodeau in an amount not to exceed $5,000.00 to each of them. Defendant will not oppose an application for payment of an Opt-In Plaintiff Enhancement to Sharon Gamble, Felipe Fuentes and Alina Abad in an amount not to exceed $2,500.00 to each of them. The final amount of any Class Representative or Opt-In Plaintiff Enhancement as determined and approved by the Court shall be binding on the Class Representative and Opt-In Plaintiff. Any Class Representative and Opt-In Plaintiff Enhancements will be treated as a non-wage payment and reported as such by the Claims Administrator to the appropriate government taxing authorities, with each Class Representative and Opt-In Plaintiff being solely responsible for paying any and all taxes due on his or her Class Representative or Opt-In Plaintiff Enhancement. The Parties expressly agree that the Court's approval or denial of any request for Class Representative Enhancements or Opt-In Plaintiff Enhancements is not a material condition to the Agreement, and is to be considered by the Court separately from the fairness, reasonableness, adequacy, and good faith of the settlement. Any order or proceeding relating to the application by Class Counsel for an award of a Class Representative Enhancement or Opt-In Plaintiff Enhancement shall not operate to terminate or cancel this Agreement. To the extent the Court awards less than the amount of the Class Representative or Opt-In Plaintiff Enhancement requested, the remaining amount will be redistributed to the Class Members on a *pro rata* basis.

54. Payments from Net Settlement Fund. Class Members shall be paid their Net Pro Rata Distribution (as defined in Paragraphs 55-56, below)

from the Net Settlement Fund, which is the amount remaining of the Gross Settlement Amount after deduction of: (1) Claims Administration Charges; (2) Class Counsel Attorneys' Fees and Costs; (3) payments, if any, made from the Reserve Fund; (4) Class Representative Enhancements; and (5) Opt-In Plaintiff Enhancements.

55. The Net Pro Rata Distribution for each Class Member will be their *pro rata* share of the Net Settlement Fund based upon their Adjusted Eligible Workweeks. More specifically, this will be determined as follows: the Claims Administrator will determine the total number of Adjusted Eligible Workweeks for all Class Members, and then, for each Class Member, divide their individual Adjusted Eligible Workweeks by the total number of Adjusted Eligible Workweeks for all Class Members. The Claims Administrator will then multiply that resulting number by the amount of the Net Settlement Fund.

56. Each Class Member will have his or her Net Pro Rata Distribution apportioned by the Claims Administrator as follows: (a) one-third for payment of any claimed interest (the "Interest Portion"); (b) one-third for payment of any claimed penalties and liquidated damages of any type (the "Penalties Portion"), and (c) one-third for payment of any claimed unpaid wages during the Class Period (the "Gross Wages Portion"). The Claims Administrator will make appropriate deductions from the Gross Wages Portion of each Class Member's Net Pro Rata Distribution for the payment of employee payroll taxes and deductions required or permitted by applicable law in connection with the payment of wages to the Class Member and will timely remit those sums to the appropriate government taxing authorities, with the remaining balance of the Gross Wages Portion after such deductions being made being the "Net Wages Portion."

57. The Claims Administrator will also calculate the total payment of employer payroll taxes due based upon the total Net Wages Portion, and will effectuate payment of these taxes to the appropriate tax agencies from the funds deposited by Defendant for this purpose in the Qualified Settlement Fund. To the extent the Claims Administrator estimates and Defendant pays a payroll tax amount that is greater than the amount owed to taxing authorities, the balance of this payment will be refunded to Defendant. To the extent the Claims Administrator initially estimates and Defendant pays an insufficient amount to cover the employer's share of all payroll taxes actually due, Defendant will pay the additional amount of payroll tax required within fifteen (15) calendar days of a request for payment by the Claims Administrator.

58. The Parties are mindful that the total consideration payable hereunder is comprised of a number of separate and distinct claims for damages and penalties by Plaintiffs and the Class Members. Accordingly, having considered the matter in detail, having performed their own separate and independent computations and estimation of the damages and penalties potentially awardable to Plaintiffs at trial, and having done the foregoing with complete and satisfactory access to, and advice from, accounting and legal advisors, the Parties mutually consent and agree that the Net Pro Rata Distribution should be apportioned among the Class Members' various wage and non-wage claims in this action as set forth above. Moreover, the Parties mutually consent and agree, and hereby represent to the Court in this judicially-supervised settlement transaction, that the apportionment of the Net Pro Rata Distributions as stated above is a reasonable and arm's length determination of the character of the Net Pro Rata Distribution for all purposes, including for tax purposes.

59. The Claims Administrator shall send a check to all Settlement Class Members (*i.e.*, those Class Members that do not affirmatively opt out and/or withdraw their consent-to-join form, as applicable) representing each Settlement Class Member's Net Pro Rata Distribution. Checks sent to Class Members' shall contain a legend on the reverse of the check that states: "Endorsement or depositing of this check means that you are certifying under penalty of perjury to being a Class Member in the matter of *Duque, et al. v. Bank of America N.A.*, are participating in the settlement in this case, and are waiving all wage and hour claims under the Federal Labor Standards Act and/or California law, as applicable. You may read the full notice and waiver online: www.bryanschwartzlaw.com/advocatesettlement." However, regardless of whether he or she negotiates the settlement check, any Class Member who fails to opt out timely of a California Class as indicated in the Notice, or Opt-In Plaintiff who has not withdrawn from the FLSA Collective, shall automatically be deemed a Settlement Class Member whose rights and claims with respect to the claims raised in the Lawsuit are determined and released by the Court's order granting final approval of this settlement, and by other rulings in the Lawsuit.

60. The allocations of any Class Members who opt out of and/or withdraw from the settlement ("unclaimed funds") will be allocated *pro rata* to the Settlement Class Members at the time of settlement disbursement. Any payments made to Settlement Class Members that remain uncashed ninety (90) days after mailing shall be voided. If the amount of those uncashed checks exceeds $10,000, the amount of those checks will be distributed on a *pro rata* basis to Settlement Class Members who cashed their initial checks (the "Second Distribution"). If the amount of those initial uncashed checks does not exceed $10,000, the amount of those checks will

be paid to Legal Aid at Work (www.legalaidatwork.org) as the *cy pres* recipient, subject to the Court's approval. Any Second Distribution checks not cashed after 90 days of mailing will be voided and the amount will be paid to Legal Aid at Work (www.legalaidatwork.org) as the *cy pres* recipient, subject to the Court's approval.

61. No Effect on Benefit Plans. No employee benefit provided by Defendant to any Settlement Class Member, including but not limited to any 401k benefits, shall increase or accrue as a result of any payment made in accordance with this Agreement.

62. No Additional Contribution by Defendant. Defendant's monetary obligation under this Agreement is limited to the amount defined as the Gross Settlement Amount, plus the employer's share of payroll taxes. Defendant may not be called upon or required to contribute additional monies above the Gross Settlement Amount plus the employer's share of payroll taxes under any circumstances whatsoever. All costs and expenses arising out of or in connection with the performance of this Agreement shall be paid from the Gross Settlement Amount and the employer's share of payroll taxes paid by Defendant into the Qualified Settlement Fund, unless expressly provided otherwise herein. In the event that this Agreement is canceled, rescinded, terminated, voided, or nullified, however that may occur, or the settlement is barred by operation of law, or invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendant will cease to have any obligation to pay any portion of the Gross Settlement Amount to the Qualified Settlement Fund or any other Party under the terms of this Agreement, and all previous disbursements made from Defendant to the Qualified Settlement Fund will immediately revert back to Defendant, less any Claims Administration Charges incurred. Notwithstanding the

foregoing, Defendant will bear sole responsibility for paying the employer's share of payroll taxes in connection with any payments made under the terms of this Agreement, out of funds separate and apart from the Gross Settlement Amount.

SETTLEMENT ADMINISTRATION

63. The Claims Administrator will administer disbursements from the Gross Settlement Amount paid by Defendant into the Qualified Settlement Fund, including, but not limited to, distributing the Notice of Settlement, calculating claims against the Qualified Settlement Fund, calculating interest owed, calculating the employer's share of payroll taxes owed, preparing and issuing all disbursements to be paid to Class Members, Class Counsel, the Class Representatives, the Opt-In Plaintiffs, and the local, state, and federal payroll tax authorities, as applicable, and handling inquiries about the calculation of the Net Pro Rata Distribution. The Claims Administrator shall be responsible for the timely filing of all applicable federal, state and local tax returns of the Qualified Settlement Fund and making the timely payment of any and all taxes and withholdings required with such returns. The Claims Administrator shall establish an email address and a toll-free telephone number to direct inquiries regarding the Notice of Settlement and determination of Net Pro Rata Distributions. All questions by Class Members shall be directed to the Claims Administrator. The Parties expect that the Claims Administrator shall conduct administration of all disbursements of the Settlement Amounts and that Class Counsel shall receive no fees or disbursements relating to the administration of disbursements of the Qualified Settlement Fund.

NOTICE TO THE CLASS AND CLAIMS PROCESS

64. The Claims Administrator shall disseminate the Notice of

Settlement by first-class United States mail, and, where possible, by e-mail. The Notice of Settlement shall be provided to Class Members in the following manner:

65. No later than fifteen (15) days after the Court enters an order granting preliminary approval of the settlement reflected in this Agreement, Defendant will provide the Claims Administrator with a database including the following information for each Class Member: (1) last known home address; (2) last known e-mail address from Defendant's electronic employment records (where available); (3) Social Security number; and (4) data pertaining to the number of weeks that each individual was actively working as an exempt Advocate during the Class Period; (5) data pertaining to the work state(s) for the active work weeks, and (6) whether the Class Member entered into a severance agreement with Defendant (collectively, the "Class List").

66. Within ten (10) days of receiving the Class List, the Claims Administrator shall determine the preliminary Net Pro Rata Distribution that each Class Member is eligible to receive, and shall provide Class Counsel and Defendant's Counsel with a list of all such amounts. Within seven (7) days after receiving the Claims Administrator's report, Class Counsel and Defendant's Counsel shall jointly review the same to determine if the calculations are consistent with this settlement and approve the preliminary Net Pro Rata Distributions for each Class Member (as modified, if necessary, after initial review).

67. Within five (5) days of receiving approval from Class Counsel and Defendant's Counsel of the preliminary Net Pro Rata Distribution for each Class Member, the Claims Administrator shall mail (and where possible,e-mail) to each Class Member the Notice of Settlement. The Claims

Administrator will use information that is reasonably available via customary search methods (*i.e.*, National Change of Address database and skip tracing) to update the addresses of Class Members provided by Defendant. With respect to each Notice of Settlement mailed to a Class Member that is returned as undeliverable prior to 60 days after the Notice is originally mailed, the Claims Administrator shall promptly attempt to determine a correct address for the Class Member using a reasonable search method and shall re-send the Notice of Settlement via first-class mail to any new address thereby determined. The Claims Administrator will use reasonable efforts to contact the Class Members to effectuate this Agreement.

68. Opting Out of Class/Collective. In order for a Class Member to validly exclude himself or herself from the California Class and/or for a Class Member who has already filed an FLSA consent-to-join as of the date of this Agreement to exclude himself or herself from the FLSA Collective (*i.e.,* to validly opt-out or withdraw a consent-to-join form), the member of the Class must send a letter to the Claims Administrator setting forth his or her name and a statement that he or she requests exclusion from the California Class (as applicable) or to withdraw his or her consent from the FLSA Collective and does not wish to participate in the settlement. In order to be effective, any such request for exclusion or withdrawal of consent-to-join form to the Claims Administrator must be postmarked no later than 60 days after the date that the Claims Administrator originally mails the Notice of Settlement to Class Members. The Parties and their respective counsel agree that none of them will take any steps to encourage any Class Member to opt-out or withdraw their consent-to-join form from the California Class or FLSA Collective. The date of mailing of the Notice of Settlement, and the

date the signed request for exclusion or withdrawal of consent-to-join form is postmarked, shall be conclusively determined according to the records of the Claims Administrator. Any Class Member who timely and validly opts-out or withdraws his or her consent-to-join form from the California Class or the FLSA Collective will not be entitled to any settlement payment, will not be bound by the terms and conditions of this Agreement, and will not have any right to object, appeal or comment thereon. By signing this Agreement, Plaintiffs agree to be bound by the terms herein and further agree not to request to be excluded from the California Class and agree not to object to any of the terms of this Agreement. Any such request for exclusion or objection shall therefore be void and of no force or effect.

69. Dispute Process. Any Class Member who disputes the information shown on his or her Notice of Settlement regarding the total number of weeks that he or she worked as an exempt Advocate during the Class Period, or whether he or she signed a severance agreement, may indicate and explain such disagreement under penalty of perjury within sixty (60) days of the mailing of the Notice of Settlement by notifying the Claims Administrator pursuant to the procedures set forth herein and described in the Notice of Settlement. Any such Class Member must submit documentation relating to his or her dispute. The Claims Administrator shall notify Defendant's Counsel and Class Counsel of any such dispute no later than five (5) days after receiving notice of the dispute. In the case of a dispute, Defendant's records shall control and will have a rebuttable presumption of correctness. For any dispute that arises, counsel for the Parties may stipulate to a resolution, or stipulate to allow the Claims Administrator to resolve the dispute and make a final and binding determination without hearing or right of appeal, or may ask the Court to

resolve a dispute.

70. Objections to Settlement. In order to object to this Agreement, or any term of it, the person making the objection must be a Class Member, must not opt-out, and must, by no later than sixty (60) days after the original mailing of the Notice of Settlement, send his or her written objections to the Court. Class Members who fail to timely file and serve objections in the manner specified herein shall be deemed to have waived any objections. Members of the FLSA Collective may not file any objections of any kind and instead must withdraw their consent-to-join forms if they do not wish to be bound by this agreement as provided in the Notice (however, any member of both the FLSA Collective and the California Class retains his or her right to object to the settlement as a California Class Member).

71. The Claims Administrator shall provide the Parties with a weekly update as to the number of returned Notices, opt-outs, withdrawn consent forms, and objections it has received. Upon completion of the sixty (60) day period in which Class Members can timely exclude themselves from the settlement, withdraw their consent forms, or object to the settlement, the Claims Administrator shall inform the Parties as to the total number of Class Members in each category.

72. Within seven (7) days after the deadline to submit an objection, opt out, or withdraw a consent form, the Claims Administrator shall recalculate the Net Pro Rata Distribution for those Class Members who remain in the Class to determine the final Net Pro Rata Distribution of each Class Member. The Claims Administrator shall provide Class Counsel and Defendant's Counsel with a list of all such amounts. Within seven (7) days after receiving the Claims Administrator's report, Class Counsel and Defendant's Counsel shall jointly review the same to determine if the

calculations are consistent with this settlement.

73. Declaration of Compliance. As soon as practicable, and no later than seven (7) days prior to the hearing regarding final approval of the settlement, the Claims Administrator shall provide Defendant's Counsel and Class Counsel with a declaration attesting to completion of the notice process (except for any ongoing attempt to obtain valid mailing addresses for, and the resending of, any returned Notices of Settlement) ("Declaration of Compliance"). The Parties agree that compliance with the notice procedures described in this Stipulation constitutes due and sufficient notice to Class Members of this proposed settlement and the hearing regarding final approval of the settlement, and should satisfy the requirement of due process. Nothing else shall be required of, or done by, the Parties, Class Counsel, Defendant's Counsel, or the Claims Administrator to provide notice of the proposed settlement and the final approval hearing.

74. Funding of Qualified Settlement Fund. Within fifteen (15) days after the Effective Date, Defendant shall wire the Gross Settlement Amount, plus the amount estimated for the employer's share of payroll taxes, to the Claims Administrator for deposit into the Qualified Settlement Fund.

75. Disbursement of Class Counsel Attorneys' Fees and Costs, Class Representative Enhancements, Opt-In Plaintiff Enhancements, and Claims Administration Charges. Within ten (10) business days after Defendant wires the Gross Settlement Amount to the Claims Administrator for deposit into the Qualified Settlement Fund, the Claims Administrator shall disburse any Court-approved attorneys' fees, costs, Class Representative Enhancements, Opt-In Plaintiff Enhancements, and any unpaid Claims Administration Charges.

76. Disbursement of Net Pro Rata Distributions. No later than ten

(10) business days after Defendant has wired the Gross Settlement Amount to the Claims Administrator for deposit into the Qualified Settlement Fund, the Claims Administrator will send each Class Member, at their last known or provided address, their Net Pro Rata Distribution in the form of (a) a non-payroll check for the combined amounts of the Interest Portion and Penalties Portion of the Pro Rata Distribution and (b) a payroll check in the net amount of the Net Wages Portion of the Pro Rata Distribution. The Claims Administrator shall report all such payments to the appropriate government taxing authorities using the tax reporting forms and methods required under applicable law. The mailing of Net Pro Rata Distributions shall be by first-class United States mail to the last known mailing address of each Class Member.

77. Ninety (90) days after mailing payments, the Claims Administrator shall calculate any unclaimed amounts – *i.e.*, the total value of checks that were not cashed (funds remaining in the Qualified Settlement Fund).

78. If the amount of uncashed funds is $10,000 or less, the amount shall be disbursed to the *cy pres* recipient identified herein within ten (10) days after the expiration of the 90-day period, with notice provided to counsel for Defendant and Plaintiffs.

79. If the amount of the uncashed funds is greater than $10,000, the amount shall be redistributed to those Class Members, on a *pro rata* basis, that did cash their initial settlement checks (the "Second Distribution"). The checks paid through the Second Distribution will be void 90 days after issuance, with any such uncashed amounts being disbursed to the *cy pres* recipient identified herein within ten (10) days after the expiration of the 90-day period, with notice provided to counsel for Defendant and Plaintiffs

80. Upon completion of the administration of the settlement under this Agreement, the Claims Administrator shall provide to Defendant's counsel the following: (a) specimens of all form documents sent to Class Members, including the Notice of Settlement; (b) copies of all documents actually sent to Class Members, including without limitation, those itemized in (a), *supra*; (c) a register of all members of the California Class who excluded themselves from the settlement; and (d) a register listing all Class Members and the Net Pro Rata Distribution made to each Class Member.

81. Extension of Time to Pay and/or Process Claims. Should the Claims Administrator need more time than is provided under this Agreement to complete any of its obligations as set forth in this Agreement, the Claims Administrator may request such additional time in writing (including an explanation of the need for additional time) from Defendant's Counsel and Class Counsel. If Defendant's Counsel and Class Counsel do not agree, in writing, to the Claims Administrator's request for additional time, the Claims Administrator may seek such additional time from the Court.

RELEASE OF CLAIMS

82. Plaintiffs and all members of the Classes that do not timely and properly exclude themselves from the terms of this Agreement (by opting out or withdrawing written consent) stipulate and agree that, upon the Effective Date, they shall be deemed to have, and by operation of the Court's order granting final approval of the settlement set forth in this Agreement and the Judgment of dismissal entered pursuant thereto shall have expressly waived and relinquished the Released Claims. Even if the Plaintiffs and/or any such Class Members may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, Plaintiffs and

each Class Member, upon the Effective Date, shall be deemed to have and by operation of the Court's order granting final approval of the settlement set forth in this Agreement and the Judgment of dismissal entered pursuant thereto shall have fully, finally, and forever settled and released any and all of the Released Claims. This is true whether the Released Claims are known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts.

83. Plaintiffs and all members of the Classes that do not timely and properly exclude themselves from the terms of this Agreement agree not to sue or otherwise make a claim against any of the Released Parties based upon the Released Claims.

84. Plaintiffs Duque and Thibodeau and all members of the California Class who do not timely and properly exclude themselves from the terms of this Agreement shall be deemed to have waived their rights as to the Released Claims with respect to the Released Parties under Section 1542 of the California Civil Code, which states:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

85. For the purposes of effectuating this Agreement only, Plaintiffs, all members of the Classes that do not timely and properly exclude

themselves from the terms of this Agreement also shall be deemed to have acknowledged and agreed that: (1) their claims for compensation for missed meal and rest breaks, overtime compensation, minimum wages, statutory and civil penalties, and any other payments and/or penalties in the Lawsuit are disputed; and (2) the payments set forth herein constitute full payment of any amounts allegedly due to them. Such acknowledgements pertain only to effectuating this Agreement and, if this Agreement fails for any reason, shall be of no effect whatsoever. In light of these acknowledgements for settlement purposes only, Plaintiffs and all California Class Members who do not timely and properly exclude themselves from the terms of this Agreement shall be deemed to have acknowledged and agreed that California Labor Code section 206.5 is not applicable to the Parties hereto. That section provides in pertinent part as follows:

> "An employer shall not require the execution of any release of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made."

86. Each member of the Classes who does not timely and properly exclude himself or herself from the terms of this Agreement-shall be deemed to have made the foregoing Release and representations as if by manually signing them.

87. In addition to the release provided above with respect to all Class Members, and for a valuable consideration, the receipt and adequacy of which is hereby acknowledged and except as specifically provided below, Class Representatives Luis Duque and Daniel Thibodeau, on behalf of themselves and each of their heirs, executors, administrators, attorneys, devisees, successors, and assigns, do hereby release and forever discharge

the Released Parties of and from any and all claims, causes of action, suits, debts, liens, contracts, judgments, agreements, promises, liabilities, claims, demands, damages, losses, costs, or expenses of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "Claims"), which Class Representatives now have against the Released Parties, or any of them, by reason of any matter, event, act, omission, cause or thing whatsoever from the beginning of time to the date of this Agreement, including but not limited to any and all Claims relating to or arising out of the hire, employment, demotion, termination or remuneration (including without limitation salary, bonus, incentive or other compensation, sick leave or medical insurance benefits), *except* vested benefits, of Class Representatives by the Released Parties, including without limitation all Claims arising out of, based upon or relating to the Lawsuit.

88. Without limiting the generality of the foregoing, the Claims of the Class Representatives released herein include any Claims arising out of, based upon, or in any way related to (i) claims of discrimination, harassment, and retaliation; (ii) any tort claims, including wrongful discharge, intentional or negligent infliction of emotional distress, intentional or negligent misrepresentation, invasion of privacy, defamation, loss of consortium, breach of fiduciary duty, assault, battery, sexual battery, violation of public policy, or any other common law claim of any kind; (iii) any other violation or alleged violation of Title VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act, as amended, the Fair Labor Standards Act, the Employee Retirement Income Security Act (except that this release does not affect any vested benefits owned by the Class Representatives), the Americans With Disabilities Act, the Family and Medical Leave Act, the California Family Rights Act, the California Fair

Employment and Housing Act, the California Labor Code, the Civil Rights Act of 1866, and the Consolidated Omnibus Budget Reconciliation Act; and (iv) any claim relating to or arising under any other local, state or federal statute, regulation or principle of common law governing the employment of individuals and/or discrimination in employment. This release extends to any and all administrative charges whether before the Equal Employment and Opportunity Commission or the Department of Fair Employment and Housing or any other court or agency. Should the Class Representatives ever become a party to any such proceeding against the Released Parties, as a result of claims released in the agreement, he or she shall immediately ask any such administrative agency or court to withdraw any such charge as to him. In consideration of the mutual promises contained herein, the Class Representatives, on behalf of themselves, and each of his heirs, representatives, successors, assigns, and attorneys, specifically agree to forever fully and finally release, waive, acquit and discharge, to the fullest extent permitted by law, all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, whether known or unknown. Further, Class Representatives agree to sign this Agreement and to be bound by the terms herein stated, and further agree not to request to be excluded from the Agreement and agree not to object to any of the terms of the Agreement.

CLASS ACTION FAIRNESS ACT NOTICE

89. Defendant will be responsible for providing appropriate notifications to the relevant agencies under the Class Action Fairness Act ("CAFA") within ten (10) days of the filing of the motion for preliminary approval.

VOIDING THE AGREEMENT

90. In the event: (i) the Court does not enter any order specified herein; (ii) the Court does not finally approve the settlement set forth in this Agreement as provided herein; (iii) the Court does not enter an order granting final approval of the settlement set forth in this Agreement and a Judgment of dismissal of the Lawsuit with prejudice as provided herein that becomes final as a result of the occurrence of the Effective Date; or (iv) the settlement set forth in this Agreement does not become final for any other reason, this Agreement shall be null and void *ab initio* and any order or judgment entered by the Court in furtherance of the settlement set forth herein shall be treated as withdrawn or vacated by stipulation of the Parties. In such case, the Parties shall be returned to their respective statuses as of the date immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed. In the event an appeal is filed from the Court's order granting final approval of the settlement set forth in this Agreement and any Judgment entered pursuant thereto, or any other appellate review is sought prior to the Effective Date, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review.

91. In the event 5% or more of the Class Members affirmatively exclude themselves from the Agreement, Defendant may, at its option, void the Agreement in its entirety. For example, if there are 321 total Class Members, and 17 or more Class Members affirmatively exclude themselves from the settlement, the 5% threshold under this Paragraph shall be exceeded.

92. Unless the foregoing precedent condition is met, Defendant will not receive reversion of any part of the Gross Settlement Amount, unless the settlement is not finally approved by the Court with terms materially identical

to the terms set forth in this Agreement. In the event the settlement is voided pursuant to this paragraph, or is not given final approval by the Court, Defendant will bear only the already-incurred costs of the Claims Administrator.

MISCELLANEOUS PROVISIONS

93. Each Party to Bear Own Costs. Except as specifically provided herein, the Parties hereto will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of this Lawsuit, and will not seek reimbursement thereof from any Party to this Agreement.

94. Severability. If any of the above provisions are found null, void, or inoperative, for any reason, the remaining provisions will remain in full force and effect. Notwithstanding, the invalidation of any material term of this Agreement, including but not limited to all the terms and provisions specified in the Release of Claims, will invalidate this Agreement in its entirety unless the Parties subsequently agree in writing that the remaining provisions will remain in force and effect.

95. Headings. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute any part of this Agreement.

96. No Admission. Neither the acceptance nor the performance by Defendant of the terms of this Agreement nor any of the related negotiations or proceedings is or shall be claimed to be construed as, or deemed to be an admission by Defendant of the truth of any of the allegations of the Lawsuit, the representative character of the Lawsuit, the validity of any of the claims that were or could have been asserted by Plaintiffs and/or Class Members in the Lawsuit, or any liability or guilt of Defendant in the Lawsuit.

97. Agreement Jointly Prepared. The Parties and their attorneys have jointly prepared and reviewed this Agreement. The Parties have had a full opportunity to negotiate the terms and conditions of this Agreement. Accordingly, the Parties expressly waive the common law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement, and agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

98. Non-Evidentiary Use. Neither the fact of this Agreement, the existence of this Stipulation, the terms of this Agreement, nor any order or action pursuant thereto may be referred to, relied upon, cited, or used as evidence by any of the Parties, Class Members, or their respective counsel in the Lawsuit or in any other action or proceeding; provided, however, that nothing contained in this section shall prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement.

99. Amendment or Modification. Unless otherwise provided herein, this Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

100. Authorization to Enter Into Stipulation. Each individual signing this Agreement warrants that he or she has the authority and is expressly authorized to enter into this Agreement on behalf of the Party for which that individual signs.

101. The Parties agree that because the Class Members are so numerous, it is impossible or impractical to have each of them execute this Agreement. Accordingly, the Notice of Settlement, which is included within Exhibit A attached to this Agreement, will advise all of the Class Members

of the binding nature of the release and, if they remain Class Members, that the release shall have the same force and effect as if the Agreement were executed by each of them, whether or not the Notice of Settlement is actually received by the Class Member.

102. Advice of Counsel. The Parties to this Agreement are represented by competent counsel, and they have had an opportunity to consult with counsel. The Parties to this Agreement agree that it reflects their good faith compromise of the claims raised in this action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.

103. Assignment. None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Class Member, Class Counsel or Defendant's Counsel without the express written consent of each Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person.

104. Governing Law. This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

105. Entire Agreement. This Agreement and any supplemental written agreement subsequently incorporated constitute the entire Agreement among these Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement other than the representations, warranties and covenants contained and

memorialized herein. This Agreement, once it is fully executed, supersedes, any and all prior agreements between the Parties, whether written or verbal.

106. Counterparts. This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

107. Cooperation. The Parties shall cooperate fully with one another in seeking approval of the Court of this Agreement (including all exhibits thereto) and to use their best efforts to consummate the Agreement and cause the Court to enter an order of final approval of the settlement. No Party to this Agreement shall seek to evade his, her or its good faith obligations to seek approval and implementation of the Agreement by virtue of any ruling, order, or other development, whether in the Lawsuit, in any other litigation or otherwise that hereafter might occur and might be deemed to alter the relative strengths of the Parties with respect to any claims or defenses of their relative bargaining power with respect to negotiating.

108. Confidentiality/ Non-Disparagement. The Parties and their counsel agree that, prior to the filing of a motion for preliminary approval, they will not issue any press releases or press statements, post any internet disclosures, have any communications with the press or media about this Agreement, or otherwise publicize the terms of this Agreement in any medium, including but not limited to Internet blogs or chat rooms, Facebook, or a law firm website. If counsel for either Party receives an

inquiry about settlement from the media, counsel may respond only after the motion for preliminary approval has been filed and only by confirming the terms of the settlement. After the filing of a motion for preliminary approval, the Parties and their counsel agree not to issue press releases, hold any press conferences, or otherwise actively publicize the settlement, except on Class Counsel's public website, as described below, with the intent to inform class members about the settlement and its terms, the Court's orders in the case, and to maximize participation in the settlement. Notwithstanding the foregoing, the Parties shall have the right to disclose this Agreement as may be required under federal or state tax and/or securities laws or under generally accepted accounting principles, and may disclose in legal proceedings the terms of this Agreement.

109. Website. Class Counsel has set up a website (www.bryanschwartzlaw.com/advocatesettlement)which will be used to provide settlement documents and other case-related documents online for Class Members' review. Any statements Class Counsel makes on the website about the Lawsuit will be factually accurate and not derogatory or disparaging about the company. Statements regarding contrasting views of the claims in this matter are not "derogatory" or "disparaging" for purposes of this Agreement.

110. To the extent permitted by law, the Court shall retain jurisdiction for the purposes of managing and overseeing the class action settlement set forth in this Agreement and the distribution of funds pursuant thereto.

* * *

THE UNDERSIGNED ACKNOWLEDGE THAT EACH HAS READ THE FOREGOING AGREEMENT AND ACCEPTS AND AGREES TO THE

PROVISIONS CONTAINED THEREIN, AND HEREBY EXECUTES IT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS CONSEQUENCES.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates indicated below.

IT IS SO STIPULATED AND AGREED:

[Signatures on following pages]

PLAINTIFFS/CLASS REPRESENTATIVES:

DATED: Jul 23, 2018, 2018

Luis Duque
Luis Duque (Jul 23, 2018)

Luis Duque
Plaintiff/Class Representative

DATED: _____, 2018

_____

Daniel Thibodeau
Plaintiff/Class Representative

DEFENDANT: **DEFENDANT BANK OF AMERICA, N.A.**

DATED: , 2018

By: _____

Name: _____

Title: _____

PLAINTIFFS/CLASS REPRESENTATIVES:

DATED: _____, 2018

Luis Duque
Plaintiff/Class Representative

DATED: July 23, 2018

Daniel Thibodeau
Plaintiff/Class Representative

DEFENDANT: **DEFENDANT BANK OF AMERICA, N.A.**

DATED: July 26, 2018

By: _____

Name: Aaron J Lopez

Title: SVP; Assistant General Counsel

COUNSEL:

DATED: July 23, 2018

BRYAN SCHWARTZ LAW

By: _____
Bryan J. Schwartz, Esq.
Rachel Terp, Esq.

Attorneys for Plaintiffs and the Class Members

DATED: July 26, 2018

MCGUIREWOODS LLP

By: _____
Michael D. Mandel, Esq.
John A. Van Hook, Esq.

Attorneys for Defendant
Bank of America, N.A.

EXHIBIT 1

to the Settlement Agreement

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

LUIS DUQUE and DANIEL THIBODEAU, individually, on behalf of others similarly situated, and on behalf of the general public,

Plaintiffs,

v.

BANK OF AMERICA N.A.

Defendant.

_____/

Case No.: 8:18-cv-01298-PA-MRW

NOTICE OF CLASS AND COLLECTIVE ACTION SETTLEMENT TO CALIFORNIA CLASS MEMBERS

Honorable Percy Anderson

IMPORTANT NOTIFICATION TO POTENTIAL CLASS MEMBERS

TO: ALL PERSONS WHO WERE EMPLOYED BY BANK OF AMERICA, N.A. AND CLASSIFIED AS EXEMPT CLIENT ADVOCATES, SENIOR CLIENT ADVOCATES, OPERATIONS CONSULTANTS, OR SENIOR OPERATIONS CONSULTANTS IN THE REGULATORY COMPLAINTS AND SOCIAL MEDIA SERVICING GROUP WITHIN THE STATE OF CALIFORNIA AT ANY TIME FROM JANUARY 5, 2014 THROUGH DECEMBER 31, 2015 ("CLASS MEMBERS").

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. A FEDERAL COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER.

A $1.95 MILLION SETTLEMENT FUND HAS BEEN CREATED TO PAY CLASS AND COLLECTIVE ACTION MEMBERS IN ORDER TO SETTLE A WAGE AND HOUR LAWSUIT.

YOUR ESTIMATED ALLOCATION OF THE SETTLEMENT IS $[XXXXX]. THIS IS THE ESTIMATED GROSS AMOUNT YOU WILL RECEIVE IF YOU DO NOT EXCLUDE YOURSELF FROM THE SETTLEMENT AND THE COURT GRANTS FINAL APPROVAL OF THE SETTLEMENT.

ACCORDING TO COMPANY RECORDS, YOU ACTIVELY WORKED AS AN EXEMPT CLASS MEMBER IN CALIFORNIA BETWEEN JANUARY 5, 2014

AND DECEMBER 31, 2015 FOR [XXX] WEEKS.

ACCORDING TO COMPANY RECORDS, YOU [DID/DID NOT] SIGN A SEVERANCE AGREEMENT.

- The settlement fund will pay claims of an estimated 321 former Client Advocates, Senior Client Advocates, Operations Consultants, and Senior Operations Consultants who worked for Bank of America, N.A. ("Bank of America") and whom Bank of America classified as exempt at any point from January 5, 2014 in California, or from January 5, 2015 outside California, until December 31, 2015.

- The settlement pertains to a lawsuit asserting causes of action against Bank of America for: (1) failure to pay overtime wages; (2) failure to provide and/or authorize meal and rest periods; (3) failure to provide itemized wage statements; (4) failure to pay earned wages upon discharge; and (5) unlawful and/or unfair business practices in violation of California Business and Professions Code.

- Bank of America denies that it is liable for any of these claims. Bank of America contends that, at all times, it properly classified and paid the employees subject to this settlement. However, in light of the risk and expense of protracted litigation, Bank of America, Class and Collective Counsel and the Plaintiffs believe that this is a fair settlement of the class and collective claims.

YOUR OPTIONS AND LEGAL RIGHTS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you do nothing, and assuming that the Court approves the settlement, you will receive a settlement payment approximating your estimated allocation stated above. If you do nothing, a check will arrive in the mail (to the same address to which this notice was sent). The back of the check will explain that by cashing the check, you are agreeing to release all claims covered by this settlement. By cashing the check, you will be opting also to exercise and release your claims under the federal Fair Labor Standards Act.
EXCLUDE YOURSELF	If you take the steps described in this notice to exclude yourself from the case, you will receive no payment from this settlement. However, you would be free to pursue any claims separately against Bank of America.
OBJECT	If you wish to challenge the terms of the settlement, you may file a written objection with the Court, setting forth the reasons why you oppose the settlement. However, in order to object to the settlement you cannot exclude yourself from the settlement.

WHAT THIS NOTICE CONTAINS

27. How do I get more information?

BASIC INFORMATION

1. Why did I get this notice package?

Bank of America's records indicate that the company employed you and classified you as an exempt Client Advocate, Senior Client Advocate, Operations Consultant, or Senior Operations Consultant in California at some point between January 5, 2014 and December 31, 2015 (the "Class Period"). These positions correspond to Bank of America's internal job codes CD037, CD034, QA006, and QA030, respectively.

You received this notice because you have a right to know about a proposed settlement of a class and collective action lawsuit, and about your options, before the Court decides whether to finally approve the settlement. If the Court approves it, and after any objections and appeals are resolved, an administrator appointed by the Court will make the payments that the settlement requires.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Central District of California, and the case is known as *Luis Duque et al. v. Bank of America, N.A.*, Case No. 8:18-cv-01298-PA-MRW (C.D. Cal.). The people who brought the suit are called Plaintiffs, and the entity the suit was brought against (Bank of America) is the Defendant.

2. What is this lawsuit about?

The Plaintiffs in this lawsuit claim that Bank of America misclassified as "exempt" from state and federal overtime laws Client Advocates, Senior Client Advocates, Operations Consultants, Senior Operations Consultants and other job titles performing the same or similar customer processing duties in the Regulatory Complaints and Social Media Servicing Group, and thereby: (1) failed to pay overtime when they worked more than eight hours in a day or forty hours in a week; and, in California, (2) failed to provide rest and meal breaks; (3) failed to provide itemized wage statements; (4) failed to pay all wages due at the time of discharge or resignation from employment; and (5) as a result of the foregoing, engaged in unfair or unlawful business practices in violation of the California Business and Professions Code.

The Court has not issued any ruling on the merits of Plaintiffs' claims, and Bank of America takes the position that its pay practices, including the exempt classifications at issue in this lawsuit, have been appropriate under California and federal law, and were made in good faith.

3. What is a class action?

In a class action, Class Representatives (in this case Luis Duque and Daniel Thibodeau, representing the California class) sue on behalf of people who have similar claims ("Class Members"). The Court will resolve the issues for all Class Members, except for those who exclude themselves from the Class.

4. Why is there a settlement?

The Court did not issue a judgment, or make any rulings on the merits, in favor of Plaintiffs or Defendant. Instead, the parties reached a negotiated settlement, which avoids the uncertainties, costs, and delays associated with further litigation and which compensates the Class Members sooner, rather than later, if at all. The Class Representatives and the attorneys believe that this settlement is in the best interests of all Class Members.

WHO IS IN THE SETTLEMENT

5. How do I know if I am part of the settlement?

Everyone who fits the following description is a California Class Member: *All persons who were classified as exempt by Bank of America, N.A. and worked as Client Advocates, Senior Client Advocates, Operations Consultants, Senior Operations Consultants and/or other job titles performing the same or similar customer complaint processing duties in the Regulatory Complaints and Social Media Servicing group, within the State of California from January 5, 2014 and December 31, 2015*. These positions correspond to Bank of America's internal job codes CD037, CD034, QA006, and QA030, respectively.

6. Are there exceptions to being included?

You are not a Class Member if you did not work for Bank of America as an exempt Client Advocate, Senior Client Advocate, Operations Consultant, Senior Operations Consultant, or other job title performing the same or similar customer complaint processing duties in the Regulatory Complaints and Social Media Servicing group, within California during the period in question. As noted below, even if you signed a severance agreement, or if you are subsequently offered a severance agreement, you may still participate in this settlement. You may also exclude yourself from the settlement by one of the methods described below.

7. I am still not sure if I am included.

If you are receiving this notice, it is most likely that you do qualify to participate, and unless you opt out, you will receive a settlement payment, assuming that the Court approves the settlement. If you have questions about whether you qualify, you may contact Class Counsel at the contact information provided below.

8. What if I signed a severance or sign one in the future?

If you are a former employee who signed a severance agreement containing various releases of claims against Bank of America, the company has agreed that you are not required to opt out of this settlement and you may still participate in this settlement and retain any severance benefits you have received or will receive. However, if you signed a severance agreement before the date of this notice, then your recovery from this case will be reduced by 10% to reflect the litigation risk associated with your claim had the case continued in litigation and/or trial.

THE SETTLEMENT BENEFITS – WHAT YOU GET

9. What does the settlement provide?

Bank of America has agreed to create a fund of $1,950,000 to be divided among all class and collective action members who participate in the settlement, and also to be used to pay for Plaintiffs' attorney's fees and costs, enhancement payments to the named Plaintiffs and opt-in Plaintiffs, administrative expenses, and other payments made pursuant to this Settlement.

Participants in the settlement will receive a *pro rata* payment based on the number of work-weeks during the Class Period that they worked as exempt employees in the relevant positions for Bank of America.

California participants who never signed a severance agreement will receive payment that is 1.5 times larger per work-week than participants who worked outside of California, to reflect the additional claims asserted on behalf of those individuals, and differences between California and federal wage and hour laws.

Participants who signed a severance agreement and release of claims will receive a payment that is 10% smaller per work-week than participants who did not sign a severance agreement and release of claims, to account for the litigation risk associated with such a release.

10. How much will my payment be?

Your estimated share of the fund is listed on the first page of this Notice. The amount will depend on the number of work-weeks during which you were actively employed as a Class Member during the Class Period, and whether you signed a severance agreement. If other Class Members do not participate in the settlement, your share of the fund may increase proportionately.

For tax reporting purposes, one-third of the settlement amount you receive will be considered wages, one-third will be considered interest, and one-third will be considered penalties and liquidated damages. The claims administrator will issue you associated tax reporting documents. You alone are responsible to pay any appropriate taxes on your settlement amount.

YOU WILL RECEIVE A PAYMENT UNLESS YOU AFFIRMATIVELY OPT OUT

11. How can I get a payment?

If you are receiving this notice, and the settlement receives final approval from the Court, unless you affirmatively opt out of the settlement by [***date – 60 days after notice is mailed***], you will automatically receive a payment.

12. When would I get my payment?

The Court will hold a hearing on **[*date*]** at 1:30 p.m. to decide whether to grant final approval of the settlement. If the Court approves the settlement, there may be appeals. Resolving any appeals can take time, perhaps more than a year. Please be patient.

However, if the Court approves the settlement at the hearing and there are no appeals, payments will be made within several months after the hearing.

13. What am I giving up to get a payment?

Unless you affirmatively exclude yourself from the settlement, you are part of the Class. You cannot sue, continue to sue, or be part of any other lawsuit against Bank of America concerning the wage and hour claims covered by this settlement. It also means that all of the Court's orders will apply to you and legally bind you.

Unless you affirmatively exclude yourself from the settlement, you will be releasing all wage and hour claims under California law covered by this settlement, whether you cash your check or not. If you have previously submitted a "consent to join" form, unless you withdraw your consent, you will also release all wage and hour claims under the federal Fair Labor Standards Act, whether you cash your check or not. If you have not previously submitted a "consent to join" form, you will release federal Fair Labor Standards Act claims only if you cash your check.

You can review the exact language of the release by reviewing the Settlement Agreement online, at the web address listed in the "Getting More Information" section of this Notice, below. The relevant portion begins in Page _ of the Settlement Agreement.

14. What if I believe I am not being credited for the right number of work-weeks?

Any Class Member who disputes the information shown on his or her Notice of Settlement regarding the total number of weeks that he or she was a Class Member may indicate and explain such disagreement within sixty (60) days of the mailing of the Notice of Settlement by notifying the Claims Administrator pursuant to the following procedures: a) any such Class Member must submit documentation timely relating to his or her dispute; b) the Claims Administrator shall notify Bank of

America's Counsel and Class Counsel of any such dispute no later than five (5) days after receiving notice of the dispute; c) in the case of a dispute, Bank of America's records shall control and will have a rebuttable presumption of correctness, which means that it is your burden to prove, with records in support, that the work weeks listed are wrong; and, d) the Claims Administrator will notify you whether or not your dispute has been successful.

EXCLUDING YOURSELF FROM THE SETTLEMENT

15. What does it mean to exclude myself from the settlement?

If you do not want a payment from this settlement, but you want to keep the right to pursue claims (or continue to pursue claims) against Bank of America on your own regarding the legal issues in this case, then you must exclude yourself from the settlement. This is called "opting out" of the settlement Class. If you exclude yourself from the Settlement, you will not receive any money at all from this Settlement.

16. How do I opt out of the settlement?

To exclude yourself from the settlement, you must send a letter by mail to the Claims Administrator setting forth your name and a statement that you request to be excluded from the California Class, and if applicable, the FLSA Collective, and do not wish to participate in the Settlement. To ensure your letter is properly processed, be sure to include your address, telephone number, and your signature. You must mail your exclusion request postmarked no later than [***date 60 days after notice is mailed***] to:

Claims Administrator
P.O. Box XXXX
City, ST XXXXX-XXXX

If you ask to be excluded, you will not get any settlement payments of any kind in this case and you cannot object to the settlement. If you previously opted-into this case, and exclude yourself, your opt-in form will be effectively withdrawn. You will not be legally bound by anything that happens in this lawsuit. You will be able to pursue claims (or continue to pursue claims) against Bank of America for the wage claims at issue in this case in the future. If you have a pending claim or lawsuit,

speak to your lawyer in that case immediately. You may need to exclude yourself from this settlement to continue your own claim or lawsuit.

17. What happens if I do nothing?

If you do nothing regarding this notice, you will be sent a check for your allocated amount, provided the Court grants final approval to the settlement.

If you do not cash the check, your rights will still be affected, in that you will necessarily give up your right to sue Bank of America for California wage and hour claims. Further, if you have previously submitted a "consent to join" form, unless you withdraw your consent, you will also release all wage and hour claims under the federal Fair Labor Standards Act covered by this settlement, even if you do not cash your check.

18. What are claims under the Fair Labor Standards Act?

The Fair Labor Standards Act is a federal law governing the payment of overtime for hours worked past 40 in a week. In contrast, California law requires overtime to be paid for hours worked past 8 in a day or 40 hours in a week. California also has laws relating to meal breaks and rest breaks, itemized wage statements, and waiting time penalties, among other laws.

Assuming the Court grants settlement approval, if you do nothing in this lawsuit, you will give up your right to sue based on any California wage and hour law while working in one of the positions described above. If you cash your settlement check, you will release your state and federal wage claims while working in one of the positions described above. If you previously filed a consent to join the FLSA collective action in this lawsuit and do not timely withdraw your consent as described in section 16 above, you will release your claims under the Fair Labor Standards Act, regardless of whether you cash your check. If you have not previously filed a consent to join the FLSA collective action and you do not cash your check, you will retain your right to sue under the Fair Labor Standards Act.

THE LAWYERS REPRESENTING THE CLASS

19. Do I have a lawyer in this case?

Bryan Schwartz Law represents the Class. These lawyers are called Class Counsel. These lawyers will be paid from the settlement amount, so you will not be charged personally for these lawyers' work on this case and in negotiating this settlement. If you want to be represented by your own lawyer, you may hire one at your own expense.

20. How will the lawyers, claims administrator, Class Representative Plaintiffs and Opt-In Plaintiffs be paid?

Class Counsel will ask the Court to approve the payment of up to one-quarter of the settlement amount for attorneys' fees (*i.e.*, up to $487,500), as well as litigation costs.

The Claims Administrator administering the settlement will be compensated at the fair market rate of those services from the settlement, and capped at $20,000.

A payment of up to $5,000 will be made to Class Representatives Luis Duque and Daniel Thibodeau, respectively, and payments of up to $2,500 each will be made for Opt-in Plaintiffs Sharon Gamble, Felipe Fuentes, and Alina Abad for their work in bringing this lawsuit and in exchange for them waiving a much broader array of personal claims than you are waiving.

The Court may award less than these amounts. Bank of America has agreed not to oppose Class Counsel's request for fee, expense, class representative, and opt-in payments. If the Court awards less than the amounts described in this section, that money will be redistributed to Class Members or distributed to an appropriate charity, depending upon the amount of the money. None of this money will revert to Bank of America.

OBJECTING TO THE SETTLEMENT

21. How do I tell the Court that I challenge all or some of the settlement terms?

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

To object to the proposed settlement, you must submit your objection to the Court by [date]. If you fail to timely file and serve objections, you shall have been deemed to waive any objection. All written objections and supporting papers must (a) clearly identify the case name and number (*Luis Duque et al. v. Bank of America, N.A.*, Case No. 8:18-cv-01298-PA-MRW); (b) be submitted to the Court either by mailing them to the Clerk of the Court for the United States District Court, Western Division, 255 East Temple St., Suite 180, Los Angeles, CA 90012, or by filing them in person at any location of the United States District Court for the Central District of California; (c) be filed or postmarked on or before [XXXX – 60 days after mailing of notice; and (d) be sent, also, to:

Claims Administrator
P.O. Box XXXX
City, ST XXXXX-XXXX

22. What's the difference between objecting, on the one hand, and excluding myself (*i.e.*, "opting out") from the settlement, on the other?

Objecting is simply telling the Court that you wish to challenge all or part of the settlement. You can object only if you stay in the Class. Excluding yourself from the settlement or "opting out" is telling the Court that you do not want to be part of the Class or receive any payment at all from the settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FINAL FAIRNESS HEARING

23. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Fairness Hearing at 1:30 P.M. on [XXX], at the United States District Court for the Central District of California, at 350 W. 1st Street, Courtroom 9A, 9th Floor, Los Angeles, CA, 90012, before the Honorable Percy Anderson. At this hearing the Court will consider whether the settlement is

fair, reasonable, and adequate. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the settlement. Please note that the hearing may be postponed without further notice to the Class. Thus, if you plan to attend the hearing, you should check the website identified in Questions 26 and 27, below, or access the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.cacd.uscourts.gov.

24. Do I have to come to the hearing?

No. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as the Court receives your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

25. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Fairness Hearing. To do so, you must send a letter to the Clerk of the Court saying that it is your "Notice of Intention to Appear in *Luis Duque et al. v. Bank of America, N.A.*, Case No. 8:18-cv-01298-PA-MRW." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than [XXX], and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the three addresses listed below. You cannot speak at the hearing if you excluded yourself ("opted out") from the settlement.

Court	**Class Counsel**	**Defense Counsel**
Clerk of the Court United States District Court Western Division 255 East Temple St. Suite 180 Los Angeles, CA 90012	Bryan Schwartz Law 1330 Broadway, Suite 1630 Oakland, CA 94612	McGuire Woods LLP Attn: Michael Mandel 1800 Century Park East, 8th Floor Los Angeles, CA 90067

GETTING MORE INFORMATION

26. Are there more details about the settlement?

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at http://www.bryanschwartzlaw.com/advocatesettlement, by contacting Class Counsel as set forth at Question 27, below, by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.cacd.uscourts.gov, or by visiting the office of the Clerk of the Court at any location of the United States District Court for the Central District of California, during business hours. If there is any conflict between this notice and the Settlement Agreement, the Settlement Agreement will control.

27. How do I get more information?

You can call 1-XXX-XXX-XXXX toll free, write to [Administrator], Inc., P.O. Box XXXX, City ST XXXXX-XXXX, or go to http://www.bryanschwartzlaw.com/advocatesettlement.

You may also call Class Counsel:

Rachel Terp, Esq., at Bryan Schwartz Law, (510) 444-9300

DO NOT CALL THE COURT

CONCLUSION

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, THE HONORABLE PERCY ANDERSON, UNITED STATES DISTRICT COURT JUDGE.

_____

The Honorable Judge Percy Anderson

EXHIBIT 2

to the Settlement Agreement

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

LUIS DUQUE and DANIEL THIBODEAU, individually, on behalf of others similarly situated, and on behalf of the general public, Plaintiffs, v. BANK OF AMERICA, N.A. Defendant. _____/	Case No.: 8:18-cv-01298-PA-MRW **NOTICE OF SETTLEMENT TO FLSA COLLECTIVE ACTION MEMBERS** Honorable Percy Anderson

IMPORTANT NOTIFICATION TO COLLECTIVE ACTION MEMBERS

TO: ALL PERSONS WHO WERE EMPLOYED BY BANK OF AMERICA N.A. AND CLASSIFIED AS EXEMPT CLIENT ADVOCATES, SENIOR CLIENT ADVOCATES, OPERATIONS CONSULTANTS, OR SENIOR OPERATIONS CONSULTANTS IN THE REGULATORY COMPLAINTS AND SOCIAL MEDIA SERVICING GROUP OUTSIDE OF THE STATE OF CALIFORNIA AT ANY TIME FROM JANUARY 5, 2015 THROUGH DECEMBER 31, 2015 ("FLSA COLLECTIVE MEMBERS").

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. A FEDERAL COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER.

A $1.95 MILLION SETTLEMENT FUND HAS BEEN CREATED TO PAY CLASS AND FLSA COLLECTIVE ACTION MEMBERS IN ORDER TO SETTLE A WAGE AND HOUR LAWSUIT.

YOUR ESTIMATED ALLOCATION OF THE SETTLEMENT IS $[XXXX]. THIS IS THE ESTIMATED GROSS AMOUNT YOU WILL RECEIVE IF YOU DO NOT EXCLUDE YOURSELF FROM THE SETTLEMENT AND THE COURT GRANTS FINAL APPROVAL OF THE SETTLEMENT.

ACCORDING TO COMPANY RECORDS, YOU ACTIVELY WORKED AS AN EXEMPT FLSA COLLECTIVE MEMBER OUTSIDE OF CALIFORNIA BETWEEN JANUARY 5, 2015 AND DECEMBER 31, 2015 FOR [XXX] WEEKS.

ACCORDING TO COMPANY RECORDS, YOU [DID/DID NOT] SIGN A SEVERANCE AGREEMENT.

- The settlement fund will pay claims of an estimated 321 former Client Advocates, Senior Client Advocates, Operations Consultants, and Senior Operations Consultants who worked for Bank of America, N.A. ("Bank of America") and whom Bank of America classified as exempt at any point from from January 5, 2014 in California, or from January 5, 2015 outside California, until December 31, 2015.

- The settlement pertains to a lawsuit asserting causes of action against Bank of America for: (1) failure to pay overtime wages; (2) failure to provide and/or authorize meal and rest periods; (3) failure to provide itemized wage statements; (4) failure to pay earned wages upon discharge; and (5) unlawful and/or unfair business practices in violation of California Business and Professions Code.

- Bank of America denies that it is liable for any of these claims. Bank of America contends that, at all times, it properly classified and paid the employees subject to this settlement. However, in light of the risk and expense of protracted litigation, Bank of America, Class and Collective Counsel, and the Plaintiffs believe that this is a fair settlement of the class and collective claims.

YOUR OPTIONS AND LEGAL RIGHTS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you do nothing, and assuming that the Court approves the settlement, you will receive a settlement payment approximating your "estimated allocation" stated above. A check will arrive in the mail (to the same address to which this notice was sent). The back of the check will explain that by cashing the check, you are agreeing to release all claims covered by this settlement. By cashing the check, you will be opting in to the collective action and releasing your claims under

	the federal Fair Labor Standards Act and any related wage and hour laws in the state in which you worked for Bank of America as an FLSA Collective Member.
CHOOSE NOT TO PARTICIPATE	If you do not cash the check issued to you, the funds will be redistributed to others and/or to a charity approved by the Court. In that case, you will release no claims.
WITHDRAW YOUR CONSENT TO JOIN	If you already filed a consent-to-join and thereby opted in to this case but you do not wish to accept this settlement, you must withdraw your consent-to-join, by contacting Class Counsel by email or mail at the contact information listed below. If you withdraw your consent-to-join, you will release no claims and receive no payment through this settlement.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

1. Why did I get this notice package?

Bank of America's records indicate that the company employed you and classified you as an exempt Client Advocate, Senior Client Advocate, Operations Consultant, or Senior Operations Consultant outside of California at some point between January 5, 2015 and December 31, 2015 (the "Class Period"). These positions correspond to Bank of America's internal job codes CD037, CD034, QA006, and QA030, respectively.

You received this notice because you have a right to know about a proposed settlement of a class and collective action lawsuit, and about your options, before the Court decides whether to finally approve the settlement. If the Court approves it, and after any objections and appeals are resolved, an administrator appointed by the Court will make the payments that the settlement requires.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Central District of California, and the case is known as *Luis Duque et al. v. Bank of America, N.A.*, Case No. 8:18-cv-01298-PA-MRW (C.D. Cal.). The people who brought the suit are called Plaintiffs, and the entity the suit was brought against (Bank of America) is the Defendant.

2. What is this lawsuit about?

The Plaintiffs in this lawsuit claim that Bank of America misclassified as "exempt" from state and federal overtime laws Client Advocates, Senior Client Advocates, Operations Consultants, Senior Operations Consultants and other job titles performing the same or similar customer processing duties in the Regulatory Complaints and Social Media Servicing Group, and thereby: (1) failed to pay overtime when they worked more than eight hours in a day or forty hours in a week; and, in California, (2) failed to provide rest and meal breaks; (3) failed to provide itemized wage statements; (4) failed to pay all wages due at the time of discharge or resignation from employment; and (5) as a result of the foregoing, engaged in unfair or unlawful business practices in violation of the California Business and Professions Code.

The Court has not issued any ruling on the merits of Plaintiffs' claims, and Bank of America takes the position that its pay practices, including the exempt classifications at issue in this lawsuit, have been appropriate under California and federal law, and were made in good faith.

3. What is a collective action?

In a FLSA collective action, Representative Plaintiffs (in this case Luis Duque and Daniel Thibodeau, sue on behalf of people who have similar claims (the "FLSA Collective"). The Court can make rulings affecting the FLSA Collective (e.g., approving the parties' settlement), which only effect those who have opted into this case already by filing a consent-to-join (only a handful of people have done so, so far), or who opt into this case by cashing their settlement checks.

4. Why is there a settlement?

The Court did not issue a judgment, or make any rulings on the merits, in favor of Plaintiffs or Defendant. Instead, the parties reached a negotiated settlement, which avoids the uncertainties, costs, and delays associated with further litigation and which compensates the FLSA Collective sooner, rather than later, if at all. The Representative Plaintiffs and the attorneys believe that this settlement is in the best interests of the FLSA Collective.

WHO IS IN THE SETTLEMENT

5. How do I know if I am part of the settlement?

Everyone who fits the following description is a member of the FLSA Collective: *All persons who were classified as exempt by Bank of America, N.A. and worked as Client Advocates, Senior Client Advocates, Operations Consultants, Senior Operations Consultants and/or other job title performing the same or similar customer complaint processing duties in the Regulatory Complaints and Social Media Servicing group, from January 5, 2015 through December 31, 2015 and who join the Collective Action through the procedures set forth in this Agreement.* These positions correspond to Bank of America's internal job codes CD037, CD034, QA006, and QA030, respectively.

6. Are there exceptions to being included?

You are not a member of the FLSA Collective if you did not work for Bank of America, as a Client Advocate, Senior Client Advocate, Operations Consultant, Senior Operations Consultant, or other job title performing the same or similar customer complaint processing duties in the Regulatory Complaints and Social Media Servicing group during the period in question. As noted below, even if you signed a severance agreement, or if you are subsequently offered a severance agreement, you may still participate in this settlement.

7. I am still not sure if I am included.

If you are receiving this notice, it is most likely that you do qualify to participate, and unless you opt out or withdraw your consent-to-join the FLSA Collective, you will receive a settlement payment, assuming that the Court approves the settlement. Once you cash your settlement check, you will release claims as described below. If you have questions about whether you qualify, you may contact Class Counsel at the contact information provided below.

8. What if I have signed a severance agreement, or sign one in the future?

If you are a former employee who signed a severance agreement containing various releases of claims against Bank of America, the company has agreed that you are not required to opt out of this settlement and you may still participate in this settlement and retain any severance benefits you have received or will receive. However, if you signed a severance agreement on or before the date of this notice, then your recovery from this case will be reduced by 10% to reflect the litigation risk associated with your claim had the case continued in litigation and/or trial.

THE SETTLEMENT BENEFITS – WHAT YOU GET

9. What does the settlement provide?

Bank of America has agreed to create a fund of $1,950,000 to be divided among all Class and FLSA Collective members, who participate in the settlement, and also to be used to pay for Plaintiffs' attorney's fees and costs, enhancement payments to the named Plaintiffs and opt-in Plaintiffs, administrative expenses, and other payments made pursuant to this Settlement.

Participants in the settlement will receive a *pro rata* payment based on the number of work-weeks during the Class Period that they worked as exempt employees in the relevant positions for Bank of America.

California participants who never signed a severance agreement will receive payment that is 1.5 times larger per work-week than participants who worked outside of California, to reflect the additional claims asserted on behalf of those individuals, and differences between California and federal wage and hour laws.

Participants who signed a severance agreement and release of claims will receive a payment that is 10% smaller per work-week than participants who did not sign a severance agreement and release of claims, to account for the litigation risk associated with such a release.

10. How much will my payment be?

Your estimated share of the fund is listed on the first page of this Notice. The amount will depend on the number of work-weeks during which you were actively employed as a Class Member during the Class Period and whether you signed a severance agreement. If other class or collective members do not participate in the settlement, your share of the fund may increase proportionately.

For tax reporting purposes, one-third of the settlement amount you receive will be considered wages, one-third will be considered interest, and one-third will be considered penalties and liquidated damages. The claims administrator will issue you associated tax reporting documents. You alone are responsible to pay any appropriate taxes on your settlement amount.

YOU WILL LIKELY RECEIVE A PAYMENT

11. How can I get a payment?

If you are receiving this notice and the settlement receives final approval from the Court, if you have already filed a consent-to-join, unless you withdraw your consent-to-join the FLSA Collective by [***date – 60 days after notice is mailed***], you will automatically receive a payment. If you have not yet filed a consent-to-join, you will receive a settlement check, and when you cash it, that will serve as your consent-to-join this suit, and will release associated claims.

12. When would I get my payment?

The Court will hold a hearing on **[*date*]** at [***time***] to decide whether to grant final approval of the settlement. If the Court approves the settlement, there may be appeals. Resolving any appeals can take time, perhaps more than a year. Please be patient.

However, if the Court approves the settlement at the hearing and there are no appeals, payments will be made within several months after the hearing.

13. What am I giving up to get a payment?

Unless you withdraw your consent-to-join form, or fail to cash your settlement payment, you are part of the FLSA Collective. You cannot sue, continue to sue, or be part of any other lawsuit against Bank of America concerning the wage and hour claims covered by this settlement. It also means that all of the Court's orders will apply to you and legally bind you.

If you cash your settlement check, you will be releasing all wage and hour claims covered by this settlement under the Fair Labor Standards Act and any related wage and hour laws in the state in which you worked for Bank of America.

You can review the exact language of the release by reviewing the Settlement Agreement online, at the web address listed in the "Getting More Information" section of this Notice, below. The relevant portion begins in Page 34 of the Settlement Agreement.

14. What if I believe I am not being credited for the right number of work-weeks?

If you dispute the information shown on your Notice of Settlement regarding the total number of weeks that you actively worked as an exempt Client Advocate, Senior Client Advocate, Operations Consultant, Senior Operations Consultant, or other job title performing the same or similar customer complaint processing duties in the Regulatory Complaints and Social Media Servicing group, you may indicate and explain such disagreement under within sixty (60) days of the mailing of the Notice of Settlement by notifying the Claims Administrator pursuant to the following procedures: a) you must submit documentation timely relating to your dispute; b) the Claims Administrator shall notify Bank of America's Counsel and Class Counsel of any such dispute no later than five (5) days after receiving notice of the dispute; c) in

the case of a dispute, Bank of America's records shall control and will have a rebuttable presumption of correctness, which means that it is your burden to prove, with records in support, that the work weeks listed are wrong; and d) the Claims Administrator will notify you whether or not your dispute has been successful.

15. What happens if I do nothing?

If you do nothing regarding this notice, you will be sent a check for your allocated amount, provided the Court grants final approval to the settlement.

If you have previously submitted a "consent to join" form, unless you opt-out or withdraw your consent, you will also release all wage and hour claims under the Fair Labor Standards Act covered by this settlement, even if you do not cash your check. If you have not previously submitted a "consent to join" form, if you do not cash your check, you will retain your right to sue under the Fair Labor Standards Act or related state laws (if applicable).

16. What are claims under the Fair Labor Standards Act?

The Fair Labor Standards Act is a federal law governing the payment of overtime for hours worked past 40 in a week.

Assuming the Court grants final approval, if you cash your settlement check, you will release your state (assuming you are eligible to recover under a state wage law) and federal wage claims against Bank of America related to the period in question and while working in one of the positions described above. If you previously filed a consent to join the FLSA collective action in this lawsuit and do not timely withdraw your consent by contacting Class Counsel to do so by email or mail (their contact information is below), you will release your claims under the Fair Labor Standards Act and related state laws, regardless of whether you cash your check.

THE LAWYERS REPRESENTING THE COLLECTIVE

17. Do I have a lawyer in this case?

Bryan Schwartz Law represents the FLSA Collective. These lawyers are called Class Counsel. These lawyers will be paid from the settlement amount, so you will not be charged personally for these lawyers' work on this case and in negotiating this

settlement. If you want to be represented by your own lawyer, you may hire one at your own expense.

18. How will the lawyers, claims administrator, Representative Plaintiffs, and Opt-In Plaintiffs be paid?

Class Counsel will ask the Court to approve the payment of one-quarter of the settlement amount for attorneys' fees (*i.e.*, up to $487,500), as well as litigation costs.

The Claims Administrator administering the settlement will be compensated at the fair market rate of those services from the settlement, and capped at $20,000.

A payment of up to $5,000 will be made to Class and Collective Representative Plaintiffs Luis Duque and Daniel Thibodeau, respectively, and payments of up to $2,500 each will be made for Opt-in Plaintiffs Sharon Gamble, Felipe Fuentes, and Alina Abad for their work in bringing this lawsuit and in exchange for them waiving a much broader array of personal claims than you are waiving.

The Court may award less than these amounts. Bank of America has agreed not to oppose Class Counsel's request for fee, expense, representative, and opt-in payments. If the Court awards less than the amounts described in this section, that money will be redistributed to Class and FLSA Collective members or distributed to an appropriate charity, depending upon the amount of the money. None of this money will revert to Bank of America.

THE COURT'S FINAL FAIRNESS HEARING

19. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Fairness Hearing at [XXX] [X].M. on [XXX], at the United States District Court for the Central District of California, at 350 W. 1st Street, Courtroom 9A, 9th Floor, Los Angeles, CA, 90012, before the Honorable Percy Anderson. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections from Class Members, the Court will consider them (FLSA Collective members may not object to the settlement, they may only chose whether or not to participate in the settlement). After the hearing, the Court will decide whether to approve the settlement. Please note that the hearing may be postponed without further notice to the FLSA Collective. Thus, if you plan to attend the hearing, you should check the website listed in the "Getting More

Information" section of this Notice, below, or access the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.cacd.uscourts.gov.

20. Do I have to come to the hearing?

No. But, you are welcome to come at your own expense. You may also pay your own lawyer to attend, but it is not necessary.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Fairness Hearing, but only if you have filed a consent-to-join. To do so, you must send a letter to the Clerk of the Court saying that it is your "Notice of Intention to Appear in *Luis Duque et al. v. Bank of America, N.A.*, Case No. 8:18-cv-01298-PA-MRW." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than [XXX], and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the three addresses listed below. You cannot speak at the hearing if you have not joined the lawsuit.

Court	Plaintiffs' Counsel	Defense Counsel
Clerk of the Court United States District Court Western Division 255 East Temple St. Suite 180 Los Angeles, CA 90012	Bryan Schwartz Law 1330 Broadway, Suite 1630 Oakland, CA 94612	McGuireWoods LLP Attn: Michael Mandel 1800 Century Park East, 8th Floor Los Angeles, CA 90067

GETTING MORE INFORMATION

22. Are there more details about the settlement?

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at http://www.bryanschwartzlaw.com/advocatesettlement, by contacting Class Counsel as set forth at Question 21, below, by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.cacd.uscourts.gov, or by visiting the office of the Clerk of the Court at any location of the United States District Court for the Central District of California,

during business hours. If there is any conflict between this notice and the Settlement Agreement, the Settlement Agreement will control.

23. How do I get more information?

You can call 1-XXX-XXX-XXXX toll free, write to [Administrator], Inc., P.O. Box XXXX, City ST XXXXX-XXXX, or go to http://www.bryanschwartzlaw.com/advocatesettlement.

You may also call Plaintiffs' Counsel:

Rachel Terp, Esq., at Bryan Schwartz Law, (510) 444-9300

DO NOT CALL THE COURT

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, THE HONORABLE PERCY ANDERSON, UNITED STATES DISTRICT COURT JUDGE.

_____

The Honorable Percy Anderson

EXHIBIT B

NERA
ECONOMIC CONSULTING

14 July 2015

Trends in Wage and Hour Settlements: 2015 Update

By **Dr. Stephanie Plancich, Neil Fanaroff,** and **Janeen McIntosh**

In wage and hour litigation, current and/or former employees allege unpaid work, including unpaid overtime, failure to provide meals and/or rest breaks, and off-the-clock work. Cases may be brought under state law or under the Federal Fair Labor Standards Act (FLSA). These cases may result in civil settlements or verdicts, as well as in back wages and penalties levied by the Department of Labor (DOL).

In this 2015 Update, we add 27 months of data to our database of civil wage and hour settlements, creating a dataset that spans January 2007 to March 2015. Looking at patterns in this data over time, we found that companies continued to pay substantial amounts to settle lawsuits involving allegations of wage and hour violations. We identified total wage and hour settlement payments of $445 million in 2013, $400 million in 2014, and $39 million through the first three months of 2015, bringing the aggregate amount paid for cases settled since January 2007 to over $3.6 billion. In total, our database contains 613 settlements from January 2007 through March 2015, for an average rate of approximately 75 settlements per year.

Average settlement values were lower in 2014 than in prior years. On average, companies paid $5.3 million to resolve a case in 2014, lower than the observed average of $6.3 million in 2013 and the overall average of $6.9 million for the 2007 to 2015 period. This pattern has continued into the first quarter of 2015; during this period, average settlement values were down to $2.8 million. Median settlement values have similarly declined. The median settlement value was $3.0 million in 2013, the median was $2.4 million in 2014, and the median was just $1.9 million through the first 3 months of 2015. This is below the overall 2007-2015 median of $2.2 million.

After controlling for the number of plaintiffs in a case and the number of years in the class period, we found a decreasing trend in the average settlement value per plaintiff per class year—from a peak of $1,475 in 2011 to $686 in 2014 and just $253 through the first three months of 2015.

Historically, the most common allegation in the settlement data related to overtime violations, and this remained true over the past 15 months. In addition, we identified an increase in the proportion of settlements that included allegations of minimum wage violations in 2014 and 2015 relative to prior years.

The number and amount of settlements also vary by industry. In 2014 and 2015, we found an increase in the proportion of settlement dollars spent in the food & food services industry relative to prior years.

We compared our sample of civil wage and hour settlements to concluded actions taken by the DOL's Wage and Hour Compliance division over the past nine years. Over that time period, the DOL reported thousands of investigations, of which 75% resulted in a determination of a violation. Comparing our wage and hour settlement data to the DOL data, we found that nearly 60% of the companies with a wage and hour settlement between 2007 and 2015 had also been investigated by the DOL's Wage and Hour Compliance division. Approximately 25% of the companies in our wage and hour settlement database were found by the DOL to have an FLSA violation, and back wages associated with these violations totaling $19.3 million were paid.[1]

Figure 1. **Over 600 Wage and Hour Cases Have Settled Since 2007**
Settled Wage and Hour Cases by Year
Data as of March 31, 2015

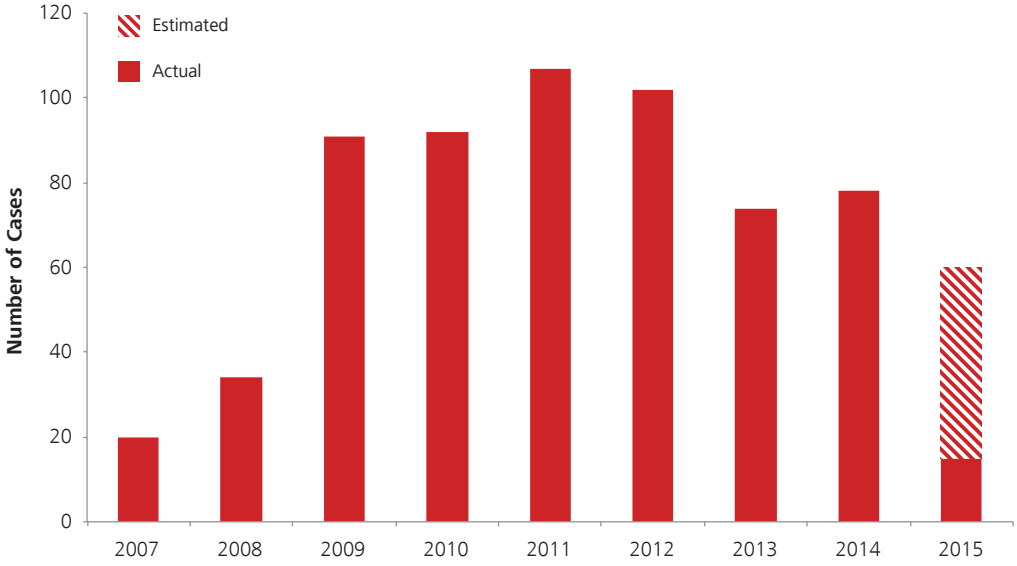


Figure 2. **Average Settlement Values Have Declined in 2014-15, Reversing the 2013 Increase**
Mean Wage and Hour Settlement Amount by Year
Data as of March 31, 2015

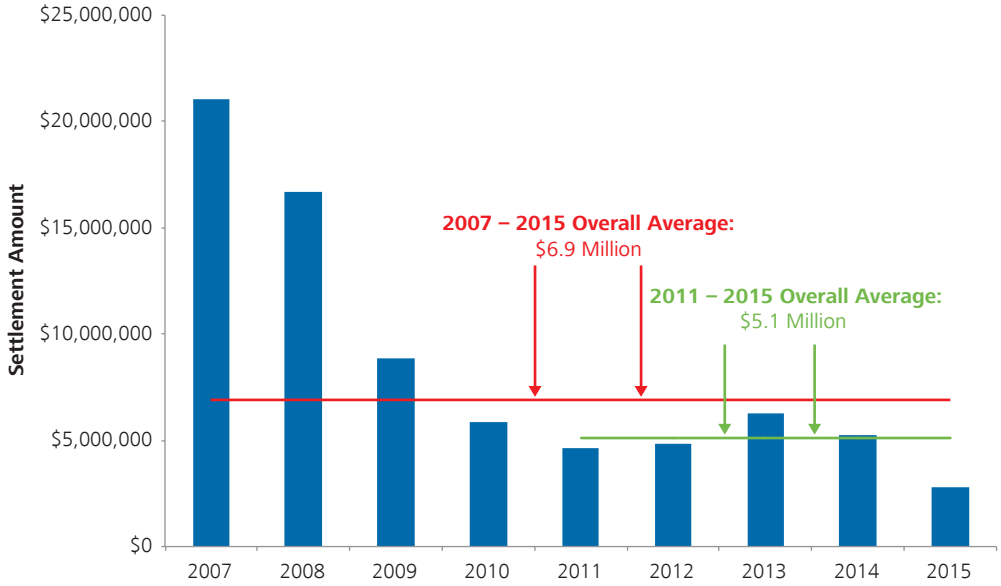


Figure 3. **Median Settlement Values Have Declined in 2014-15 Relative to 2013**
Median Wage and Hour Settlement Amount by Year
Data as of March 31, 2015

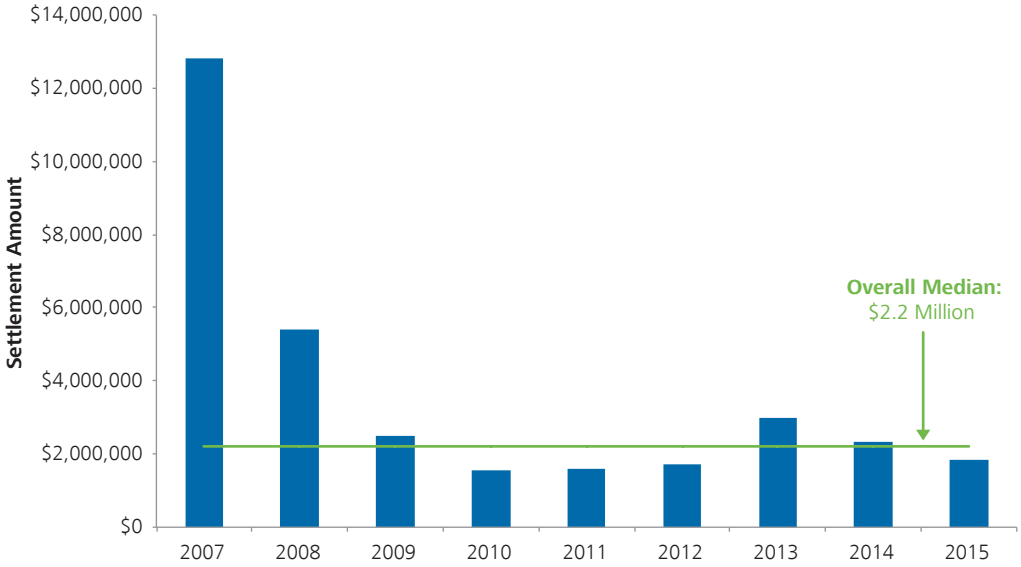
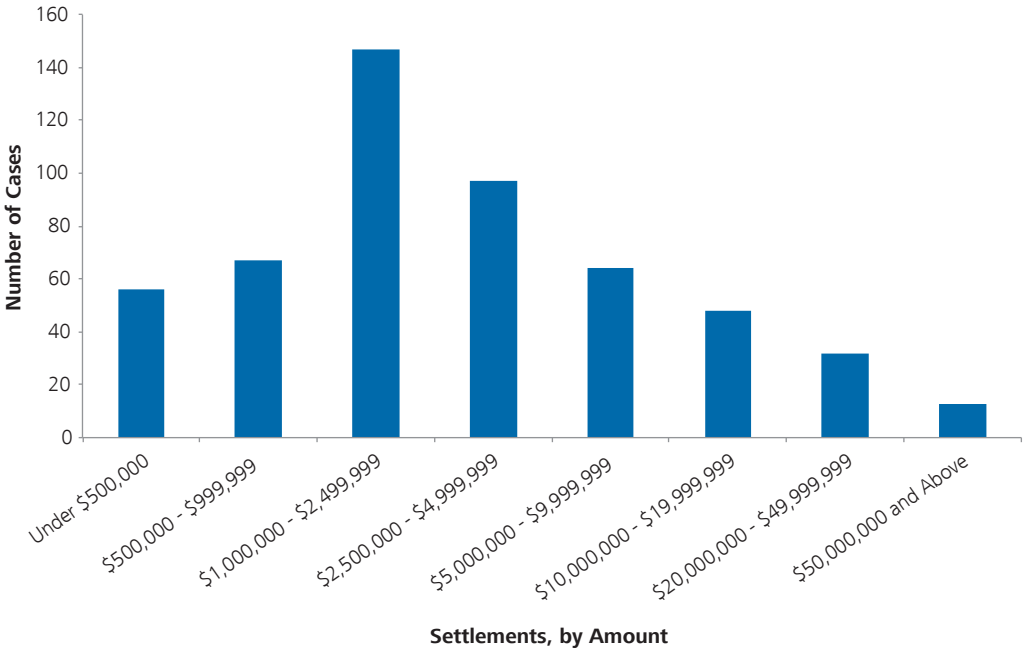


Figure 4. **More Than Half of Cases Settle for Under $2.5 Million**
Settled Wage and Hour Cases by Settlement Amount
January 2007 – March 2015



Data and Methodology

Our updated data includes 613 settlements for wage and hour cases, obtained from articles published in *Law360* between 1 January 2007 and 31 March 2015, and a review of the Seyfarth Shaw annual litigation report for 2007 through 2014. When the information available from these sources was incomplete, additional case-specific details were obtained from Factiva. In addition to settlement value, the data extracted includes case-specific information such as industry, allegations, number of plaintiffs, length of class period, and jurisdiction. While this data collection methodology yielded a substantial number of wage and hour settlements, particularly those with large settlement amounts and/or large classes, it is not necessarily comprehensive.

The DOL's Wage and Hour Compliance Data was obtained from the website http://ogesdw.dol.gov/data_summary.php.[2]

Average Wage and Hour Settlements – Trends per Plaintiff and per Class Period Year

- For approximately 75% of the cases in our database, we were able to determine the number of plaintiffs participating in the settlement; for about 66%, we could determine both the number of plaintiffs and the reported settlement amount.
  - The number of cases with over 10,000 plaintiffs had been decreasing between 2007 and 2013, but increased in 2014, as 16% of settlements were associated with such large classes. The percentage of large settlements remained above 2013 levels in the first three months of 2015.
- On average, the settlement per plaintiff for this subset of cases for which we have plaintiff counts was $5,742. A small proportion of cases—approximately 5%—had settlements averaging over $25,000 per plaintiff, which skews the average upward. The median settlement per plaintiff was lower, at $2,576.
- Cases with more plaintiffs tend to have higher total settlements but lower settlements per person.
- For about 40% of the settlements in our database, we identified the number of plaintiffs in the case, the number of years covered by the settlement, and the settlement amount.
- The median and average duration of a class period in our data were five years. Like cases with more plaintiffs, cases with longer class periods tend to have larger total settlements. However, these cases do not necessarily have higher settlements per class year.
- The vast majority of average settlements were less than $5,000 per plaintiff per class year. The few cases with average settlement amounts per plaintiff per class year above $5,000 were in either the telecommunications/utilities or the financial services/insurance industries and included allegations of misclassification and overtime.
- More recently, the average per plaintiff per class year has dropped substantially, relative to the overall average.

Figure 5. **More Than Half the Cases Have Fewer Than 1,000 Plaintiffs**
Settled Wage and Hour Cases by Number of Plaintiffs
January 2007 – March 2015

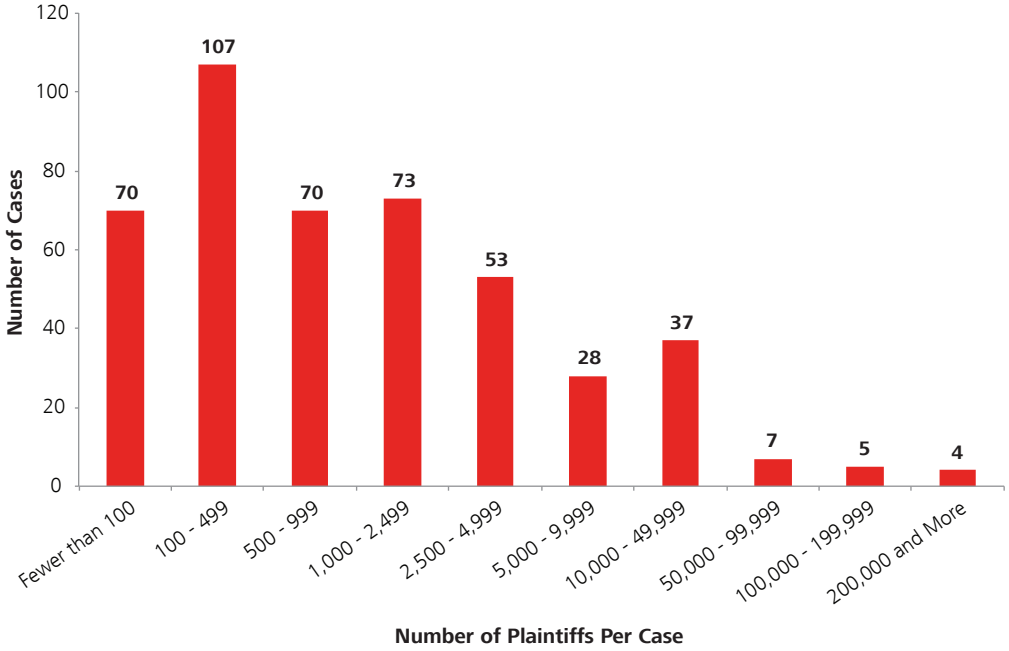


Figure 6. **The Proportion of Cases Involving Large Classes Grew in 2014**
Annual Distribution of Settled Wage and Hour Cases by Number of Plaintiffs
Data as of March 31, 2015

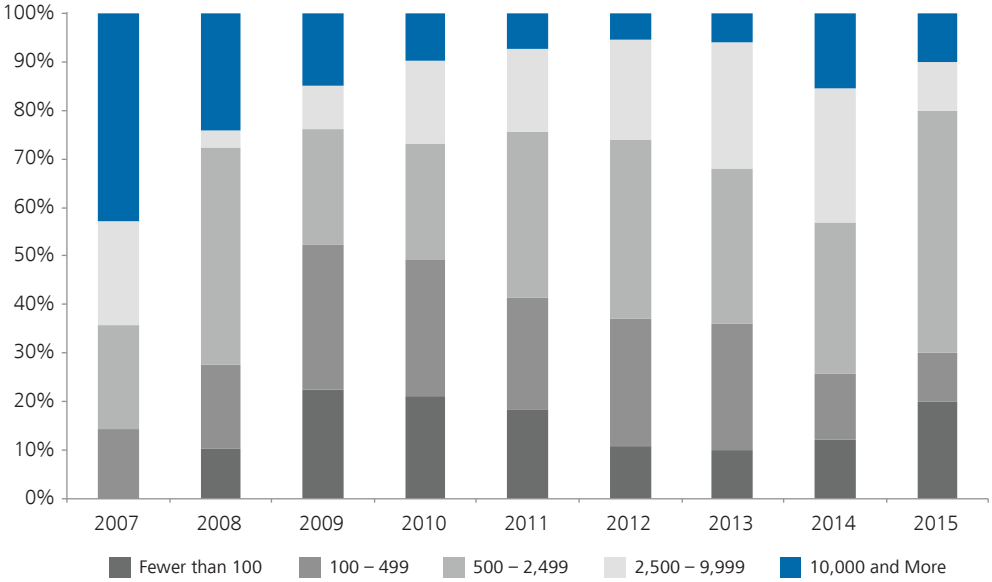


Figure 7. **The Average Settlement Value Per Plaintiff Decreased Significantly in 2014, but Increased in the First 3 Months of 2015**
Average Settlement Value Per Plaintiff for Wage and Hour Cases by Settlement Year
Data as of March 31, 2015

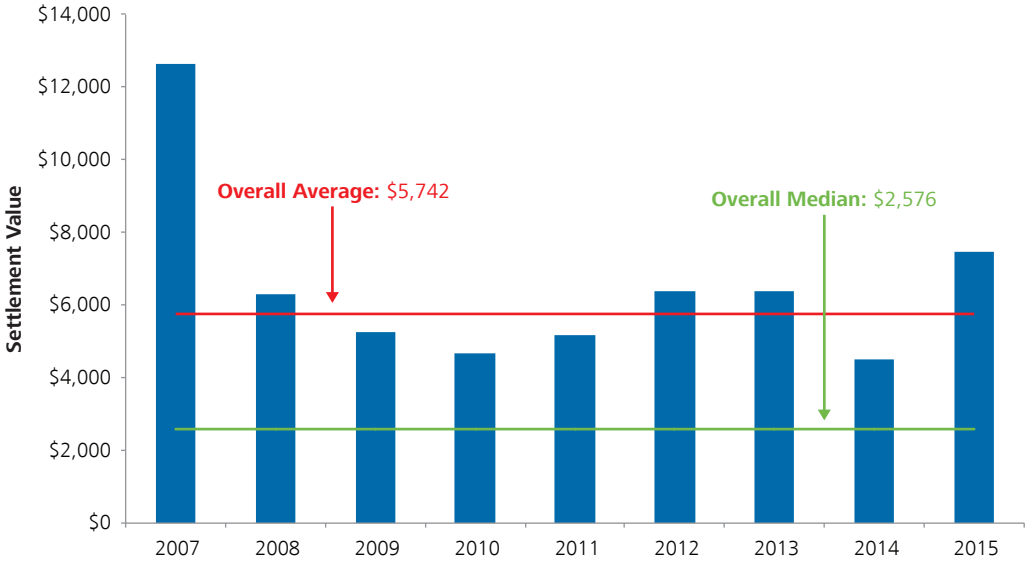


Figure 8. **A Large Proportion of Cases Have an Average Settlement Value Per Plaintiff Between $1,000 and $4,999**
Settled Wage and Hour Cases by the Average Settlement Value Per Plaintiff
January 2007 – March 2015

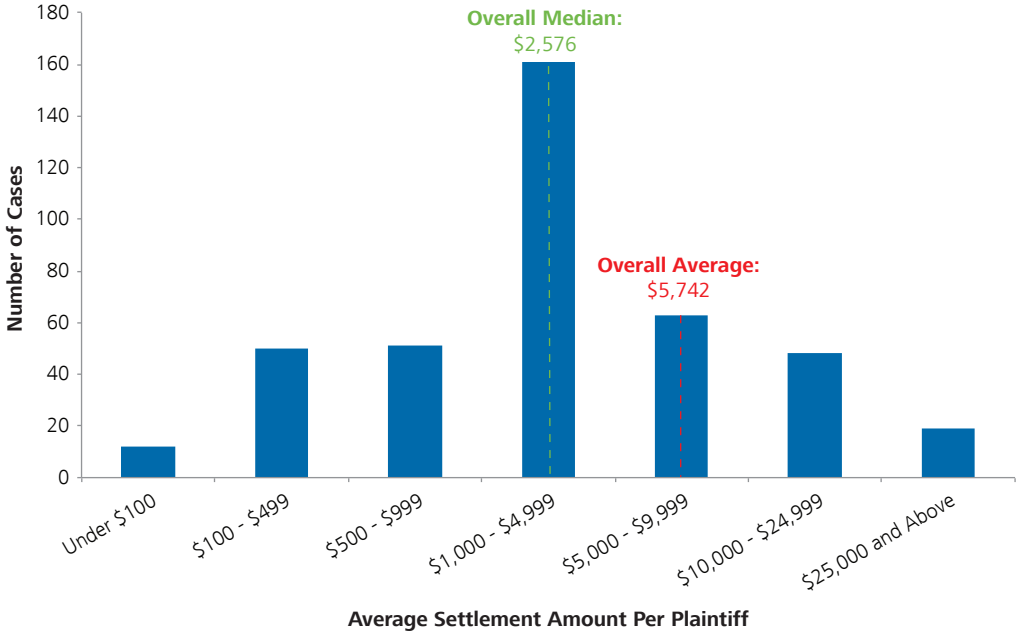


Figure 9. **Less Than 15% of Settled Cases Have a Class Period Greater Than 7 Years**
Settled Wage and Hour Cases by Number of Years in Class Period
January 2007 – March 2015

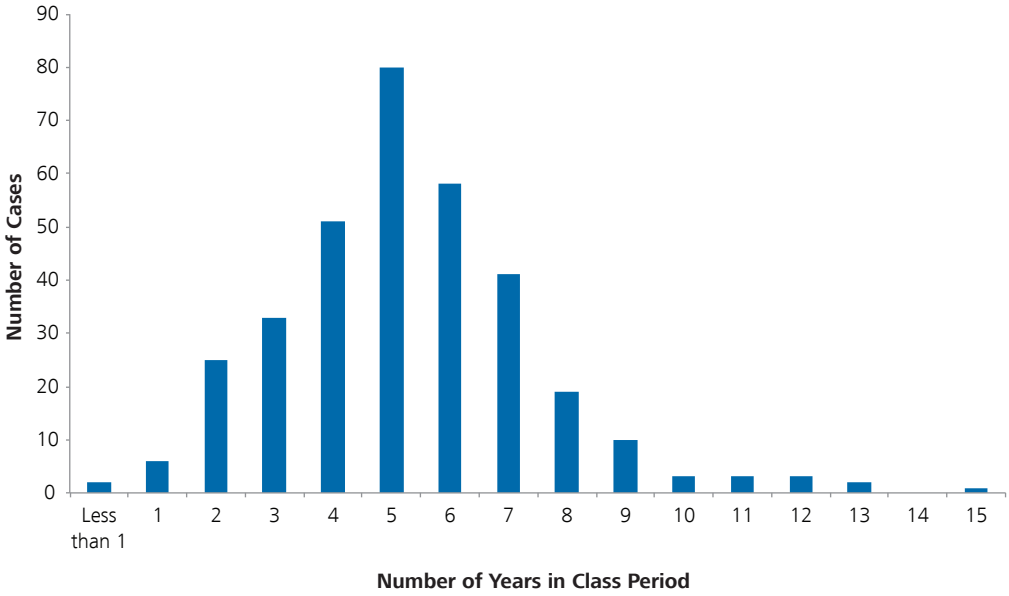


Figure 10. **The Average Settlement Value Per Plaintiff Per Class Year Has Declined Considerably Since the Peak in 2011**
Average Settlement Value Per Plaintiff Per Class Year for Wage and Hour Cases by Settlement Year
Data as of March 31, 2015

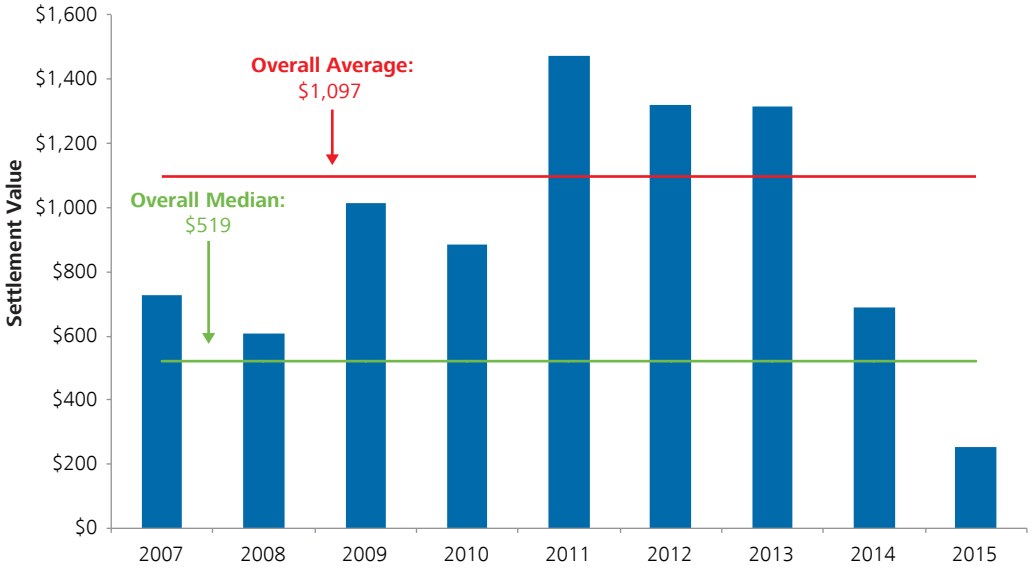
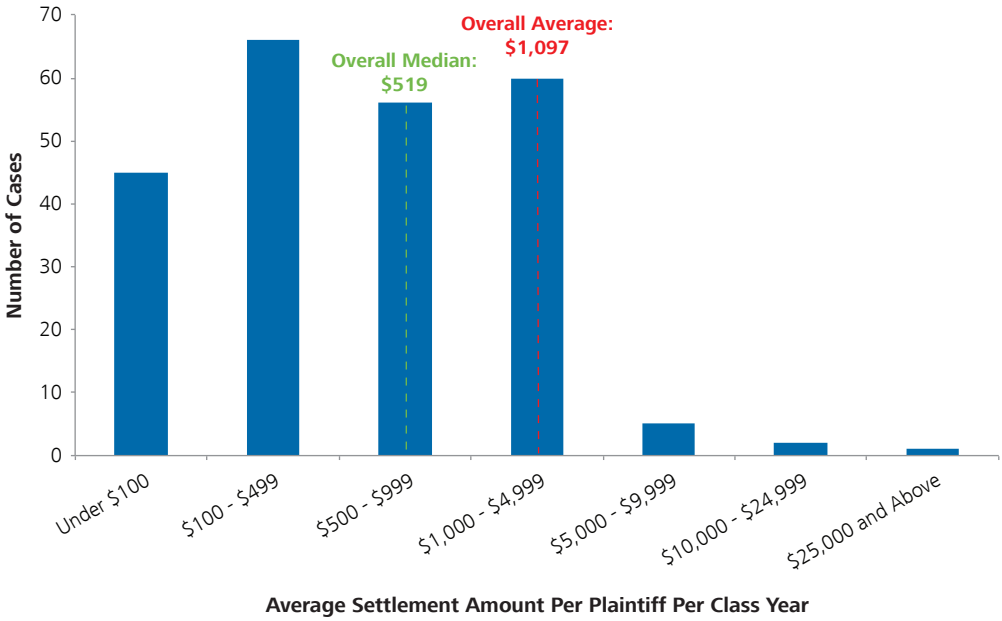


Figure 11. **Few Cases Settle for More Than $5,000 Per Plaintiff Per Class Year**
Settled Wage and Hour Cases by the Average Settlement Value Per Plaintiff Per Class Year
January 2007 – March 2015



Case Characteristics

- We identified all the allegations made in the cases in our settlement database and classified these allegations in the following categories:[3]
  - Overtime
  - Off-the-clock
  - Minimum wage violation
  - Donning and doffing
  - Missed meals and breaks
  - Misclassification
  - Tip Pooling
- Many of the cases in our database had multiple allegations—for example, workers frequently claim that alleged off-the-clock work caused them to have minimum wage violations. About 60% of the cases had at least two allegations. Approximately 16% of the cases in our data had an allegation of overtime only, while another 55% included an allegation of overtime in addition to one or more other allegations.
- This pattern of allegations has been relatively steady: as in prior years, overtime allegations dominated in 2014 and 2015. The share of misclassification and off-the-clock allegations were slightly down in 2014 and 2015 compared to earlier years, but the share of minimum wage violation allegations increased.

- We also identified the industries of the settling defendants and found that the most common industries in all years were financial services/insurance, retail, and food & food services. In 2014 and 2015, the most common industry of settling defendants was retail, followed closely by the financial services/insurance and food & food services industries.

- Three industries accounted for more than half of total spending overall in 2014 and 2015. Over the past 15 months, 21% of settlement dollars were paid to workers in the financial services/insurance sector, 19% of settlement dollars were paid to workers in the retail industry, and 17% were paid to workers in the food & food services industry—in total, 57% of spending. Over all years, these three industries comprised 54% of total spending.

- The majority of the cases in the financial services/insurance, retail, and food & food services industries included allegations of overtime.

- The second most frequent allegation in the financial services/insurance industry was misclassification.

- In the retail industry, we saw allegations of overtime violations, off-the-clock work, and missed meals and breaks, as well as misclassification.

- There were relatively few allegations of misclassification in the food & food services industry, but that industry had several other types of alleged violations, including donning and doffing, missed meals and breaks, and off-the-clock work.

- From 2007 – 2015, settlements with defendants in the technology industry were the highest, followed closely by settlements in the financial services/insurance and food & food services industries.

- In 2014 and 2015, as in prior years, the majority of settlement dollars have been paid out in New York and California.

Figure 12a. **Over 40 Percent of Allegations Relate to Overtime Violations**
Allegations in Settled Wage and Hour Cases
January 2007 – March 2015

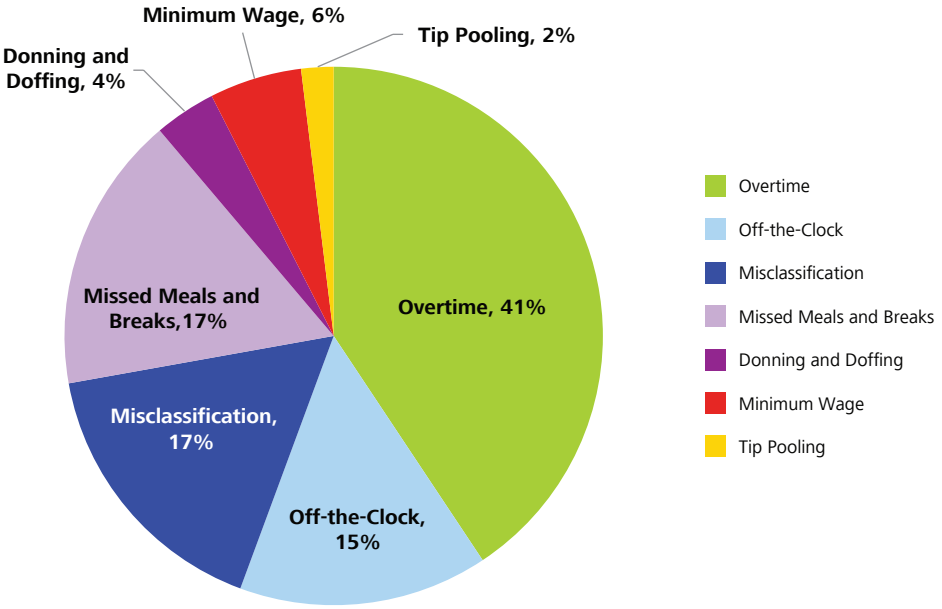


Figure 12b. **In 2014 and 2015, Overtime Remained the Most Common Type of Allegation**
Allegations in Settled Wage and Hour Cases
January 2014 – March 2015

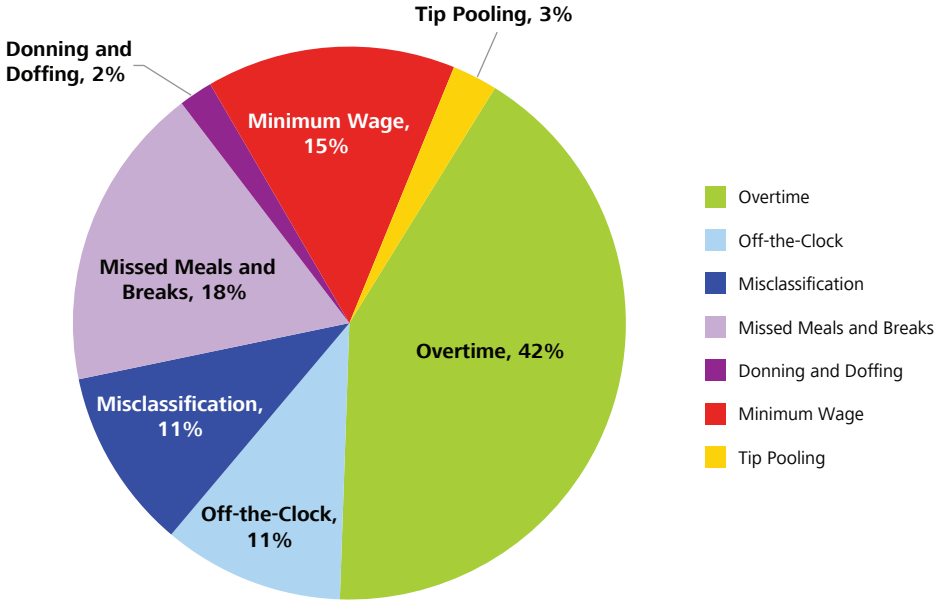


Figure 13. **The Financial Services/Insurance, Retail, and Food & Food Services Industries are the Most Common Industries for Settlements**
Settled Wage and Hour Cases by Industry of Employer
January 2007 – March 2015

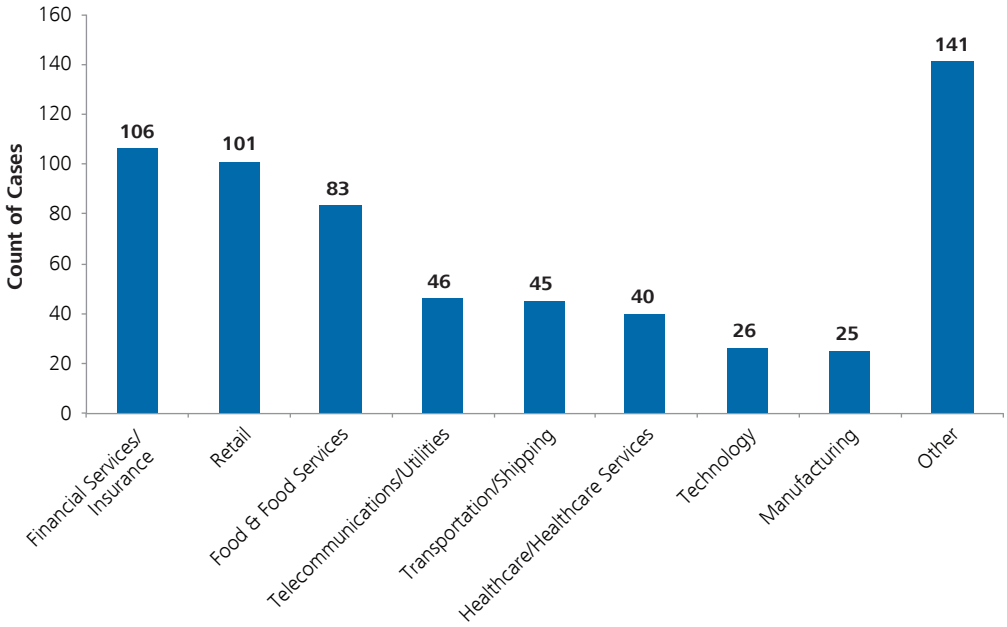


Figure 14a. **Nearly Half of All Total Settlement Dollars Were Paid to Employees in the Retail and Financial Services/Insurance Industries**
Wage and Hour Settlement Dollars by Industry: January 2007 – March 2015

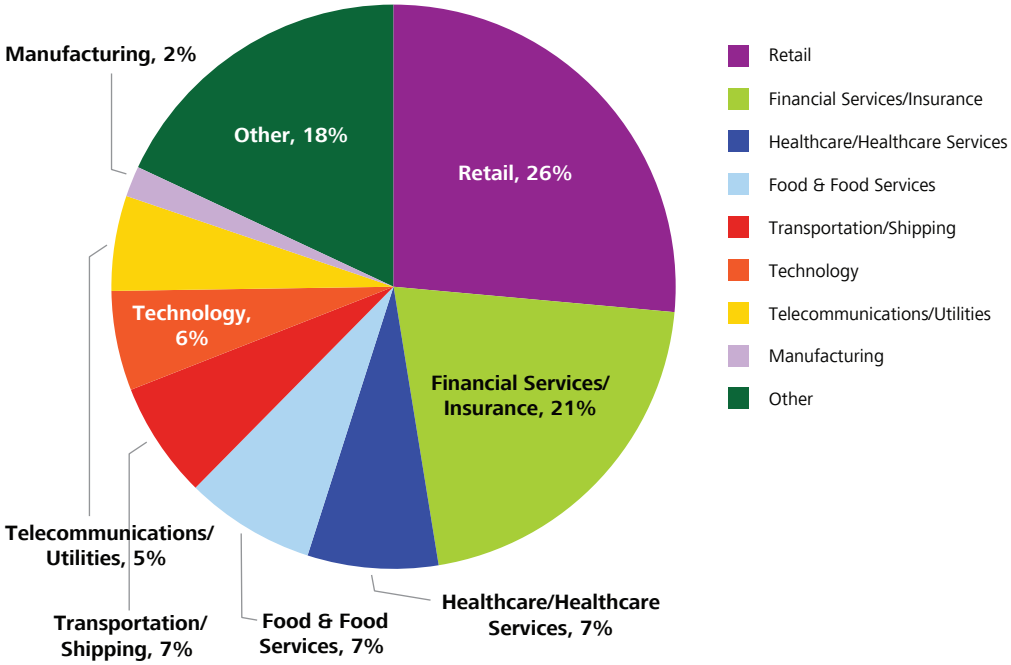


Figure 14b. **Over Half of All Total Settlement Dollars were Paid to Employees in the Retail, Financial Services/Insurance, and Food & Food Services Industries in 2014 & 2015**
Wage and Hour Settlement Dollars by Industry: January 2014 – March 2015

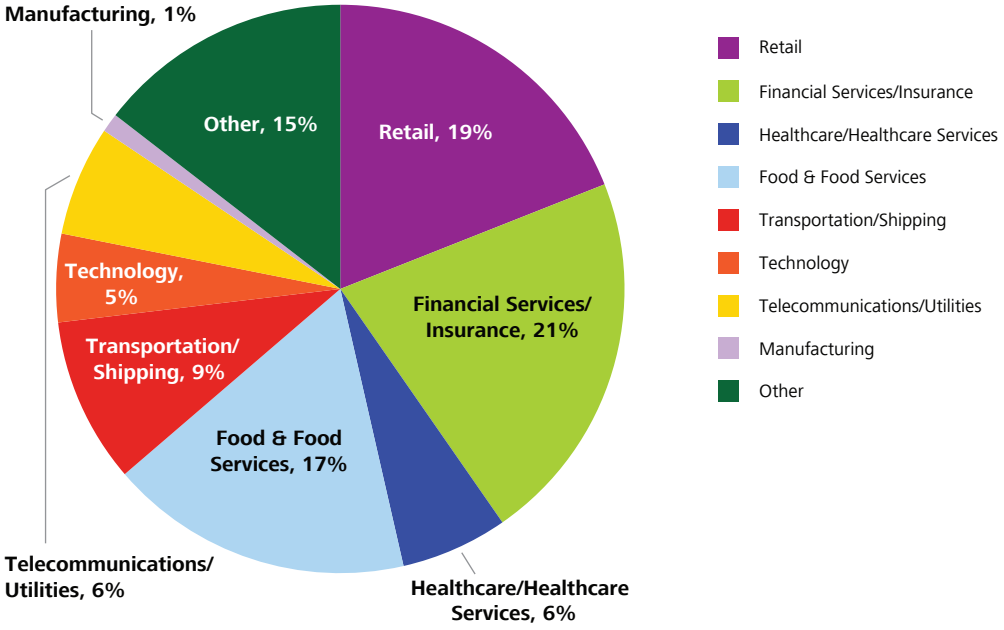


Figure 15. **The Average Settlement Value by Industry Ranged from $2.9 Million to $7.4 Million in 2014 & 2015**
Mean Settlement Values for Wage and Hour Cases by Industry of Employer
January 2014 – March 2015

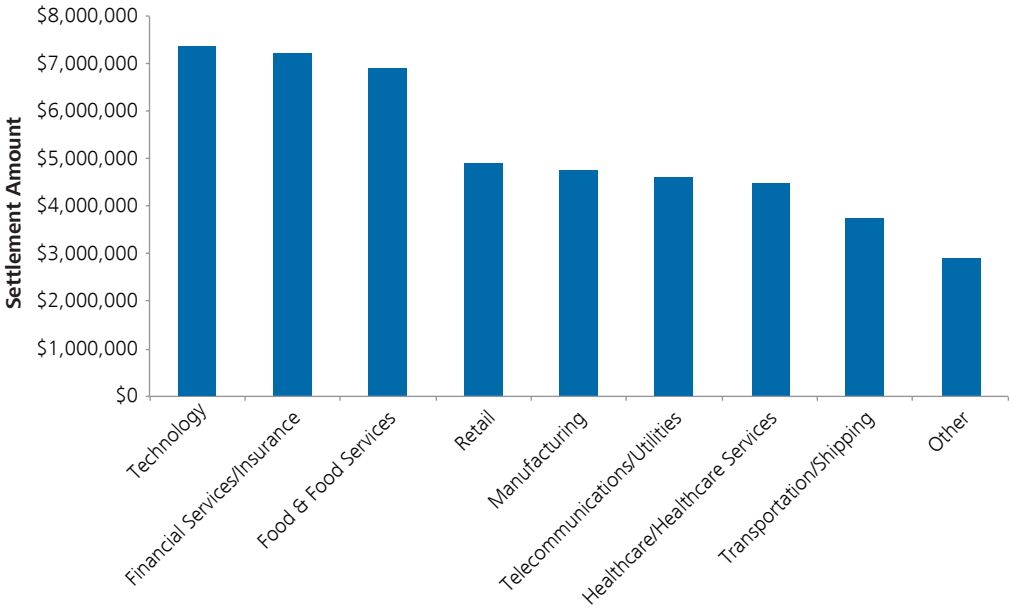
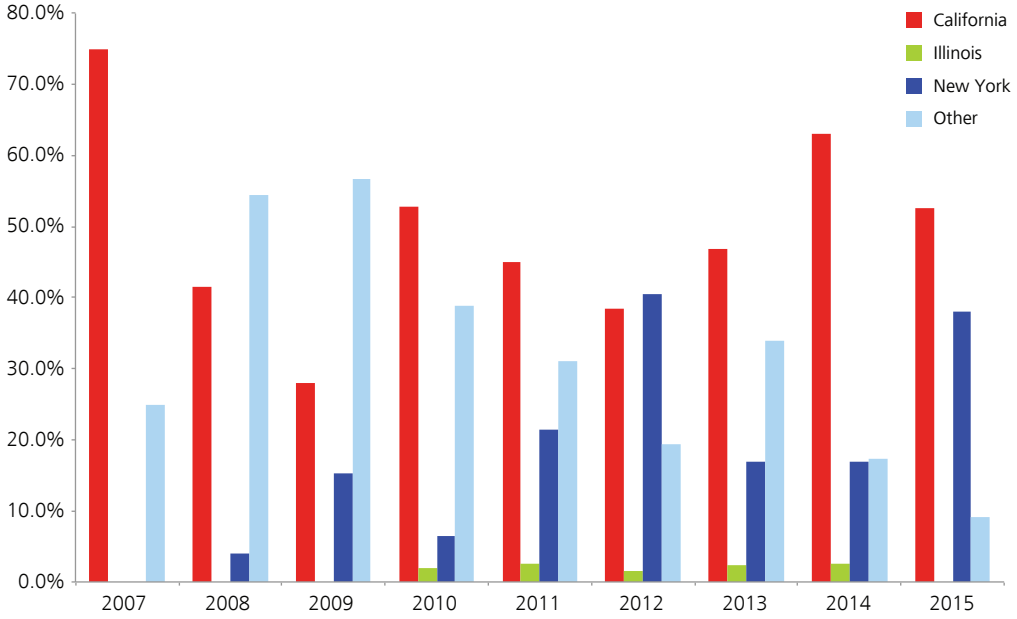


Figure 16. **The Vast Majority of Settlement Dollars Have Been Paid in New York and California**
Distribution of Settlement Dollars Paid for Wage and Hour Cases by Year and State
Data as of March 31, 2015



Notable Recent Settlements

Although no recent settlements were outside of the historical range observed in our database, a few notable cases had settlement values over $20 million in the last 15 months:

- Brinker Restaurant Corp. – $56.5 million. The case included 108,000 workers who alleged wage and hour violations. Because of the large class, the average settlement value per plaintiff was just $523.
- City of Los Angeles – $26 million. The case included 1,074 trash truck drivers who alleged meal and rest break violations. The average settlement value per plaintiff was $24,209.
- Walgreen Co. – $23 million. The case included 40,000 workers who alleged that they were denied overtime and meal and rest breaks. Because of the large class, the average settlement value per plaintiff was $575. Further, the class period lasted seven years, so the average settlement value per plaintiff per class year was just $82.
- Schneider Logistics Transloading and Distribution Inc. – $21 million. Plaintiffs asserted that they were denied overtime and minimum wage.

DOL Public Wage and Hour Data

The data NERA compiled are public civil wage and hour cases. Another source of data on wage and hour activity comes from the U.S. Department of Labor, which reports statistics on their investigations, violations, and back wage payments related to wage and hour issues. The data spans all concluded actions since 2007 and includes variables such as indicators for whether violations were found, whether the violations were FLSA, and the amount of back wages, if any, agreed to be paid by the employer.

According to the DOL's public data, the DOL has completed over 150,000 investigations since 2007. Of these:

- Over 115,000 resulted in findings of violations.
- 56% of the investigations found violations that included back wage payments, while 8% found violations that included some kind of penalty.
- Over 60% of the investigations were found to have an FLSA violation, and nearly half of the investigations resulted in an FLSA violation that included back wage payments.
- 90% of back wage payments included an overtime violation.
- The states with the most DOL cases were Texas, California, Florida, and New York. These four states accounted for 35% of all investigations and violations since 2007.
- In the aggregate, back wages paid for cases with DOL wage and hour enforcement violations was $1.55 billion over the six years, with an additional $75 million assessed as civil money penalties.

Figure 17. **Approximately Half of All Investigations Resulted in FLSA Violations with Back Wages or Civil Money Penalties**
Distribution of All Concluded DOL Wage and Hour Compliance Investigations
2007 – 2015

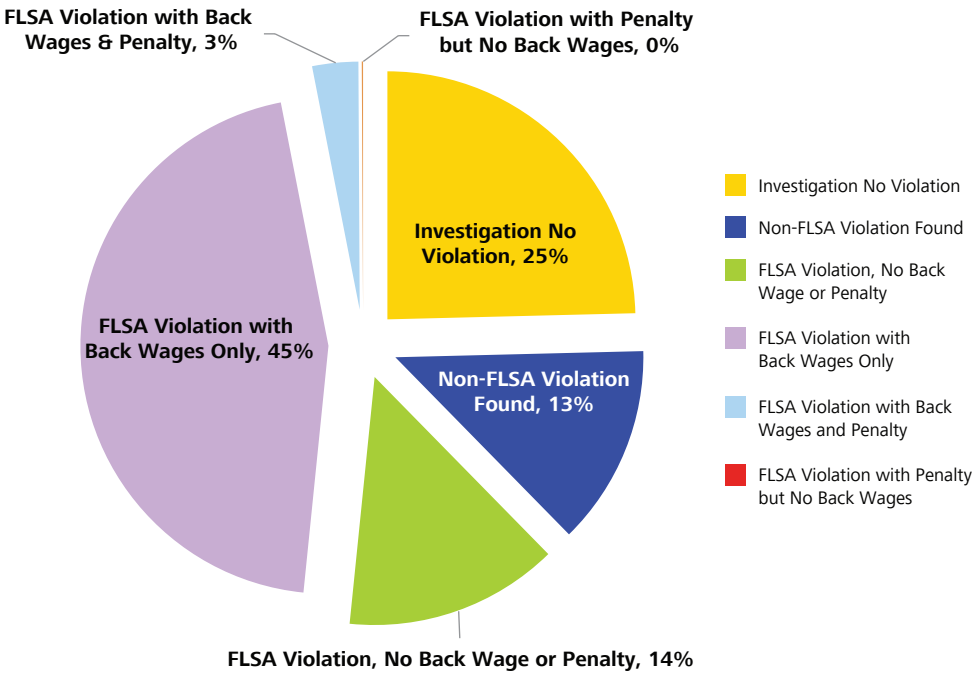


Figure 18. **Nearly 90% of Cases Resulting in Back Wages Paid for FLSA Violations Included an Overtime Violation**
Distribution of Back Wages Agreed to Pay for FLSA Violations for Concluded DOL Wage and Hour Compliance Investigations

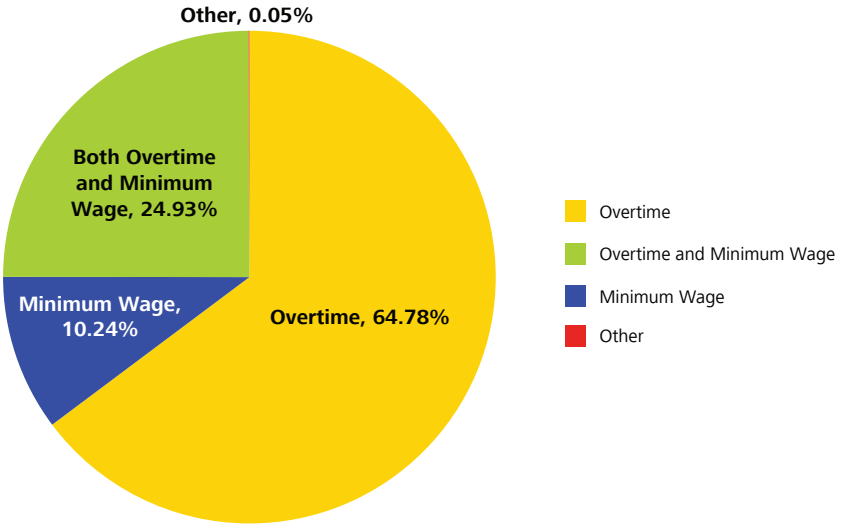


Figure 19. **California, Florida, New York, and Texas Accounted for Over One Third of the FLSA Violations Found**
Distribution of FLSA Violations Following DOL Wage and Hour Compliance Investigations Across Regions
2007 – 2015

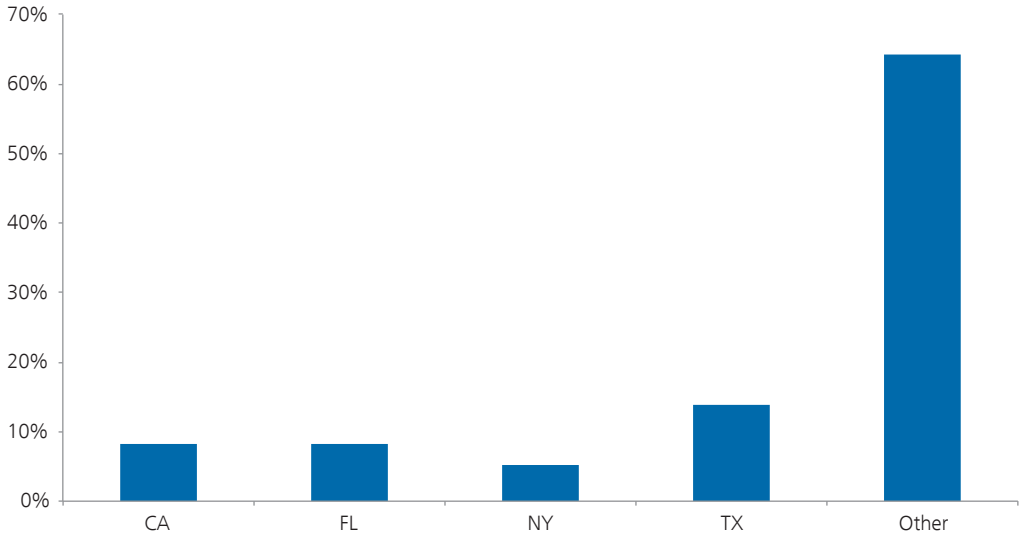
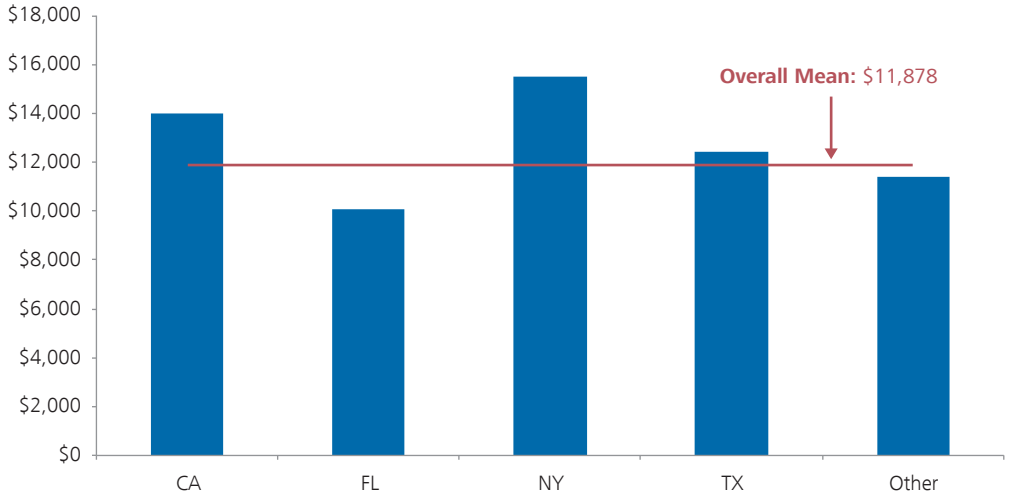


Figure 20. **Average Back Wages Agreed to Under FLSA in California, New York, and Texas were Above the National Average**
Average Back Wages Agreed to Pay Under FLSA Following DOL Wage and Hour Compliance Investigations by Region
2007 – 2015



Comparing DOL and NERA Wage and Hour Data

Many of the allegations related to FLSA violations are the same as those brought in state court wage and hour civil litigation. To see if there was overlap in the defendants settling civil cases with those found to have FLSA violations by the DOL, we matched our wage and hour settlement database to the DOL's violation list.

Given the available data, it is not possible to do a one-to-one map of each investigation to each settlement. However, we can identify and match the defendant companies in both databases. In other words, starting with our wage and hour settlement data companies, we looked to see if any of these companies were listed in the DOL data during the January 2007 – March 2015 period.[4]

We found that 59% of the defendants in our database with a settled wage and hour civil case during this time period also had a DOL investigation. Of those, 21% were found to have a non-FLSA related violation and 44% were found to have at least one FLSA violation. In total, 60% of the companies with wage and hour settlements either had no investigation or were found to have no violation.

For the defendants with an FLSA violation, 86% paid at least some back wages to employees. 53% of these were for overtime, 26% were for overtime and minimum wage, and 7% were for minimum wage only.

Figure 21. **Two-Thirds of the Companies with a Wage and Hour Settlement Between 2007 and 2015 Had a DOL Investigation; Over 25 Percent Had an FLSA Violation**
Distribution of Concluded DOL Wage and Hour Compliance Investigations for Companies with Wage and Hour Settlement

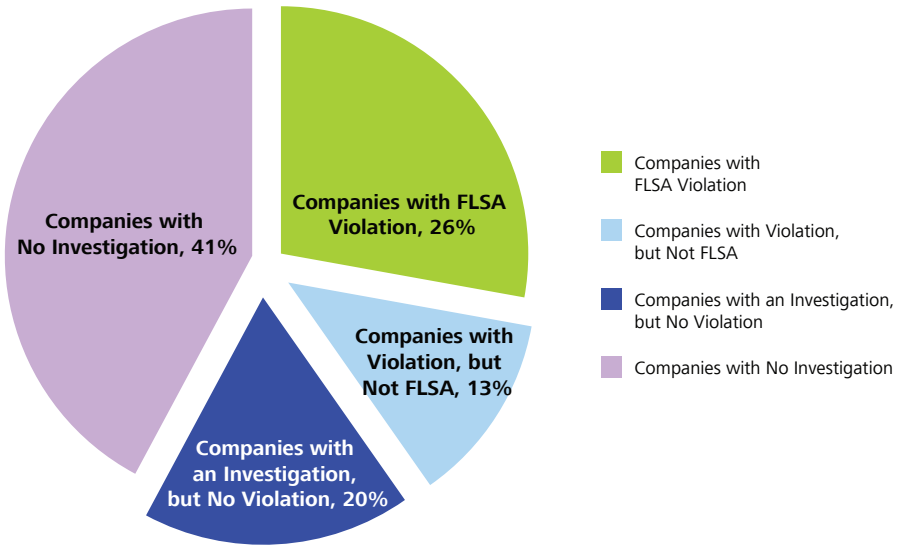
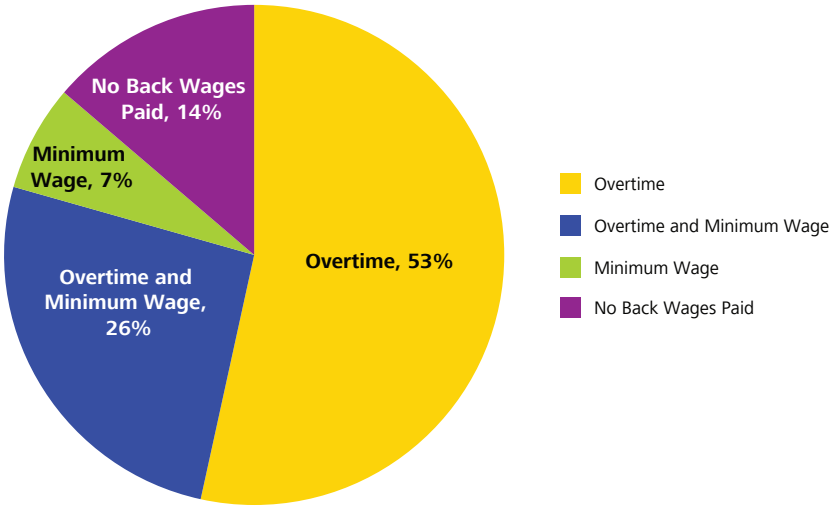


Figure 22. **Approximately 80% of the Companies with a Wage and Hour Settlement Between 2007 and 2015 were Found by the DOL to Have an Overtime Violation**
Distribution of Back Wages Agreed to Pay for FLSA Violations for Concluded DOL Wage and Hour Compliance Investigation



Endnotes

[1] We thank Mary Elizabeth Stern for her peer review and Tanner Baker, Christopher Dederick, Matthew Fisher, Wendy Magaronga, Yingtian Yang, and Richelle Zheng for additional research assistance.

[2] Also, due to incomplete information, reported statistics exclude the *Wal-Mart Multi-District Litigation* settlement in 2008, which resolved 63 wage and hour class action cases for over $600 million.

[3] There are a handful of cases with "Other" allegations that were not captured by these categories.

[4] This restriction exists because a company may show up multiple times in either database, so there is no definitive way to tie an investigation to a specific settlement. Furthermore, no open or close dates exist in the DOL data, so there is no way to effectively approximate which DOL investigation is related to which settlement.

NERA
ECONOMIC CONSULTING

About NERA

NERA Economic Consulting (**www.nera.com**) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA's clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world's largest economic consultancies. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

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IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORINA

Luis Duque and Daniel Thibodeau, individually, on behalf of others similarly situated, and on behalf of the general public, Plaintiffs, vs. Bank of America, National Association, and DOES 1-50, Defendant.	**CASE NO.:** 8:18-cv-01298-PA-MRW **DECLARATION OF LUIS DUQUE**

I, Luis Duque**,** declare as follows:

1. I am over the age of 18. If called upon to testify, I could and would competently testify to the matters set forth in this declaration based on my personal knowledge.

2. I was formerly employed as a Client Advocate ("Advocate") for Bank of

America. I worked for Bank of America as an Advocate from September 2009 to March 2015, during which time Bank of America classified me as exempt from overtime and meal and rest breaks. I was based out of Woodland Hills, California and Irvine, California. I also worked from my home office. I was initially assigned to work out of the Bank's Office of the President and Chief Executive Officer of Bank of America. My job was eventually placed within the Regulatory Complaints and Social Media Servicing group.

3. As an Advocate, my main responsibility was performing customer complaint processing duties in a non-supervisory capacity in the Office of the President and Chief Executive Officer of Bank of America.

4. My job involved producing written responses to customers' verbal and written inquiries, according to standard policies, procedures, guidelines, and frequently relying on scripts and template forms. I would receive inquiries by phone, email, and mail. These inquiries were typically from customers, consumers, regulatory agencies, Attorneys' General offices, non-profit organizations, and other business channels, which I refer to hereafter collectively as "customers." The inquiries frequently involved customer complaints.

5. Once I received a customer's communication, I would review it and generate an itemized list of the customer's inquiries if the customer articulated more than one. I would then direct each inquiry to the appropriate channel of Bank of America's business and make sure the business channel provided a response. Once I received the business channels' responses, I would compile the inquiry responses into a letter according to Defendant's formatting and content requirements.

6. Except for the most basic customer communications, the quality assurance department or my managers, including Sheryl Carrier-Caldera, Rose Ann Solorzano, Gilda Shanlian, Wanda Allison, Lara Aposhian, and Natalia (whose last name I cannot recall), would review each letter I produced. If a letter did not satisfy them or meet Bank of America's guidelines or formatting requirements, the quality assurance reviewer or my manger would return it to me for correction. Once the quality assurance department or my manager approved my letter, I could send my letter to the customer. If the quality assurance

department or my manager determined I was not meeting Bank of America's detailed policies and procedures for producing letters, they could discipline me with written warnings, regular in-person performance reviews with my supervisor, or termination. My understanding of these consequences for failing to meet the requirements came from counseling sessions with my managers.

7. Bank of America required Advocates to process high volumes of letters. I estimate that my manager assigned me eight to ten customers each week. I recall that my manager expected me to close at least two customer inquiries per day. My managers closely monitored my production. It was my understanding that if I failed to meet my production volume expectations, my manager could discipline me with a verbal warning, a write-up, or termination. I knew I could be disciplined because I received verbal criticism from managers most weeks for not processing complaints quick enough.

8. Bank of America required Advocates to complete each inquiry within a specified timeframe. Timeframes depended on the line of business in which we were working. My managers closely monitored my deadlines. Based on conversations with my managers, it was my understanding that if I failed to meet a deadline, my manager would discipline me with a verbal warning, a write-up, or termination. I witnessed my managers verbally warn other Advocates about missing deadlines.

9. During the process of working with a customer, Bank of America required Advocates to detail our work in a customer inquiry tracking system called "Siebel." Siebel was software used to track the life of a complaint. Bank of America specially formatted spreadsheets with titled columns and blank fields for us to input customer information such as Name, Date, Time, Phone Number, Notes, Status, etc. These spreadsheets were inputted into Siebel. Managers also used Siebel to assign customer inquiries to Advocates. My manager would also review, update, and assign tasks through Siebel throughout the day. My manager often populated Siebel so fast that I was not able to keep up with my assignments without working additional hours. Office turnover was high. I recall hearing about several employees quitting, taking stress leave, or transferring to other departments due to the volume of work they were required to complete under time pressure, but I do

not remember specific names. Because of the detailed information they contain, Siebel spreadsheets are likely the best evidence of my production volume and turnaround times while I worked as an Advocate.

10. Bank of America also required us to call every new customer back within 24 hours. If a new customer did not respond, Bank of America required us to call each customer again and send a letter before closing a case. I often experienced customers calling me back with another inquiry after I had already completed their form letter, which meant I had to start the process all over again.

11. My calls were also closely scrutinized. I had to attend regular trainings where managers provided feedback on recorded calls between Advocates and customers. Managers rated us on the quality of our calls using a scale Bank of America had developed. If our ratings were unsatisfactory, we were subject to discipline, which included verbal warnings, write-ups, and termination.

12. While at Bank of America, a manager directly supervised me. I did not supervise any employees or perform work related to the general management or business operations of Bank of America. I did not direct the work of any other employees. I did not have input in hiring or firing decisions.

13. In producing letters, I was not responsible for formulating or administering management policies for the company. I just followed the detailed guidelines and step-by-step procedures provided by Bank of America to produce individual letters in response to customer inquiries. After a while, the steps were so routine that I did not have to look at the checklist for the most common inquiries, but I still followed Bank of America's required steps. If I failed to meet Bank of America's detailed policies and procedures for producing letters, then my understanding was that I could be disciplined, including written warnings, in-person performance reviews with my supervisor, and termination.

14. My department provided me with an "Advocate Level Goals: Regulatory/Executive Level" sheet. The sheet notes that 25% of my assessment score was measured by the percentage of cases I timely closed. Another 25% of my assessment score was measured by the percentage of time I made timely acknowledgments to clients by

phone or letter. My inline pass rate accounted for another 20%. My Letter Scorecard was 10%. Call Monitoring was 10%. And Post QA Reviews was the final 10%.

15. I did not advise management or make policy recommendations to Bank of America.

16. Bank of America provided me, and, upon information and belief, all Advocates nationwide, with a set of written, step-by-step procedures and template forms for each financial product produced by Advocates. The written procedure documents were available to me at home and at work.

17. My work was not related to the management or general business operations of Bank of America's customers. I was not a consultant or advisor to Bank of America's customers.

18. I did not negotiate agreements with customers about the terms of their service or otherwise bind Bank of America to any business commitments. For example, I would not explain to customers the steps for completing a loan modification. Instead, I would refer customers to the appropriate line of business. As another example, instead of counseling a customer on what to do in a short-sale situation, I only forwarded the customer's inquiry to the line of business, and they would work it out with the customer.

19. During the time that Bank of America classified me as exempt, I was paid a salary on a semimonthly basis. I frequently worked more than forty hours in a workweek, but never received overtime pay, including overtime premiums, for working more than eight hours in a day or forty hours in a week. I worked extremely long hours as an Advocate for Bank of America. I regularly worked 50 to 55 hours per week. And I estimate that I worked one Saturday every six weeks during my entire employment with Bank of America.

20. During the time that Bank of America classified me as exempt, I was never informed that I was entitled to take thirty-minute meal breaks or paid ten-minute rest breaks, and I often worked for long stretches of time without taking these breaks. Most days, I did not stop working to eat; rather, I ate meals while working on my laptop. I generally did not take two ten-minute rest breaks per day. Rest breaks were certainly not scheduled or guaranteed. Bank of America classified me as exempt from meal and rest

breaks, did not keep track of the time I worked, and never paid me meal or rest break premiums.

21. I understand that other Advocates at Bank of America were paid salary and were not paid overtime. I sometimes discussed compensation and hours with other Advocates and observed them working at the office before and after regular business hours.

22. I did not sell any products as part of my job.

23. I received on-the-job training regarding how to perform my job duties.

24. While I worked at Bank of America, I brought my concerns about working long hours and insufficient pay for the number of hours to the attention of my managers. But my managers just told me that I needed to work the hours and perform well, so I could get promoted and receive a raise or better working conditions in the future.

25. As an Advocate, I worked on the same team as Operations Consultants and through regular communication with them became familiar with their duties. Operations Consultants were intermediaries between Advocates and the line of business to which Advocates directed itemized inquiries. I submitted requests for inquiry responses to our internal system, Share Point, which then sent a generated email to the Advocate, an Operations Consultant, and the applicable line of business. The email contained details related to the Advocate's request, including the line of business contact information and the deadline to complete processing the request. I submitted anywhere from ten to twenty requests for inquiry responses each day. Operations Consultants monitored Share Point for new requests, reminded lines of business to respond, updated Advocates on the progress of the inquiries, and ultimately confirmed that Advocates received responses within specified timeframes. Operations Consultants also reviewed past due requests to determine if they were complete but not properly closed out. In conversations I had with Operations Consultants over email, Share Point, and instant messenger, Operations Consultants told me there could be more than one hundred outstanding inquiries in Share Point that Operations Consultants had to monitor.

26. I experienced reputational risk and harms as a result of bringing this case. Participating in this case put me in the public spotlight and made me feel like I had lost a job reference and future employment opportunities. As a result of the case, I am more nervous about applying with future employers, especially in the financial industry, because Bank of America is so large and has so much influence.

27. I have spent significant time on this case, including filing the January 5, 2018 complaint in the prior case, and most recent July 2018 Complaint in the present case, preparing documents and interrogatory responses with the assistance of counsel before the prior case was dismissed, reviewing pleadings and agreements, consulting extensively with Plaintiffs' counsel both before and after filing the cases, providing key information that counsel used in preparing for mediation, reviewing and providing feedback on the terms of the proposed settlement agreement, and staying up to date on developments in the case.

28. Before I signed up to be a representative of the Class, my attorneys explained to me what was involved in being a Class Representative. Since agreeing to serve, I believe I have diligently fulfilled my Class Representative obligations, and was instrumental in achieving the excellent relief obtained for the Class. I do not believe I have any conflicts of interest with, or interests opposed to the interests of the Class.

Pursuant to 28 U.S.C. § 1746, the laws of the United States, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16 day of August 2018 in La Habra, California.

Luis Duque
Luis Duque (Aug 16, 2018)

Luis Duque

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IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORINA

Luis Duque and Daniel Thibodeau, individually, on behalf of others similarly situated, and on behalf of the general public, Plaintiffs, vs. Bank of America, National Association, and DOES 1-50, Defendant.	**CASE NO.: 8:18-cv-01298-PA-MRW** **DECLARATION OF DANIEL THIBODEAU**

I, Daniel Thibodeau, declare as follows:

1. I am over the age of 18. If called upon to testify, I could and would competently testify to the matters set forth in this declaration based on my personal knowledge.

2. Bank of America employed me from February 2011 until the company

terminated me in August 2017. Bank of America assigned me the duties of a "Client Advocate" ("Advocate") from approximately July 2014 until my termination in August 2017. From approximately July 2014 to August 2015, Bank of America classified me as exempt from overtime and meal and rest breaks. I worked out of Bank of America's Brea, California office. I also worked out of my home office, and Bank of America provided me with a laptop. I was initially assigned to work out of the Bank's Office of the President and Chief Executive Officer of Bank of America. My job was eventually placed within the Regulatory Complaints and Social Media Servicing group.

3. As an Advocate, my main responsibility was performing customer complaint processing duties in a non-supervisory capacity in the Office of the President and Chief Executive Officer of Bank of America.

4. My job involved producing written responses to customers' verbal and written inquiries, according to standard policies, procedures, guidelines, and frequently relying on scripts and template forms. I would receive inquiries by phone, email, and mail. These inquiries were typically from customers, consumers, regulatory agencies, Attorneys' General offices, non-profit organizations, and other business channels, which I refer to hereafter collectively as "customers." The inquiries frequently involved customer complaints.

5. Once I received a customer's communication, I would review it and generate an itemized list of the customer's inquiries if the customer articulated more than one. I would then direct each inquiry to the appropriate channel of Bank of America's business and make sure the business channel provided a response. Once I received the business channels' responses, I would compile the inquiry responses into a letter according to Defendant's formatting and content requirements.

6. Except for the most basic customer communications, the quality assurance department would review each letter I produced. If a letter did not satisfy them or meet Bank of America's guidelines or formatting requirements, the quality assurance reviewer would return it to me for correction. Once the quality assurance department approved my letter, I could send my letter to the customer. If the quality assurance department

determined I was not meeting Bank of America's detailed policies and procedures for producing letters, my direct manager could discipline me with written warnings, regular in-person performance reviews with my supervisor, or termination. I recall having five managers during my employment: Leticia Hartson, Narinder Bassi, Cecilia Avina, Lashon Settle, and one male manager whose name I do not recall. My understanding of the consequences for failing to meet quality assurance guidelines came from counseling sessions with my managers. Narinder Bassi verbally warned me for not meeting these requirements. She also gave me a written warning and ultimately terminated me for not meeting the requirements.

7. Bank of America required Advocates to process high volumes of letters. I estimate that my manager assigned me ten to fifteen customers each week. I recall that my manager expected me to close approximately two customer inquiries per day. My managers closely monitored my production. It was my understanding that if I failed to meet my production volume expectations, my manager could discipline me with a verbal warning, a write-up, or termination. I knew I could be disciplined because one of my managers, Narinder Bassi, issued me a written warning for failing to meet Bank of America's production goals. I also witnessed my coworkers, including Robert Serna, get written up for not meeting production goals.

8. Bank of America required Advocates to complete each inquiry within a specified timeframe. Timeframes depended on the line of business in which we were working. My managers closely monitored my deadlines. Based on conversations with my managers, it was my understanding that if I failed to meet a deadline, my manager would discipline me with a verbal warning, a write-up, or termination.

9. During the process of working with a customer, Bank of America required Advocates to detail our work in a customer inquiry tracking system called "Siebel." Siebel was software used to track the life of a complaint. Bank of America specially formatted spreadsheets with titled columns and blank fields for us to input customer information such as Name, Date, Time, Phone Number, Notes, Status, etc. These spreadsheets were inputted into Siebel. Managers also used Siebel to assign customer

inquiries to Advocates. My manager would also review, update, and assign tasks through Siebel throughout the day. My manager often populated Siebel so fast that I was not able to keep up with my assignments without working additional hours. Office turnover was high, and several employees quit, took stress leave, or transferred to other departments. I myself took a leave of absence for a month due to the stressful volume of work I was required to complete under time pressure. A coworker, Judy Bailey, also took at least a month of time off due to stress. Because of the detailed information they contain, Siebel spreadsheets are likely the best evidence of my production volume and turnaround times while I worked as an Advocate.

10. Bank of America also required us to call every new customer back within 24 hours. If a new customer did not respond, Bank of America required us to call each customer again and send a letter before closing a case. I often experienced customers calling me back with another inquiry after I had already completed their form letter, which meant I had to start the process all over again.

11. My calls were also closely scrutinized. I had to attend regular trainings where managers provided feedback on recorded calls between Advocates and customers. Managers rated us on the quality of our calls using a scale Bank of America had developed. If our ratings were unsatisfactory, we were subject to discipline, which included verbal warnings, write-ups, and termination.

12. While at Bank of America, a manager directly supervised me. I did not supervise any employees or perform work related to the general management or business operations of Bank of America. I did not direct the work of any other employees. I did not have input in hiring or firing decisions.

13. In producing letters, I was not responsible for formulating or administering management policies for the company. I just followed the detailed guidelines and step-by-step procedures provided by Bank of America to produce individual letters in response to customer inquiries. Bank of America often issued new policies, so I had to always check my work carefully to ensure I was properly following Bank of America's required steps. If I failed to meet Bank of America's detailed policies and procedures for

producing letters, then my understanding was that I could be disciplined, including written warnings, in-person performance reviews with my supervisor, and termination.

14. I did not advise management or make policies recommendations to Bank of America. Occasionally, I submitted questions or workflow improvement ideas to my managers, but I never received a response.

15. Bank of America provided me, and, upon information and belief, all Advocates nationwide, with a set of written, step-by-step procedures and template forms for each financial product produced by Advocates. The written procedure documents were available to me at home and at work.

16. My work was not related to the management or general business operations of Bank of America's customers. I was not a consultant or advisor to Bank of America's customers.

17. I did not negotiate agreements with customers about the terms of their service or otherwise bind Bank of America to any business commitments. For example, instead of counseling a customer on what to do in a short-sale situation, I only forwarded the customer's inquiry to the line of business, and they would work it out with the customer.

18. During the time that Bank of America classified me as exempt, I was paid a salary on a semimonthly basis. I frequently worked more than forty hours in a workweek, but never received overtime pay, including overtime premiums, for working more than eight hours in a day or forty hours in a week. I worked extremely long hours as an Advocate for Bank of America. I regularly worked 55 to 60 hours per week, including occasional Saturdays and the very rare Sunday.

19. When Bank of America reclassified me as exempt in July 2014, my managers did not inform me about whether or not I was entitled to take thirty-minute meal breaks or paid ten-minute rest breaks. I often worked for long stretches of time without taking these breaks. I hardly ever took two ten-minute rest breaks per day, and I had to skip approximately two lunch breaks per week because of the heavy workload. Rest breaks were certainly not scheduled or guaranteed. Bank of America classified me

as exempt from meal and rest breaks, did not keep track of the time I worked, and never paid me meal or rest break premiums.

20. I understand that other Advocates at Bank of America were paid salary and were not paid overtime. I sometimes discussed compensation and hours with other Advocates and observed them working at the office before and after regular business hours.

21. I did not sell any products as part of my job.

22. I received on-the-job training regarding how to perform my job duties.

23. While I worked at Bank of America, I complained to supervisors about my pay and working conditions. For example, about a month after Bank of America reclassified me as exempt, I went to speak in person with Vice President Bryan Snoke. I spoke with him about my long hours, Bank of America's failure to compensate me for overtime hours worked, including overtime premiums, and the fact that I had been classified as exempt rather than non-exempt. I explained that it seemed unfair for me to work long hours and be exempt from overtime considering the low salary Bank of America paid me. He sat quietly and did not respond to any of my concerns in that meeting.

24. As an Advocate, I worked on the same team as Operations Consultants and through regular communication with them became familiar with their duties. Operations Consultants were intermediaries between Advocates and the line of business to which Advocates directed itemized inquiries. I submitted requests for inquiry responses to our internal system, Share Point, which then sent a generated email to the Advocate, an Operations Consultant, and the applicable line of business. The email contained details related to the Advocate's request, including the line of business contact information and the deadline to complete processing the request. I submitted anywhere from ten to twenty requests for inquiry responses each day. Operations Consultants monitored Share Point for new requests, reminded lines of business to respond, updated Advocates on the progress of the inquiries, and ultimately confirmed that Advocates received responses within specified timeframes. Operations Consultants also reviewed past due requests to

determine if they were complete but not properly closed out. In conversations I had with Operations Consultants over email, Share Point, and instant messenger, Operations Consultants told me there could be more than one hundred outstanding inquiries in Share Point that Operations Consultants had to monitor.

25. I experienced reputational risk and harms as a result of bringing this case. Participating in this case put me in the public spotlight and made me feel like I had lost a job reference and future employment opportunities. As a result of the case, I am more nervous about applying with future employers, especially in the financial industry, because Bank of America is so large and has so much influence. I get more nervous in job interviews because it is difficult for me to speak about my six year employment history at Bank of America in light of this litigation.

26. I have spent significant time on this case, including filing the January 5, 2018 complaint in the prior case, and most recent July 2018 Complaint in the present case, reaching out to putative Class members, providing investigatory leads for counsel to pursue, preparing to producing document and interrogatory responses with the assistance of counsel before the prior case was dismissed, reviewing pleadings and agreements, consulting extensively with Plaintiffs' counsel about the case, both before and after filing the cases, providing key information that counsel used in preparing for mediation, reviewing and providing feedback on the terms of the proposed settlement agreement, and staying up to date on developments in the case. I also took a day off of work and drove to and from Los Angles to attend the full-day mediation which resulted in the Settlement.

27. Before I signed up to be a representative of the Class, my attorneys explained to me what was involved in being a Class Representative. Since agreeing to serve, I believe I have diligently fulfilled my Class Representative obligations, and was instrumental in achieving the excellent relief obtained for the Class. I do not believe I have any conflicts of interest with, or interests opposed to the interests of the Class.

Pursuant to 28 U.S.C. § 1746, the laws of the United States, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20 day of August 2018, in Diamond Bar, California.

Daniel Thibodeau (Aug 20, 2018)

Daniel Thibodeau

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IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORINA

Luis Duque and Daniel Thibodeau, individually, on behalf of others similarly situated, and on behalf of the general public, Plaintiff, vs. Bank of America, National Association, and DOES 1-50, Defendant.	**CASE NO.: 8:18-cv-00016** **DECLARATION OF SHARON GAMBLE**

I, Sharon Gamble, declare as follows:

1. I am over the age of 18. If called upon to testify, I could and would competently testify to the matters set forth in this declaration based on my personal knowledge.

2. I was formerly employed as a Client Advocate for Bank of America. I

worked for Bank of America as a Client Advocate from approximately February 2010 through late-February 2015, during which time Bank of America classified me as exempt from overtime and meal and rest breaks. I worked out of Bank of America's Woodland Hills, Simi Valley, and Pasadena offices and from my home office.

3. As an Advocate, my main responsibility was to perform customer complaint processing duties in a non-supervisory capacity, in the Office of the President and Chief Executive Officer of Bank of America.

4. My job involved producing written responses to customers' verbal and written inquiries, according to standard policies, procedures, guidelines, and frequently relying on scripts and template forms. I would receive inquiries by phone, email, and/or mail. These inquiries were typically from bank customers, consumers, regulatory agencies, Attorney Generals' offices, non-profit organizations, and other business channels, which I will refer to hereafter collectively as "customers." The inquiries frequently involved customer complaints.

5. Once I received a customer's inquiry communication, I would review it and generate an itemized list of the customer's inquiries, in the event the customer articulated more than one. I would then direct each inquiry to the appropriate channel or line of Bank of America's business, and make sure the line of business provided a response. Once I received the business channels' responses, I would compile the inquiry responses into a letter, according to Defendant's formatting and content requirements.

6. Except for the most basic communications with the customer, the quality assurance department and/or my managers – Sheryl Carrier-Caldera, Rose Ann Solorzano, Gilda Shanlian, Wanda Allison, and Natalia (whose last name I cannot recall) – would review each letter that I produced. If a letter did not satisfy them or meet Bank of America's guidelines or formatting requirements, the quality assurance reviewer and/or my manger would send it back to me for corrections. Once the quality assurance department and/or my manager approved my letter, I could send my letter to the customer. If the quality assurance department and/or my manager determined that I was failing to meet Bank of America's detailed policies and procedures for producing letters, then I

could be disciplined, including receiving written warnings, regular in-person performance reviews with my supervisor, and termination. My understanding of the consequences for failing to meet the requirements came from counseling sessions with my manager.

7. Bank of America required us to process high volumes of letters. I estimate that my manager assigned me three to five customers a day, and sometimes more if another Advocate was sick or on vacation. I recall that my manager expected me to close at least two customer inquiries per day. My managers closely monitored my production. It was my understanding that if I failed to meet my production volume expectations, my manager would discipline me with a verbal warning, a write-up, and/or termination. I knew I could be disciplined because three of my managers had verbally reprimanded me, and one of my managers, Ms. Shanlian I believe, wrote me up for failing to complete case closure.

8. Bank of America required us to complete each inquiry within a specified timeframe. Timeframes depended on the line of business in which we were working. The executive manager for each line of business set the deadlines for when we were to resolve customer matters. My managers closely monitored my deadlines. It was my understanding that if I failed to meet a deadline, manager would discipline me with a verbal warning, a write-up, and/or termination. I had seen them do this before to other Advocates.

9. During the process of working with a customer, Bank of America required us to detail of our work in a customer inquiry tracking system called "Siebel." Siebel was a spreadsheet Bank of America specially formatted with titled columns and blank fields for us to input customer information such as Name, Date, Time, Phone Number, Notes, Status, etc. Managers also used Siebel to assign customer inquiries to Advocates. My manager would also review, update, and assign tasks through Siebel throughout the day. My manager often populated the Siebel so fast that I was not able to keep up with my assignments without working additional hours. Office turnover was high, and several employees – Susy Martin, Felipe "Phil" Fuentes, Jimmy Suban, and Rodney Gillens – quit or took stress leave due to the volume of work they were required to complete under time pressure. Because of the detailed information they contain, Siebel spreadsheets are likely the best evidence of my production volume and turnaround times while I worked as an

advocate.

10. Bank of America also required us to call every new customer back within 24 hours. If a new customer did not respond, Bank of America required us to call each customer again and send a letter before closing a case. I often experienced customers calling me back with another inquiry after I had already completed their form letter, which meant I had to start the process all over again.

11. My calls were also closely scrutinized. I had to attend regular trainings where managers provided feedback on recorded calls between Advocates and customers. Managers rated us on the quality of our calls using a scale Bank of America had developed. If our ratings were unsatisfactory, we were subject to discipline, which included verbal warnings, write-ups, and/or termination.

12. While at Bank of America, a manager directly supervised me. I did not supervise any employees, or perform work related to the general management or business operations of Bank of America. I did not direct the work of any other employees. I did not have input into hiring or firing decision.

13. In producing letters, I was not responsible for formulating or administering management policies for the company – I just followed the detailed guidelines and step-by-step procedures provided by Bank of America to produce individual letters in response to customer inquiries. After a while, the steps were so routine that I did not have to look at the checklist for the most common inquiries, but I still followed Bank of America's required steps. If I failed to meet Bank of America's detailed policies and procedures for producing letters, then my understanding was that I could be disciplined, including receiving written warnings, regular in-person performance reviews with my supervisor, and termination.

14. I did not advise management or make policy recommendations to Bank of America.

15. Bank of America provided me, and, upon information and belief, all Advocates nationwide, with a set of written, step-by-step procedures and template forms for each financial product produced by Advocates. The written procedure documents were

available to me at home and at work.

16. My work was not related to the management or general business operations of Bank of America's customers. I was not a consultant or advisor to Bank of America's customers.

17. I did not negotiate agreements with customers about the terms of their service or otherwise bind Bank of America to any business commitments. For example, rather than counseling a customer on what to do in a short-sale situation, I, instead, had to forward the customer's inquiry to the line of business, and they would work it out with the customer.

18. During the time that Bank of America classified me as exempt, I was paid a salary on a semimonthly basis. I frequently worked more than 40 hours in a workweek, but never received overtime pay, including overtime premiums, for working more than eight hours in a day or 40 hours in a week. I worked extremely long hours as an Advocate for Bank of America. I regularly worked 50 to 60 hours per week, including Saturdays and sometimes Sundays.

19. During the time that Bank of America classified me as exempt, I was never informed that I was entitled to take 30-minute meal breaks or paid 10-minute rest breaks, and I often worked for long stretches of time without taking such breaks. Most days, I did not stop working to eat; rather, I ate meals while working on my laptop. I generally did not take two 10-minute rest breaks per day. Such breaks were certainly not scheduled or guaranteed. Bank of America classified me as exempt from such breaks, and did not keep track of the time I worked, and never paid me meal- or rest-break premiums.

20. I understand that other Advocates at Bank of America were paid salary, and were not paid overtime. I sometimes discussed compensation and hours with other Advocates, and observed them working at the office before and after regular business hours.

21. I did not sell any products as part of my job.

22. I received on the job training regarding how to perform my job duties.

Pursuant to 28 U.S.C. § 1746, the laws of the United States, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24 day of January 2018 in Los Angeles, California.

Sharon Gamble (Jan 24, 2018)

Sharon Gamble

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IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORINA

Luis Duque and Daniel Thibodeau, individually, on behalf of others similarly situated, and on behalf of the general public, Plaintiff, vs. Bank of America, National Association, and DOES 1-50, Defendant.	**CASE NO.: 8:18-cv-00016** **DECLARATION OF FELIPE FUENTES**

I, Felipe Fuentes, declare as follows:

1. I am over the age of 18. If called upon to testify, I could and would competently testify to the matters set forth in this declaration based on my personal knowledge.

2. I was formerly employed as a Client Advocate for Bank of America. I

worked for Bank of America as a Client Advocate from approximately June 1, 2009 through April 8, 2015, during which time Bank of America classified me as exempt from overtime and meal and rest breaks. I worked out of Bank of America's West Hills, Woodland Hills, Simi Valley, and Pasadena offices.

3. As an Advocate, my main responsibility was to perform customer complaint processing duties in a non-supervisory capacity, in the Office of the President and Chief Executive Officer of Bank of America.

4. My job involved producing written responses to customers' verbal and written inquiries, according to standard policies, procedures, guidelines, and frequently relying on scripts and template forms. I would receive inquiries by phone, email, and/or mail. These inquiries were typically from bank customers, consumers, regulatory agencies, Attorney Generals' offices, non-profit organizations, and other business channels, which I will refer to hereafter collectively as "customers." The inquiries frequently involved customer complaints.

5. Once I received a customer's inquiry communication, I would review it and generate an itemized list of the customer's inquiries, in the event the customer articulated more than one. I would then direct each inquiry to the appropriate channel or line of Bank of America's business, and make sure the line of business provided a response. Once I received the business channels' responses, I would compile the inquiry responses into a letter, according to Defendant's formatting and content requirements.

6. Except for the most basic communications with the customer, the quality assurance department and/or my managers – Sarine Daghlian, Sheryl Carrier-Caldera, Rose Ann Solorzano, Gilda Shanlian, Wanda Allison, Laura Aposhain, and Natalia (whose last name I cannot recall) – would review each letter that I produced. If a letter did not satisfy them or meet Bank of America's guidelines or formatting requirements, the quality assurance reviewer and/or my manger would send it back to me for corrections. Once the quality assurance department and/or my manager approved my letter, I could send my letter to the customer. If the quality assurance department and/or my manager determined that I was failing to meet Bank of America's detailed policies and procedures

for producing letters, then I could be disciplined, including receiving written warnings, regular in-person performance reviews with my supervisor, and/or termination. My understanding of the consequences for failing to meet the requirements came from counseling sessions with my manager.

7. Bank of America required us to process high volumes of letters. I estimate that my manager assigned me ten or more customers a day. I recall that my manager expected me to close at least two customer inquiries per day. My managers closely monitored my production. It was my understanding that if I failed to meet my production volume expectations, my manager would discipline me with a verbal warning, a write-up, and/or termination. I knew I could be disciplined because one of my managers, Ms. Carrier-Caldera, issued me a written warning regarding my failure to meet Bank of America's production goals.

8. Bank of America required us to complete each inquiry within a specified timeframe. Timeframes depended on the line of business in which we were working. The executive manager for each line of business set the deadlines for when we were to resolve customer matters. My managers closely monitored my deadlines. It was my understanding that if I failed to meet a deadline, my manager would discipline me with a verbal warning, a write-up, and/or termination. I had seen them do this before to other Advocates, including Sharon Gamble, Jimmy Subhan, Rodney Gillens, and Karla York.

9. During the process of working with a customer, Bank of America required us to detail our work in a customer inquiry tracking system called "Siebel." Siebel was a spreadsheet Bank of America specially formatted with titled columns and blank fields for us to input customer information such as Name, Date, Time, Phone Number, Notes, Status, etc. Managers also used Siebel to assign customer inquiries to Advocates. My manager would also review, update, and assign tasks through Siebel throughout the day. My manager often populated Siebel so fast that I was not able to keep up with my production requirements without working additional hours. Office turnover was high, and several employees, including me, quit, took stress leave, or transferred to other departments due to the volume of work they were required to complete under time pressure. Because of the

detailed information they contain, Siebel spreadsheets are likely the best evidence of my production volume and turnaround times while I worked as an Advocate.

10. Bank of America also required us to call every new customer back within 24 hours and inform them that we would respond to their inquiry in no more than three days. If a new customer did not respond, Bank of America required us to call each customer again and send a letter before closing a case.

11. My calls were also closely scrutinized. I had to attend regular trainings where managers provided feedback on recorded calls between Advocates and customers. Managers rated us on the quality of our calls using a scale Bank of America had developed. If our ratings were unsatisfactory, we were subject to discipline, which included verbal warnings, write-ups, and/or termination.

12. While at Bank of America, a manager directly supervised me. I did not supervise any employees, or perform work related to the general management or business operations of Bank of America. I did not direct the work of any other employees. I did not have input into hiring or firing decision.

13. In producing letters, I was not responsible for formulating or administering management policies for the company – I just followed the detailed guidelines and step-by-step procedures provided by Bank of America to produce individual letters in response to customer inquiries. After a while, the steps were so routine that I did not have to look at the checklist for the most common inquiries, but I still followed Bank of America's required steps. If I failed to meet Bank of America's detailed policies and procedures for producing letters, then my understanding was that I could be disciplined, including receiving written warnings, regular in-person performance reviews with my supervisor, and/or termination.

14. I did not advise management or make policy recommendations to Bank of America. In fact, we were discouraged from providing any type of input. For example, I often saw younger Advocates, who did not understand the structure, get shot-down or completely ignored at meetings for trying to make suggestions.

15. Bank of America provided me, and, upon information and belief, all

Advocates nationwide, with a set of written, step-by-step procedures and template forms for each financial product produced by Advocates.

16. My work was not related to the management or general business operations of Bank of America's customers. I was not a consultant or advisor to Bank of America's customers.

17. I did not negotiate agreements with customers about the terms of their service or otherwise bind Bank of America to any business commitments. For example, we would not explain to customers the steps for completing a loan modification. We would refer customers to the appropriate line of business.

18. During the time that Bank of America classified me as exempt, I was paid a salary on a semimonthly basis. I frequently worked more than 40 hours in a workweek, but never received overtime pay, including overtime premiums, for working more than eight hours in a day or 40 hours in a week. I worked extremely long hours as an Advocate for Bank of America. I regularly worked 50 to 60 hours per week, including Saturdays and sometimes Sundays.

19. During the time that Bank of America classified me as exempt, I was never informed that I was entitled to take 30-minute meal breaks or paid 10-minute rest breaks, and I often worked for long stretches of time without taking such breaks. I saw many Advocates eat lunch at their desk as they worked. I generally did not take two 10-minute rest breaks per day. Such breaks were certainly not scheduled or guaranteed. Bank of America classified me as exempt from such breaks, and did not keep track of the time I worked, and never paid me meal- or rest-break premiums.

20. I understand that other Advocates at Bank of America were paid salary, and were not paid overtime. I sometimes discussed compensation and hours with other Advocates, and observed them working at the office before and after regular business hours.

21. I did not sell any products as part of my job.

22. I received on the job training regarding how to perform my job duties.

23. On a few occasions, at team meetings if concerns were brought forward

concerning backlogs and/or the workload, Ms. Carrier-Caldera said to us that Bank of America could work Advocates for 24 hours if it wanted and could do so because we were salaried. I believe we were overworked and underpaid.

Pursuant to 28 U.S.C. § 1746, the laws of the United States, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of January 2018 in Glendora, California.

Felipe Fuentes (Jan 12, 2018)

Felipe Fuentes

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Luis Duque and Daniel Thibodeau, individually, on behalf of others similarly situated, and on behalf of the general public, Plaintiffs, vs. Bank of America, National Association, and DOES 1-50, Defendant.	Case No.: 8:18-cv-01298-PA-MRW **[PROPOSED] ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT** Date: October 15, 2018 Time: 1:30p.m. Place: Ct. Rm. 9A Hon. Percy Anderson

The Parties came for hearing on Plaintiffs' Unopposed Motion for Preliminary Approval of Class and Collective Action Settlement on October 15, 2018 at 1:30 p.m. in the District Court for the Central District of California, the Honorable Percy Anderson presiding in Courtroom 9A, 350 W. 1st Street, 9th Floor, Los Angeles, CA, 90012. The Court, having considered the papers submitted in support of the Parties' application, HEREBY ORDERS THE FOLLOWING:

1. To the extent terms in this Order are defined in the Joint Stipulation For Settlement and Release of Class and Collective Action Claims (the "Settlement Agreement"), submitted to the Court as Exhibit A to the Declaration of Bryan J. Schwartz, Esq., such terms shall have the same meanings in this Order as in the Settlement Agreement.

2. The Court certifies the Settlement Class and grants preliminary approval of the Settlement based upon the terms set forth in the Settlement Agreement and the preliminary approval motion, and based upon the Schwartz and Plaintiffs' Declarations in support of the agreement and related exhibits, and all of the briefing and information submitted in this case to date. The Settlement appears to be fair, adequate, and reasonable to the Class.

3. The Settlement is supported by the recommendations of counsel and was negotiated at arms' length, and is thus presumptively valid, subject to any objections that may be raised at the final fairness hearing, and to final approval by this Court.

4. To comply with the Ninth Circuit's decision in *In re Bluetooth Headset Litigation*, 654 F.3d 935 (9th Cir. 2011), Class Counsel will file their motion for fees and costs more than 15 days before the final approval motion deadline, on or before _____, 2018.

5. A final fairness hearing on whether the proposed Settlement, attorneys' fees to Class Counsel, the Class Representatives' enhancement payments, and the *cy pres* recipient should be approved as fair, reasonable, and adequate as to the members of the Settlement Class will be held on _____, at 1:30 p.m. in the Courtroom of the Hon. Percy Anderson. The final fairness hearing may, without further notice to the Settlement Class, be continued by order of the Court.

6. The Court approves, as to form and content, the Class and Collective Notices of Class Action Settlement ("Notices of Settlement") attached as Exhibits 1 and 2 to the Settlement Agreement. The Court approves the procedure for Class Members to

participate in, opt out of, and object to the Settlement as set forth in the Notices of Settlement.

7. The Court directs the mailing of the Notices of Settlement in accordance with the Implementation Schedule set forth below. The Court finds that the dates selected for the mailing and distribution of the Notices meet the requirements of due process, provide the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled to notice of the proposed settlement.

8. The Court appoints Rust Consulting as the settlement administrator, based on Counsel's declaration, testifying that Rust has experience with similar matters and offers a competitive bid.

9. The Court orders the following Implementation Schedule for further proceedings:

Deadline for Defendant to provide Class data to Claims Administrator	15 days after Court enters an order granting preliminary approval
Deadline for Rust to calculate Net Pro Rata Distribution and Plaintiffs' Counsel to deliver the same to Defendant's Counsel and the Claims Administrator	15 days after Court enters an order granting preliminary approval
Deadline for Parties' Counsel to review calculations	7 days after receiving Net Pro Rata Distribution
Deadline for Claims Administrator to Mail the Notices to Class Members	5 days after receiving approval of calculations from Counsel
Deadline for California Class Members to opt out or serve written objections to the settlement	60 days after Notices of Settlement are mailed by the Claims Administrator
Deadline for Class Counsel to file fee petition	15 days before the expiration of the 60 day period to opt out or serve objections to the settlement

Deadline for Class Counsel to file Motion for Final Approval of Settlement, Motion for Attorneys' Fees, Costs, and Enhancement Awards	5 Days after the Expiration of the 60 Day Period to opt out or serve objections to the settlement
Final Fairness Hearing and Final Approval	Approximately 120 days after preliminary approval: _____

10. In the event the Settlement does not become effective in accordance with the terms of the Settlement Agreement, or the Settlement is not finally approved, or is terminated, canceled, or fails to become effective, then the Parties shall revert to their respective positions existing immediately prior to the date they entered into the Settlement Agreement.

11. The Parties may further modify the Settlement Agreement prior to the Final Approval Hearing so long as such modifications do not materially change the terms of the settlement provided therein. The Court may approve the Settlement Agreement with such modifications as may be agreed to by the Parties, if appropriate, without further notice to Class Members.

12. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to Class Members.

IT IS SO ORDERED

DATED: _____ 2018

_____
HON. PERCY ANDERSON
UNITED STATES DISTRICT COURT