

1 BRYAN SCHWARTZ LAW  
2 BRYAN J. SCHWARTZ (SBN 209903)  
3 RACHEL M. TERP (SBN 290666)  
4 DECAROL A. DAVIS (SBN 316849)  
5 1330 Broadway, Suite 1630  
6 Oakland, California 94612  
7 Tel: (510) 444-9300  
8 Fax: (510) 444-9301  
9 Email: bryan@bryanschwartzlaw.com  
10 rachel@bryanschwartzlaw.com  
11 decarol@bryanschwartzlaw.com

12 *Attorneys for Plaintiffs and Proposed Collective  
13 and California Classes*

14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**

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

20 Plaintiffs,

21 vs.

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

24 Defendant.

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

**DECLARATION OF BRYAN J.  
SCHWARTZ ISO PLAINTIFFS’  
UNOPPOSED AMENDED MOTION  
FOR PRELIMINARY APPROVAL  
OF CLASS AND COLLECTIVE  
ACTION SETTLEMENT**

Date: October 15, 2018

Time: 1:30 p.m.

Courtroom: 9A

Hon. Percy Anderson

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

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

9 2. For all the reasons articulated in my declaration of August 21, 2018 (Dkt.  
10 #15-1), I support this settlement as a fair, adequate, and reasonable settlement,  
11 advantageous to the class and FLSA collective. A true and correct copy of the proposed  
12 amended settlement agreement (the "Amended Settlement") is attached hereto as Exhibit  
13 A.

14 3. Following this Court's prior denial of preliminary approval based upon the  
15 settlement opt-in mechanism the parties used previously, the parties revised the  
16 settlement agreement and notices, as follows, to address the court's concerns:

17 a) The parties eliminated the procedure permitting back-of-the-check  
18 FLSA opt-ins and releases (Amended Settlement ¶ 62, previously  
19 included in the original Settlement Agreement ¶ 59);

20 b) The parties added a provision to the amended settlement agreement  
21 requiring eligible Collective Members to opt-in affirmatively. Those  
22 eligible Collective Members shall have ninety (90) days from the initial  
23 mailing of the Notice of Settlement to submit a consent-to-join to the  
24 Claims Administrator. Forty-five (45) days after the initial mail of the  
25 Notice, the Claims Administrator shall send a reminder postcard to all  
26 eligible Class Members who have not yet submitted a consent-to-join,  
27 to remind them of the deadline of submitting a consent-to-join. A FLSA

1 collective member who fails to submit a valid and timely FLSA consent-  
2 to-join shall not be entitled to receive any payment of FLSA-related  
3 settlement benefits under the Settlement. Plaintiffs will file each  
4 consent-to-join with the Court upon receipt from the Claims  
5 Administrator (Amended Settlement ¶ 71);

6 c) To allow ample opportunity to participate, the parties increased the  
7 notice period to the potential collective action members from sixty (60)  
8 days to ninety (90) days (Amended Settlement ¶ 71, 74 & 75).

9  
10 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is  
11 true and correct.

12  
13 Dated: November 8, 2018

Respectfully submitted,  
/s/ Bryan J. Schwartz  
Bryan J. Schwartz  
BRYAN SCHWARTZ LAW

14  
15  
16 **Attachment A: Amended Settlement Agreement & Notices**  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

# EXHIBIT A

**MCGUIREWOODS LLP**

Michael D. Mandel, Esq. (SBN 216934)  
Email: mmandel@mcguirewoods.com  
John A. Van Hook, Esq. (SBN 205067)  
Email: jvanhook@mcguirewoods.com  
1800 Century Park East, 8<sup>th</sup> Floor  
Los Angeles, California 90067  
Telephone: (310) 315-8200  
Facsimile: (310) 315-8210

Attorneys for Defendant  
BANK OF AMERICA, N.A.

**BRYAN SCHWARTZ LAW**

BRYAN SCHWARTZ (SBN 209903)  
RACHEL M. TERP (SBN 290666)  
DECAROL A. DAVIS (SBN 316849)  
1330 Broadway, Suite 1630  
Oakland, California 94612  
Tel: (510) 444-9300  
Fax: (510) 444-9301  
Email: bryan@bryanschwartzlaw.com  
rachel@bryanschwartzlaw.com  
decarol@bryanschwartzlaw.com

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-01298-PA-MRW

**AMENDED 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 Members” 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 Members” 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, who do not submit a valid request for exclusion (i.e. opt-out of the Settlement).

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 by affirmatively opting-in to the Settlement 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 who are eligible 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 or California Class and FLSA Collective 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 Amended 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; as dismissed without prejudice on April 13, 2018, pursuant to the Parties' joint stipulation for dismissal without prejudice; and then refiled as Case No. 8:18-cv-01298-AG-ADS, and renamed Case 8:18-cv-01298-PA-MRW.

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 Pre-Agreement Opt-In Plaintiff Enhancements, the Claims Administration Charges, and the Class Counsel Attorneys' Fees and Costs.

20. "Pre-Agreement Opt-In Plaintiffs" means Sharon Gamble,

Felipe Fuentes, and Alina Abad.

21. “Pre-Agreement Opt-In Plaintiff Enhancements” means the payments, as determined and approved by the Court, to the Pre-Agreement 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 Class and Collective Action Complaint filed with with the Court on July 26, 2018 (“Complaint”) in the Lawsuit and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint. 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 “January 5, 2018 Complaint”). Plaintiffs subsequently filed a First Amended Complaint (the “April 3, 2018 FAC”).

28. 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.

29. 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 a settlement, Plaintiffs would refile their suit, materially identical to the FAC.

30. 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.

31. 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).

32. After weeks of additional discussions, the parties arrived at an initial settlement agreement which they fully executed on July 26, 2018 ("July 26, 2018 Agreement").

33. On July 26, 2018, the Parties filed a putative class and collective action complaint in the United States District Court, Central District of California, 8:18-cv-01298, entitled *Duque, et al. v. Bank of America, N.A.* (the "Complaint"). (ECF 1)

34. The Complaint 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.* (ECF 1)

35. On August 21, 2018, Plaintiffs filed an Unopposed Motion for Preliminary Approval of Class Action Settlement. (ECF 15) On October 2,

2018 the Court requested supplemental briefing regarding the FLSA opt-in process, which Plaintiffs filed on October 9, 2018. (ECF 18 & 19). On October 12, 2018, the Court denied Plaintiffs' initial motion for preliminary approval, on the grounds that the initial settlement did "not comply with § 216(b)'s opt-in requirement." (EFC 21).

36. The Parties subsequently met and conferred to arrive at this Agreement, which the Parties believe addresses the Court's concerns regarding the FLSA opt-in process.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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**

46. 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.

47. Within fourteen (14) days after the this Agreement is finalized, Plaintiffs 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 Plaintiffs as Class Representatives 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 **Exhibits 1 & 2** to this Agreement, or as modified by the Court (the “Notice of Settlement”);
- (g) 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.

48. 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.

49. 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.

50. 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").

51. 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**

52. 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 Pre-Agreement 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.

53. 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.

54. 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.

55. 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.

56. Class Representative and Pre-Agreement 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 a Pre-Agreement 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 Pre-Agreement Opt-In Plaintiff Enhancement as determined and approved by the Court shall be binding on the Class Representative and Pre-Agreement Opt-In Plaintiff. Any Class Representative and Pre-Agreement 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 Pre-Agreement Opt-In Plaintiff being solely responsible for paying any and all taxes due on his or her Class Representative or Pre-Agreement Opt-In Plaintiff Enhancement. The Parties expressly agree that the Court's approval or denial of any request for Class Representative Enhancements or Pre-Agreement 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 Pre-Agreement 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 Pre-Agreement Opt-In Plaintiff Enhancement requested, the remaining amount will be redistributed to the Class Members on a *pro rata* basis.

57. 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) Pre-Agreement Opt-In Plaintiff Enhancements.

58. 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.

59. 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."

60. 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.

61. 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.

62. The Claims Administrator shall send a check to all Class Members, *i.e.*, California Class Members (*i.e.*, those California Class Members who do not affirmatively opt out), the FLSA Collective members who submit a timely opt-in form, and those FLSA Collective members who have previously opted in and who do not withdraw their prior opt-in forms, as applicable, representing each Settlement Class Member's Net Pro Rata Distribution. However, regardless of whether he or she negotiates the settlement check, any Class Member who fails to opt out or otherwise withdraw timely as indicated in the Notice, 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.

63. 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](http://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](http://www.legalaidatwork.org)) as the *cy pres* recipient, subject to the Court’s approval.

64. 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.

65. 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**

66. 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 Pre-Agreement 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

67. 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:

68. 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").

69. 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).

70. 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.

71. Opting Into the Collective. Those eligible Class Members who have not already opted-in to the FLSA action, shall have ninety (90) days from the initial mailing of the Notice of Settlement to submit a Consent to Join Fair Labor Standards Act Settlement and Release of Claims form (“FLSA consent-to-join”) to the Claims Administrator. Forty-five (45) days after the initial mailing of Notice of Settlement, the Claims Administrator shall send a reminder postcard to all eligible Class Members who have not yet submitted an FLSA consent-to-join, to remind them of the deadline or submitting an FLSA consent-to-join. A FLSA collective member who fails to submit a valid and timely FLSA consent-to-join shall not be entitled to receive any payment of FLSA-related settlement benefits under the Settlement.

72. 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 90 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.

73. 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 ninety (90) 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.

74. 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 ninety (90) 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).

75. 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 ninety (90) 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.

76. Review of Final Distribution Amounts. Within seven (7) days after the deadline to submit an FLSA consent-to-join, 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.

77. 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.

78. 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.

79. Disbursement of Class Counsel Attorneys' Fees and Costs, Class Representative Enhancements, Pre-Agreement 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, Pre-Agreement Opt-In Plaintiff Enhancements, and any unpaid Claims Administration Charges.

80. 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.

81. 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).

82. 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.

83. 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

84. 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 Settlement Class Member.

85. 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**

86. Plaintiffs and all members of the California Class, FLSA Collective, or both who do not timely and properly exclude themselves from the terms of this Agreement (by opting out, withdrawing written consent, or for FLSA Collective members never opting in in the first place) 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.

87. 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.

88. 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.”

89. 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.”

90. 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.

91. 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.

92. 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**

93. 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**

94. 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.

95. In the event 5% or more of the California 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 California Class Members, and 17 or more California Class Members affirmatively exclude themselves from the settlement, the 5% threshold under this Paragraph shall be exceeded. In the event that less than 10% of the FLSA Collective members do not opt in to the settlement, Defendant may, at its option, void the Agreement in its entirety. For example, if there are 321 total FLSA Collective members, and less than 32 of them opt in to the settlement, the 10% threshold under this Paragraph shall be exceeded. 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

96. 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.

97. 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.

98. 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.

99. 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.

100. 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.

101. 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.

102. 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.

103. 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.

104. 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 Class and Collective Action Settlement to California Class Members, and Notice of Collective Action Settlement to FLSA Collective Action Members, which is included within Exhibit 1 & 2 attached to this Agreement, will advise all of the Class Members of the binding nature of the release and, if they remain or become 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.

105. 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.

106. 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.

107. 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.

108. 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.

109. 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.

110. 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.

111. 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 eligible 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.

112. Website. Class Counsel has set up a website ([www.bryanschwarzlaw.com/advocatesettlement](http://www.bryanschwarzlaw.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.

113. 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: Nov 2, 2018, 2018 *Luis Duque*  
Luis Duque (Nov 2, 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: Nov 2, 2018, 2018 \_\_\_\_\_  


Daniel Thibodeau (Nov 2, 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: \_\_\_\_\_, 2018 \_\_\_\_\_

Daniel Thibodeau  
Plaintiff/Class Representative

**DEFENDANT:**

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

DATED: November 5, 2018

By: Aaron J. Longo

Name: Aaron J. Longo

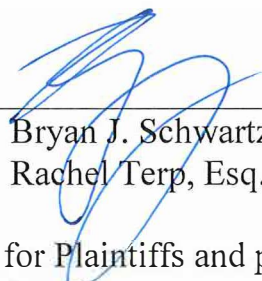
Title: sup; Assistant General Counsel

**COUNSEL:**

DATED: November 2, 2018

**BRYAN SCHWARTZ LAW**

By: \_\_\_\_\_

  
Bryan J. Schwartz, Esq.  
Rachel Terp, Esq.

Attorneys for Plaintiffs and putative Class and  
Collective Members

DATED: \_\_\_\_\_, 2018

**MCGUIREWOODS LLP**

By: \_\_\_\_\_

Michael D. Mandel, Esq.  
John A. Van Hook, Esq.

Attorneys for Defendant  
Bank of America, N.A.

**COUNSEL:**

DATED: \_\_\_\_\_, 2018

**BRYAN SCHWARTZ LAW**

By: \_\_\_\_\_

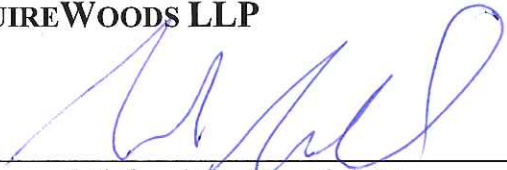
Bryan J. Schwartz, Esq.  
Rachel Terp, Esq.

Attorneys for Plaintiffs and putative Class and  
Collective Members

DATED: 11/5, 2018

**MCGUIREWOODS LLP**

By: \_\_\_\_\_

  
Michael D. Mandel, Esq.  
John A. Van Hook, Esq.

Attorneys for Defendant  
Bank of America, N.A.

# **EXHIBIT 1**

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 \$[XXXXXX]. 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 from overtime at any point from January 5, 2014 in California, or from January 5, 2015 outside of 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.

<b>YOUR OPTIONS AND LEGAL RIGHTS IN THIS SETTLEMENT</b>	
<p><b>DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT</b></p>	<p>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). You will release the California state law claims covered by this settlement.</p>
<p><b>EXCLUDE YOURSELF</b></p>	<p>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.</p>
<p><b>OBJECT</b></p>	<p>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.</p>

<b>WHAT THIS NOTICE CONTAINS</b>
----------------------------------

BASIC INFORMATION	PAGE --
1. Why did I get this notice package?	
2. What is this lawsuit about?	
3. What is a class action?	
4. Why is there a settlement?	
WHO IS IN THE SETTLEMENT	PAGE --
5. How do I know if I am part of the settlement?	
6. Are there exceptions to being included?	
7. I am still not sure if I am included.	
8. What if I signed a severance or sign one in the future?	
THE SETTLEMENT BENEFITS – WHAT YOU GET	PAGE --
9. What does the settlement provide?	
10. How much will my payment be?	
YOU WILL RECEIVE A PAYMENT UNLESS YOU AFFIRMATIVELY OPT OUT	PAGE --
11. How can I get a payment?	
12. When would I get my payment?	
13. What am I giving up to get a payment?	
14. What if I believe I am not being credited for the right number of work-weeks, or for the correct severance status?	
EXCLUDING YOURSELF FROM THE SETTLEMENT	PAGE --
15. What does it mean to exclude myself from the settlement?	
16. How do I get out of the settlement?	
17. What happens if I do nothing?	
THE LAWYERS REPRESENTING THE CLASS	PAGE --
18. Do I have a lawyer in the case?	
19. How will the lawyers, claims administrator, Class Representative Plaintiffs and Opt-In Plaintiffs be paid?	
OBJECTING TO THE SETTLEMENT	PAGE --
20. How do I tell the Court that I challenge all or some of the settlement terms?	
21. What’s the difference between objecting, on the one hand, and excluding myself ( <i>i.e.</i> , “opting out”) from the settlement, on the other?	
THE COURT’S FINAL FAIRNESS HEARING	PAGE --
22. When and where will the Court decide whether to approve the settlement?	
23. Do I have to come to the hearing?	
24. May I speak at the hearing?	
GETTING MORE INFORMATION	PAGE --
25. Are there more details about the settlement?	

26. 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 – 90 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. Note that the Court may change the date of the hearing without further notice. 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.

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 ninety (90) 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 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 90 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.

### **THE LAWYERS REPRESENTING THE CLASS**

#### **18. 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.

#### **19. 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

**20. 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 may 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 – 90 days after mailing of notice]; and (d) be sent, also, to:

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

**21. 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

**22. 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 25 and 26, 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>.

**23. 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.

**24. 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.

<b>Court</b>	<b>Class Counsel</b>	<b>Defense Counsel</b>
Clerk of the Court United States District Court Western Division 255 East Temple St. Suite 180	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

Los Angeles, CA 90012		
-----------------------	--	--

**GETTING MORE INFORMATION**

**25. 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.bryanschwarzlaw.com/advocatesettlement>, by contacting Class Counsel as set forth at Question 26, 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.

**26. 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.bryanschwarzlaw.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**

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,

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

Plaintiffs,

**NOTICE OF SETTLEMENT TO  
FLSA COLLECTIVE ACTION  
MEMBERS**

v.

BANK OF AMERICA, N.A.

Honorable Percy Anderson

Defendant.

\_\_\_\_\_ /

**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.**

**YOU MUST RESPOND BY [DATE] TO COLLECT MONEY IN THIS CASE.**

**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 \$[XXXXXX]. THIS IS THE ESTIMATED GROSS AMOUNT YOU WILL RECEIVE IF YOU OPT INTO THIS CASE AND THE COURT GRANTS FINAL**

1 **APPROVAL OF THE SETTLEMENT.**

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

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

- 8 • The settlement fund will pay claims of an estimated 321 former Client  
9 Advocates, Senior Client Advocates, Operations Consultants, and Senior  
10 Operations Consultants who worked for Bank of America, N.A. (“Bank of  
11 America”) and whom Bank of America classified as exempt at any point from  
12 from January 5, 2014 in California, or from January 5, 2015 outside of  
13 California, until December 31, 2015.
- 14 • The settlement pertains to a lawsuit asserting causes of action against Bank of  
15 America for: (1) failure to pay overtime wages; (2) failure to provide and/or  
16 authorize meal and rest periods; (3) failure to provide itemized wage  
17 statements; (4) failure to pay earned wages upon discharge; and (5) unlawful  
18 and/or unfair business practices in violation of California Business and  
19 Professions Code.
- 20 • Bank of America denies that it is liable for any of these claims. Bank of  
21 America contends that, at all times, it properly classified and paid the  
22 employees subject to this settlement. However, in light of the risk and expense  
23 of protracted litigation, Bank of America, Class and Collective Counsel, and  
24 the Plaintiffs believe that this is a fair settlement of the class and collective  
25 claims.

<b>YOUR OPTIONS AND LEGAL RIGHTS IN THIS SETTLEMENT</b>	
<b>OPT IN TIMELY AND RECEIVE A SETTLEMENT PAYMENT</b>	If you opt in following the instructions in this notice, by [date], 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). By opting in to the collective action you will be joining this settlement,

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	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.
<b>DO NOTHING</b>	If you do not opt into this case by timely completing and submitting the consent-to-join form as indicated in this notice, by [date], you will not be participating in this action. In that case, you will release no claims, and will receive no payment through this settlement.
<b>WITHDRAW YOUR CONSENT TO JOIN</b>	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.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**WHAT THIS NOTICE CONTAINS**

**BASIC INFORMATION** **PAGE --**

- 1. Why did I get this notice package?
- 2. What is this lawsuit about?
- 3. What is a collective action?
- 4. Why is there a settlement?

**WHO IS IN THE SETTLEMENT** **PAGE --**

- 5. How do I know if I am part of the settlement?
- 6. Are there exceptions to being included?
- 7. I am still not sure if I am included.
- 8. What if I signed a severance or sign one in the future?

**THE SETTLEMENT BENEFITS – WHAT YOU GET** **PAGE --**

- 9. What does the settlement provide?
- 10. How much will my payment be?

**YOU WILL NOT RECEIVE A PAYMENT UNLESS YOU OPT IN** **PAGE --**

- 11. How can I get a payment?
- 12. When would I get my payment?
- 13. What am I giving up to get a payment?
- 14. What if I believe I am not being credited for the right number of work-weeks?

**DOING NOTHING** **PAGE --**

- 15. What happens if I do nothing?
- 16. What are claims under the Fair Labor Standards Act?

**THE LAWYERS REPRESENTING THE COLLECTIVE** **PAGE --**

- 17. Do I have a lawyer in the case?
- 18. How will the lawyers, claims administrator, Representative Plaintiffs, and Opt-In Plaintiffs be paid?

**THE COURT’S FINAL FAIRNESS HEARING** **PAGE --**

- 19. When and where will the Court decide whether to approve the settlement?
- 20. Do I have to come to the hearing?
- 21. May I speak at the hearing?

**GETTING MORE INFORMATION** **PAGE --**

- 22. Are there more details about the settlement?
- 23. 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 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.

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

5 **3. What is a collective action?**

6 In a FLSA collective action, Representative Plaintiffs (in this case Luis Duque and  
7 Daniel Thibodeau, sue on behalf of people who have similar claims (the “FLSA  
8 Collective”). The Court can make rulings affecting the FLSA Collective (e.g.,  
9 approving the parties’ settlement), which only effect those who opt into this case by  
10 submitting a consent-to-join.

11 **4. Why is there a settlement?**

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

18 **WHO IS IN THE SETTLEMENT**

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

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

**6. Are there exceptions to being included?**

1 You are not a member of the FLSA Collective if you did not work for Bank of  
2 America, as a Client Advocate, Senior Client Advocate, Operations Consultant,  
3 Senior Operations Consultant, or other job title performing the same or similar  
4 customer complaint processing duties in the Regulatory Complaints and Social  
5 Media Servicing group during the period in question. As noted below, even if you  
6 signed a severance agreement, or if you are subsequently offered a severance  
7 agreement, you may still participate in this settlement. You must complete and  
8 submit a timely consent-to-join form by [date] to be included.

9  
10 **7. I am still not sure if I am included.**

11 If you are receiving this notice, it is most likely that you do qualify to participate, and  
12 if you complete and submit, or (if you already submitted one) do not withdraw your  
13 consent-to-join the FLSA Collective, you will receive a settlement payment,  
14 assuming that the Court approves the settlement. Once you cash your settlement  
15 check, you will release claims as described below. If you have questions about  
16 whether you qualify, you may contact Class Counsel at the contact information  
17 provided below.

18  
19 **8. What if I have signed a severance agreement, or sign one in the future?**

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

27 **THE SETTLEMENT BENEFITS – WHAT YOU GET**

28 **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 NOT RECEIVE A PAYMENT UNLESS YOU OPT IN**

**11. How can I get a payment?**

If you complete and submit your opt-in form by [date], if you have already filed a consent-to-join, unless withdraw your consent-to-join the FLSA Collective by [date – 90 days after notice is mailed], and if the settlement receives final approval from the Court, you will receive a payment.

**12. When would I get my payment?**

The Court will hold a hearing on [date] at [time] to decide whether to grant final

1 approval of the settlement (though the Court may change the date without further  
2 notice). If the Court approves the settlement, there may be appeals. Resolving any  
3 appeals can take time, perhaps more than a year. Please be patient.

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

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

7 If you complete and submit a consent-to-join form by [date], or previously submitted  
8 and do not withdraw your consent-to-join form, you will be part of the FLSA  
9 Collective. You cannot sue, continue to sue, or be part of any other lawsuit against  
10 Bank of America concerning the wage and hour claims covered by this settlement. It  
11 also means that all of the Court's orders will apply to you and legally bind you.

12 By participating, you will be releasing all wage and hour claims covered by this  
13 settlement under the Fair Labor Standards Act and any related wage and hour laws  
14 in the state in which you worked for Bank of America.

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

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

21 If you dispute the information shown on your Notice of Settlement regarding the total  
22 number of weeks that you actively worked as an exempt Client Advocate, Senior  
23 Client Advocate, Operations Consultant, Senior Operations Consultant, or other job  
24 title performing the same or similar customer complaint processing duties in the  
25 Regulatory Complaints and Social Media Servicing group, you may indicate and  
26 explain such disagreement under within ninety (90) days of the mailing of the Notice  
27 of Settlement by notifying the Claims Administrator pursuant to the following  
28 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.

**DOING NOTHING**

**15. What happens if I do nothing?**

If you do nothing regarding this notice, and you have not timely submitted a consent-to-join form, you will not be sent a check, and will not release any claims in this 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 nothing.

**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 have completed and timely submitted a consent-to-join, 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?**

1  
2 Class Counsel will ask the Court to approve the payment of one-quarter of the  
3 settlement amount for attorneys' fees (*i.e.*, up to \$487,500), as well as litigation costs.

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

6 A payment of up to \$5,000 will be made to Class and Collective Representative  
7 Plaintiffs Luis Duque and Daniel Thibodeau, respectively, and payments of up to  
8 \$2,500 each will be made for Opt-in Plaintiffs Sharon Gamble, Felipe Fuentes, and  
9 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.

10 The Court may award less than these amounts. Bank of America has agreed not to  
11 oppose Class Counsel's request for fee, expense, representative, and opt-in payments.  
12 If the Court awards less than the amounts described in this section, that money will  
13 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.

14  
15 **THE COURT'S FINAL FAIRNESS HEARING**

16  
17 **19. When and where will the Court decide whether to approve the  
settlement?**

18 The Court will hold a Final Approval Fairness Hearing at [XXX] [X].M. on [XXX],  
19 at the United States District Court for the Central District of California, at 350 W. 1st  
20 Street, Courtroom 9A, 9th Floor, Los Angeles, CA, 90012, before the Honorable  
21 Percy Anderson. At this hearing the Court will consider whether the settlement is  
22 fair, reasonable, and adequate. If there are objections from Class Members, the Court  
23 will consider them (FLSA Collective members may not object to the settlement, they  
24 may only chose whether or not to participate in the settlement). After the hearing, the  
25 Court will decide whether to approve the settlement. Please note that the hearing may  
26 be postponed without further notice to the FLSA Collective. Thus, if you plan to  
attend the hearing, you should check the website identified in Questions 22 and 23,  
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. [XXXXXXXXXXXX].” 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.

<b>Court</b>	<b>Plaintiffs’ Counsel</b>	<b>Defense Counsel</b>
Clerk of the Court United States District Court Western Division 255 East Temple St. Suite 180 Los Angeles, CA 90012	Bryan Schwartz Law 180 Grand, Suite 1380 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 23, 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?**

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

4 You may also call Plaintiffs' Counsel:

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

6 **DO NOT CALL THE COURT**

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

11 \_\_\_\_\_  
12 The Honorable Percy Anderson  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28