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18 Attorneys for Plaintiff and the Class

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

21 **COUNTY OF MARIN**

22 BARBARA SCROOC, individually, and
23 on behalf of all others similarly situated,

24 Plaintiff,

25 v.

26 MERRILL LYNCG, PIERCE, FENNER
27 & SMITH, INCORPORATED, and Does
1 through 10, inclusive,

28 Defendants.

Case No. CIV 2001671

**JOINT STIPULATION OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE**

Judge: Hon. Andrew E. Sweet

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3 **I.**

4 **PREAMBLE**

5 1. This Class Settlement Agreement (“Settlement” or “Agreement”) is entered

6 into between Plaintiff Barbara Scrooc (“Scrooc” or “Named Plaintiff”), individually and

7 as class representative on behalf of all individuals defined in Section III of this Agreement

8 (collectively, with Named Plaintiff, the “Settling Class”), on the one hand, and defendant

9 Merrill Lynch, Pierce, Fenner, & Smith, Incorporated (“Defendant” or “Merrill Lynch”),

10 on the other hand. The Settling Class and Merrill Lynch are referred to collectively herein

11 as the “Settling Parties.”

12 2. Scrooc, who was formerly employed by Merrill Lynch as a Client Associate,

13 filed a Complaint commencing the above-captioned action in the Superior Court of the

14 State of California for the County of Marin on June 19, 2020, where it was assigned case

15 number CIV 2001671 (the “Lawsuit”). Scrooc filed a First Amended Complaint on August

16 26, 2020, to which Merrill Lynch filed an Answer denying all allegations on December 23,

17 2020.

18 3. The Lawsuit seeks to assert claims on behalf of a putative class, which

19 consists of “Client Associates, or the functional equivalent, however titled . . . who worked

20 in California at any time within the last four years of the filing of this action.” (First Amend.

21 Compl. ¶ 2.) The Lawsuit generally alleges that Merrill Lynch: failed to pay the statutory

22 minimum wage for all hours worked pursuant to California Labor Code §§ 1194 and

23 1194.2; failed to pay the statutory premium wage for all hours worked pursuant to

24 California Labor Code §§ 558 and 1194; failed to provide and document legally compliant

25 meal periods pursuant to California Labor Code §§ 226.7 and 512 and California Code of

26 Regulations, tit. 8, § 11040(11); failed to provide legally compliant wage statements

27 pursuant to Labor Code §§ 226, 226.3, and 1174; failed to timely pay wages upon

28 separation pursuant to Labor Code §§ 201 and 202; and engaged in unfair competition

1 pursuant to Business & Professions Code §§ 17200 *et seq.* (the “UCL”). The Lawsuit is
2 framed as both a putative class action and a non-class representative action pursuant to the
3 California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.*
4 (“PAGA”) and seeks compensatory damages (unpaid wages and premium wages),
5 statutory and/or civil penalties, liquidated damages, restitution, declaratory relief, interest,
6 reasonable attorneys’ fees and costs, and such other relief as the Court may award.

7 4. Merrill Lynch believes that the Lawsuit’s claims and allegations are meritless
8 and contends that at all times it has complied with relevant California law to the extent that
9 said law applies to the Settling Class.

10 5. On September 15, 2021, the Settling Parties attended a full day mediation in
11 San Francisco, California before private mediator David A. Rotman of David A. Rotman
12 – Mediated Negotiations, a highly regarded mediator who is intensely familiar with
13 employment class actions lawsuits. The case did not settle that day, but the parties
14 ultimately accepted a mediator’s proposal to resolve the matter on October 4, 2021. The
15 parties agreed that the Lawsuit’s claims regarding the alleged miscalculation of the regular
16 rate of pay, and all claims related thereto, would be settled and dismissed with prejudice.
17 All other claims are to be dismissed without prejudice.

18 6. Over the course of the Lawsuit, the Settling Parties have engaged in
19 significant discussion of the validity of the legal claims at issue and have exchanged
20 extensive documents and information, which have allowed the Settling Parties to fully
21 assess the value of the claims involved. The Settling Parties have agreed to avoid further
22 litigation and to settle and resolve the Lawsuit, as well as all existing and potential disputes,
23 actions, lawsuits, charges, and claims that are or could have been raised in the Lawsuit,
24 that the Settling Class has or may have against Merrill Lynch, to the fullest extent permitted
25 by law and without any admission of liability or wrongdoing by either party. The Named
26 Plaintiff and their counsel have concluded that the Settlement is fair, reasonable, and in the
27
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1 best interests of the Settling Class and respectfully request that the Settlement be approved
2 by the Court.

3 7. This Agreement shall become effective upon the “Effective Date,” as set
4 forth in Section VII below. The Settling Parties hereby agree to do all things and to engage
5 in all procedures reasonably necessary and appropriate to obtain final Court approval of
6 this Agreement, in consideration for: (a) the payment by Merrill Lynch of the
7 consideration described herein, subject to the terms, conditions, and limitations of this
8 Agreement; and (b) the release and dismissal of the Lawsuit and all claims by the Named
9 Plaintiff and Settling Class Members, as described in Paragraphs 31, 53, 54, 55, and 56 of
10 this Agreement.

11 **II.**
12 **PAYMENTS TO THE SETTLING CLASS, CLASS COUNSEL, NAMED**
13 **PLAINTIFF, AND THE CLAIMS ADMINISTRATOR**

14 8. Subject to Court approval, and the provisions of this Agreement, Merrill
15 Lynch shall pay an aggregate total of one million, three hundred seventy-five thousand
16 United States dollars and zero cents (\$1,375,000.00) (the “Gross Settlement Value” or
17 “GSV”) in consideration for the settlement and dismissal of the Lawsuit and the related
18 release of all claims the Named Plaintiff may have, and certain claims the Settling Class
19 Members may have, against the Merrill Lynch Releasees, as contained in Paragraphs 31,
20 53, 54, 55, and 56 of this Agreement. One hundred thousand United States dollars and
21 zero cents (\$100,000.00) of the GSV (the “PAGA Allocation”) shall be allocated to claims
22 under PAGA.

23 9. Merrill Lynch shall deposit the full GSV in an interest-bearing account to be
24 established by the Claims Administrator (as defined in Paragraph 14) no later than
25 December 24, 2021, provided, however, that the Claims Administrator must provide wire
26 information on its official letterhead, and complete, current, and accurate forms SS-4, W-
27 9, and CA Form 590, by no later than December 15, 2021. If said information is provided
28 after December 15, 2021, Merrill Lynch shall deposit the full GSV no later than January

1 17, 2022. Should the Settlement Effective Date never be reached for any reason, the Gross
2 Settlement Amount and all interest earned shall be returned to Merrill Lynch. The GSV
3 shall remain in said account, pending occurrence of the Effective Date as defined in
4 Section VII of the Agreement. The Claims Administrator shall not disburse any portion of
5 these funds until after the Effective Date.

6 10. The GSV is the maximum amount that Merrill Lynch shall be required to pay
7 for settlement of the Lawsuit except for the employer's share of standard payroll taxes.
8 The GSV will cover compensation to the Settling Class, payment to the State of California
9 (Labor and Workforce Development Agency ("LWDA")) for penalties under PAGA,
10 additional compensation to the Named Plaintiff as class representative, the cost of claims
11 administration and notice, and attorneys' fees and reimbursement of litigation costs and
12 expenses to Class Counsel, and all other costs and disbursements aside from the employer's
13 share of standard payroll taxes (as defined in Sections IV and IX). This is a non-
14 reversionary settlement, which means that once the Agreement is final and effective, no
15 part of the GSV shall revert to Merrill Lynch.

16 III. 17 SETTLING CLASS

18 11. Solely for the purpose of effectuating this Settlement, and subject to Court
19 approval, the Settling Parties hereby stipulate to the following "Settling Class" comprised
20 of "Settling Class Members" defined as follows:

21 All individuals employed by Merrill Lynch as a Client
22 Associate, or the functional equivalent, however titled, which
23 position includes the titles "Registered Client Associate,"
24 "Registered Senior Client Associate," "Investment Associate,"
25 "Private Wealth Associate," "Sales Assistant," "Sales
26 Associate," "Account Associate," "Brokerage Associate,"
27 and/or any other non-exempt administrative support position at
28 Merrill Lynch in California at any time during the period from
August 26, 2016 until the date of Preliminary Approval.

Accordingly, the "Settling Class Period" is defined as August 26, 2016, through the date
this Settlement receives Preliminary Approval.

1 12. The individuals who worked in the above-referenced classifications during
2 the Class Period shall be identified by Merrill Lynch and provided to the Claims
3 Administrator Pursuant to Paragraph 18 of this Agreement. Persons who request exclusion
4 from the Lawsuit pursuant to the terms of this Settlement shall not be a Settling Class
5 Member, shall not share in the distribution of the GSV, and shall not be bound by the terms
6 of this Settlement.

7 13. The certification of the Settling Class, the Settling Parties' settlement of the
8 Lawsuit, and their rights and obligations hereunder, are contingent upon final approval by
9 the Court of this Agreement as to the Settling Class. The Settling Class recognizes and
10 agrees that – in consideration of the covenants undertaken herein by Merrill Lynch,
11 including, without limitation, Merrill Lynch's agreement to pay the full amount of the GSV
12 – this Agreement settles certain claims, known and unknown, the Settling Class has or may
13 have against Merrill Lynch to the extent set out herein.

14 14. Subject to Court approval, the Settling Parties agree that Simpluris will be
15 appointed as Claims Administrator. The Claims Administrator will be responsible for
16 establishing and maintaining an interest bearing account for the GSV; mailing the class
17 notices; receiving and logging adjustment forms and requests for exclusion; researching
18 and updating addresses through skip-traces and similar means; answering questions from
19 the Settling Class members; reporting on the status of the Settlement to the Settling Parties;
20 preparing a declaration regarding its due diligence in the claims administration process;
21 providing the Settling Parties with data regarding the filing of adjustment forms and
22 requests for exclusion; calculating and distributing settlement checks; calculating tax
23 obligations; remitting any and all tax obligations to the appropriate taxing authorities
24 (including the employer's share of standard payroll taxes); processing the PAGA
25 Allocation; and doing such other things as the Settling Parties may direct. The Claims
26 Administrator will be solely responsible for any and all tax obligations (including, by way
27 of example but not of limitation, any reporting obligations and/or taxes owed) resulting
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1 from interest earned by the GSV, and in no case shall Merrill Lynch bear any responsibility
2 at all with respect to same.

3 **IV.**
4 **APPOINTMENT OF NAMED PLAINTIFF'S COUNSEL**
5 **AS SETTLING CLASS COUNSEL**

6 15. Class Counsel for the Settling Class shall be as follows:

7 Edward J. Wynne, Esq.
8 WYNNE LAW FIRM
9 80 E. Sir Francis Drake Blvd., Ste. 3-G
10 Larkspur, CA 94939
11 Telephone: (415) 461-6400
12 Facsimile: (415) 461-3900
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Carlsbad, CA 92011
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Facsimile: (760) 209-6565
jclapp@clapplegal.com

14 **V.**
15 **SETTLEMENT APPROVAL PROCEDURES**
16 **AND NOTICE TO CLASS MEMBERS**

17 16. The Settling Parties' settlement of the Lawsuit, and their rights and
18 obligations hereunder, is expressly conditioned on both the Court's preliminary and final
19 approval of this Settlement as to the class defined in Section III of this Agreement.

20 17. At the earliest possible opportunity, Class Counsel shall file a motion
21 requesting an order which, *inter alia*, grants preliminary approval of the Settlement
22 Agreement, modifies the litigation class for settlement purposes only, and sets a date for
23 the settlement fairness hearing ("Final Approval Hearing"). In conjunction with this
24 request, Class Counsel shall submit this Agreement, supporting papers, and proposed forms
25 of all notices and other documents, in the form attached hereto, necessary to implement the
26 Settlement Agreement. The Preliminary Approval Order shall provide for notice of the
27 Agreement and related matters ("Settlement Class Notice"), including notice of the
28 procedure to withdraw from the Class to be sent to the Settling Class as specified herein.
The Preliminary Approval Order submitted to the Court shall be in a form attached hereto

1 as Exhibit A, and the Settlement Class Notice shall be in the form attached hereto as
2 Exhibit B, and as further described in Paragraph 47 of this Agreement.

3 18. Not later than fifteen (15) business days after receipt of notice of the Court's
4 entry of an Order of Preliminary Approval, and to the extent possible based on the presence
5 of information in its records, Merrill Lynch shall provide to the Claims Administrator, in
6 electronic form, a spreadsheet that contains the name, social security number, dates of
7 active employment in a class-qualifying capacity, number of overtime hours worked while
8 in a class-qualifying capacity, and last known mailing address of every Settling Class
9 Member. Merrill Lynch shall meet-and-confer with the Claims Administrator regarding
10 the format of said spreadsheet and shall cooperate to provide any additional information
11 which the Claims Administrator may request that is reasonable and necessary for the
12 purpose of giving Class Notice, allocating and distributing the GSV, and otherwise
13 administering this Agreement.

14 19. Not later than ten (10) business days after receipt of the information
15 described in Paragraph 18 of this Agreement, the Claims Administrator shall mail the
16 Settlement Class Notice to all Settling Class Members whose address information is known.
17 This mailing will be sent by first-class U.S. mail. Before mailing the Settlement Class
18 Notice, the Claims Administrator shall run the Class member addresses through the U.S.
19 Postal Service's Change of Address Database.

20 20. The Claims Administrator shall make such further efforts as are possible and
21 reasonable (if any), to provide the Settlement Class Notice to Settling Class Members
22 whose original Settlement Class Notice is returned as undeliverable, provided that all such
23 efforts shall be completed by the thirtieth (30th) calendar day after the Settlement Class
24 Notice is mailed. The Claims Administrator shall document all efforts under this Section
25 V, and keep such documentation for a period of four (4) years from the date of the Court's
26 final approval of the settlement.

21. The Claims Administrator shall set up and maintain a website to post the Notice and provide other relevant information for Class Members about the Settlement. The uniform resource locator (URL) of said website shall not contain the terms “Merrill Lynch” or “Merrill” or similar identifier.

VI.

PROCEDURE FOR OBJECTIONS AND OPT-OUTS

22. If any Settling Class Member believes that the proposed Settlement should not be approved by the Court for any reason, the Settling Class Member may object by: (1) filing a signed written objection in which the Settling Class Member provides their name, address, and telephone number and states the basis for an objection with the Court and whether they are represented by counsel; (2) serving a copy of the objection on the Claims Administrator; and (3) sending copies of the objection to counsel for the Named Plaintiff and counsel for Merrill Lynch. Settling Class Members may also object by appearing at the hearing for Final Approval.

23. Class members are requested to submit written objections within thirty (30) days from the date the Settlement Class Notice is first mailed. Class members will also be notified by the Settlement Class Notice that they may appear at the Court hearing scheduled for final approval of the Settlement to have objections heard by the Court. Any attorney who represents an individual objecting to the Settlement must file a Notice of Appearance with the Court and timely serve counsel for all parties. All objections or other correspondence must state the name and number of the case, which is *Scrooc v. Merrill Lynch, Pierce, Fenner & Smith, Incorporated*, Case No. 2001671.

24. Any Settling Class Member who does not want to participate in this Settlement may “opt-out” of the Settlement by mailing a written request for exclusion to the Claims Administrator. Requests for exclusions must be post-marked no later than thirty (30) calendar days after the Settlement Class Notice is first mailed. For a request for

1 exclusion to be valid, it must be actually received by the Claims Administrator and contain
2 the name and signature of the Settling Class Member.

3 25. If a Class member submits both a timely and valid Adjustment Form and a
4 timely and valid request for exclusion, the latter-filed shall be determinative. If the two
5 documents are filed simultaneously, and both are timely and valid, the Claims
6 Administrator shall attempt to contact the individual and determine his or her intent. If this
7 attempt is unsuccessful, the request for exclusion shall be deemed invalid and the Settling
8 Class Members shall be bound by and have the right to receive a payment through this
9 Settlement.

10 26. A Settling Class Member who timely complies with the exclusion procedures
11 set forth herein shall be excluded from the Settling Class, shall have no standing to object
12 to or otherwise be heard by the Court and/or on appeal with respect to any aspect of this
13 Agreement, and shall be ineligible for any benefits of this Agreement.

14 27. In addition to the list discussed in Paragraph 34, the Claims Administrator
15 shall stamp the date received on the original of any request for exclusion it receives and
16 serve copies of the request(s) for exclusion on counsel for Merrill Lynch within three (3)
17 business days after receipt thereof.

18 **VII.**

19 **THE EFFECTIVE DATE**

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21 28. This Agreement shall become final and effective (the “Effective Date”) on
22 the occurrence of all of the following events described in Paragraphs 29 through 32.

23 29. Entry by the Court of an Order of Preliminary Approval as discussed in
24 Paragraph 17 of this Agreement, and appointment of a Claims Administrator as described
25 in Paragraph 14 of this Agreement.

26 30. Class Counsel filing, at or before the Final Approval Hearing, a declaration
27 from the Claims Administrator:
28

1 (a) Certifying that Class Notice to each Settling Class Member was sent
2 in accordance with Sections V and XI of this Agreement and the Preliminary
3 Approval Order;

4 (b) Setting out the number of Class Notices that were returned as
5 undeliverable, and any efforts under Paragraphs 19 and 20 with regard to same; and

6 (c) Delineating the number of putative Settling Class Members who
7 submitted timely requests for exclusion, and providing participation metrics
8 measured by both headcount and workweeks on a percentage and absolute numbers
9 basis.

10 31. Entry by the Court of an Order and Judgment Granting Final Approval and
11 dismissing the Lawsuit with prejudice. The Settling Parties shall jointly prepare and lodge
12 a proposed Order and Judgment to this effect in advance of the Final Approval Hearing,
13 which shall reflect, *inter alia*: the dismissal of the Lawsuit; that the Settlement is effective
14 as a release of all claims set out in Paragraph 53 as to all individuals who did not exclude
15 themselves from the Settlement, including those who did not cash a check or receive a
16 payment; and the Court's approval of the settlement pursuant to the terms of this
17 Agreement, including but not limited to the releases set out in Paragraphs 53, 54, 55, and
18 56.

19 32. The occurrence of the "Effective Date of Judgment," which shall be deemed
20 to be the last to occur of the following:

21 (a) If an appeal or other review is not sought from the Order and
22 Judgment Granting Final Approval and Dismissing Lawsuit, the sixty-fifth (65th)
23 calendar day after entry of the judgment; or

24 (b) If an appeal or other review is sought from the Order and Judgment
25 Granting Final Approval and Dismissing Lawsuit by a Settling Class Member, the
26 day after the trial court's judgment is affirmed or the appeal or other review is
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1 dismissed or denied, and the judgment is no longer subject to judicial review or
2 other challenge.

3 **VIII.**
4 **EFFECT OF NON-APPROVAL,**
5 **FAILURE OF THE EFFECTIVE DATE TO OCCUR, OPT-OUTS**
6 **IN EXCESS OF FIVE PERCENT**

7 33. If any one of the events specified in Section VII do not occur, this Agreement
8 shall be voidable at Merrill Lynch's discretion, and any portion of the GSV previously
9 deposited with the Claims Administrator, including any interest earned thereon, shall
10 immediately be returned to Merrill Lynch.

11 34. The Claims Administrator shall provide written notice to Class Counsel and
12 counsel for Merrill Lynch no later than five (5) business days after the Notice Period
13 Deadline with a complete list of all putative Settling Class Members who have timely
14 requested exclusion from the class and the number of workweeks associated with each.
15 Merrill Lynch, in its sole and independent discretion, shall have the right, but not the
16 obligation, to revoke this Agreement if requests for exclusion from the settlement are filed
17 by five percent (5%) or more of the Settling Class, measured on a headcount or workweek
18 basis.

19 35. Merrill Lynch must exercise its option under Paragraph 34, if at all, within
20 fifteen (15) business days after receipt of the list of all excluded Class members referenced
21 in Paragraph 34.

22 36. In the event that the Agreement is voided pursuant to Paragraphs 34 or
23 otherwise, then the following shall apply:

24 (a) Nothing in this Agreement shall be construed as a determination,
25 admission, or concession of any substantive or procedural issue in the Lawsuit, and
26 nothing in this Agreement may be offered into evidence in any hearing or trial, or
27 in any subsequent pleading or in any subsequent judicial, arbitral, or administrative
28 proceeding;

1 (b) This Agreement shall be without force or effect, and the Lawsuit will
2 continue to be litigated as if this Agreement never existed; and

3 (c) The Settling Parties expressly reserve their rights with respect to the
4 prosecution and defense of the Lawsuit as if this Agreement never existed; and

5 (d) Merrill Lynch shall bear any costs for notice or claims administration
6 incurred by the Claims Administrator through that date.

7 **IX.**
8 **ATTORNEYS' FEES, COSTS AND EXPENSES, AND ENHANCEMENT**
9 **AWARDS**

10 37. The Lawsuit alleges a potential claim for attorneys' fees and costs pursuant
11 to, *inter alia*, the California Labor Code. The Settling Parties agree that any and all such
12 claims for attorneys' fees and costs have been settled in this Agreement.

13 38. Merrill Lynch recognizes that Class Counsel will apply to the Court for an
14 award of: (i) attorneys' fees in an amount up to, but not more than, one-third of the GSV;
15 and (ii) reasonable and necessary costs and expenses (including expenses incurred by
16 Named Plaintiff in the prosecution of this action) in an amount up to, but not more than,
17 twenty thousand United States dollars and zero cents (\$20,000.00). Merrill Lynch will not
18 oppose Class Counsel's application under this Paragraph 38 and the Named Plaintiff, Class
19 Counsel, and Settling Class Members shall not seek payment of attorneys' fees or
20 reimbursement of costs or expenses except as set forth herein. Class Counsel's application
21 under this Paragraph 38 shall be scheduled for determination at the Final Approval Hearing,
22 but Class Counsel's application shall be filed and served before the Class Notice is
23 distributed and will be posted on Class Counsel's website and the Claims Administrator's
24 website.

25 39. Merrill Lynch recognizes that, at the same time the application under
26 Paragraph 38 is made, Class Counsel will also apply to the Court for an additional award
27 to Named Plaintiff, in an amount not to exceed five thousand United States dollars and zero
28 cents (\$5,000.00), as reasonable additional compensation for the time and effort expended

1 by her in connection with the initiation and maintenance of the Lawsuit and in
2 consideration for the additional release set out in Paragraph 54 (the “Enhancement
3 Award”). Merrill Lynch will not oppose Class Counsel’s application under this Paragraph
4 39 and the Named Plaintiff, Class Counsel, and Settling Class Members shall not seek
5 payment of any additional enhancement awards except as set forth herein. Any
6 Enhancement Award will be in addition to any amount Scrooc may be entitled to receive
7 on account of her own individual claims pursuant to Section XI of this Agreement. Class
8 Counsel’s application under this Paragraph 39 shall be scheduled for determination at the
9 Final Approval Hearing, but Class Counsel’s application shall be filed and served before
10 the Class Notice is distributed and will be posted on Class Counsel’s website and the
11 Claims Administrator’s website.

12 40. Any awards pursuant to Paragraphs 38 and/or 39 will be funded solely and
13 completely from the GSV.

14 41. If the Court does not approve the total amount of attorneys’ fees, costs, and/or
15 Enhancement Award requested by Class Counsel pursuant to Paragraphs 38 and/or 39 of
16 this Agreement, any remaining portion of requested amount will be added to the Net
17 Settlement Value (as that term is defined in Paragraph 43(e) of this Agreement). The
18 Claims Administrator shall recalculate the Class Member payments to account for any
19 reduction in the amount of attorneys’ fees, costs and/or Enhancement Award made by the
20 Court.

21 42. Any proceedings or Court decisions related to Class Counsel’s application
22 for attorneys’ fees, costs and expenses, and/or Enhancement Award shall not terminate or
23 cancel this Agreement, or otherwise affect the finality of the Court’s Order and Judgment
24 Granting Final Approval or the settlement of this Lawsuit. However, if the Court approves
25 a lesser amount of attorneys’ fees, litigation costs, or Enhancement Award than those
26 sought by Named Plaintiff and her counsel, Named Plaintiff reserves the right to appeal
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any amount disallowed by the Court, with the understanding that regardless of the outcome of Plaintiff's appeal, this Settlement shall still be binding.

**X.
PLAN OF ALLOCATION AND
DISTRIBUTION OF THE SETTLEMENT**

43. The GSV shall be allocated, in order, as follows:

(a) First, to any attorneys' fees and reasonable and necessary costs and expenses of Class Counsel (including expenses incurred by Named Plaintiff in the prosecution of this action), as may be awarded by the Court pursuant to Paragraph 38 of this Agreement including the pro rata share of interest earned on the GSV.

(b) Second, to any Enhancement Award, as may be awarded by the Court pursuant to Paragraph 39 of this Agreement.

(c) Third, to the State of California in the amount of seventy five thousand United States dollars and zero cents (\$75,000.00) in penalties pursuant to PAGA (75% of the PAGA Allocation);

(d) Fourth, to the costs and expenses incurred by, or fees imposed by, the Claims Administrator in performing its duties under this Agreement, pursuant to Paragraph 14 of this Agreement.

(e) Fifth, to the "Net Settlement Value" or "NSV." The Net Settlement Value shall be defined as the value of the GSV less the items described in Subparagraphs 43(a)-(d). The NSV shall include the Settling Class' share of the PAGA payment in the amount of twenty-five thousand United States dollars and zero cents (\$25,000.00) (*i.e.*, 25% of the PAGA Allocation) and pro rata share of interest earned on the GSV. The Net Settlement Value shall be allocated to the Settling Class as described in Section XI. The Claims Administrator shall be responsible for the allocation and distribution of the Net Settlement Value to the Settling Class Members who submit timely Adjustment Forms as set forth in Paragraph 46 herein.

1 (f) Sixth, the amount of any settlement checks that are not cashed by
2 Settling Class Members as well as any portion of the GSV not otherwise allocated
3 under this Settlement shall be the Residual Amount. The Residual Amount shall be
4 paid to the State of California as unclaimed wages under the name of the Settling
5 Class Member pursuant to the escheat procedures set forth in the California Code
6 of Civil Procedure section 1300, *et seq.*

7 44. The Claims Administrator shall make payments from the GSV pursuant to
8 this Section X within five (5) calendar days after the Effective Date, but only after the
9 Effective Date. The GSV must be funded no later than December 24, 2021.

10 45. In light of the nature of the claims in the Lawsuit, for the purposes of
11 determining and/or calculating applicable taxes, two-thirds (approximately 66.66%) of
12 each Class Member Payment (as that term is defined in Paragraph 51 of this Agreement)
13 shall be classified as ordinary income, interest and penalties, payable on a Form 1099, and
14 one-third (approximately 33.33%) of each Class Member Payment shall be classified as
15 wages, payable on a Form W2. One hundred percent (100%) of the Named Plaintiff's
16 Enhancement Award will be allocated to ordinary income, payable on a Form 1099. The
17 Named Plaintiff and Settling Class Members shall be individually responsible for any and
18 all tax implications or obligations attributable to receipt of the Enhancement Award and/or
19 Class Member Payments. The Claims Administrator shall be responsible for generating
20 any necessary or appropriate documents and remitting any necessary monies to the
21 appropriate agencies in connection with payments hereunder (including remitting 75% of
22 the PAGA Allocation to the State of California). Merrill Lynch shall provide the Claims
23 Administrator with any information reasonably necessary to perform the calculations
24 discussed in this Paragraph 45.

XI.
DETERMINATION OF THE AMOUNT, PROCESSING,
AND PAYMENT OF CLASS MEMBER CLAIMS

46. The Settlement Class Notice sent to each Settling Class Member shall be accompanied by a separate Adjustment Form which is attached hereto as Exhibit C. The Adjustment Form shall be individualized for each Settling Class Member with information reflecting the time periods during the Class Period in which the individual was actively employed in a class-qualifying capacity, and the corresponding number of overtime hours worked, pursuant to the spreadsheet discussed in Paragraph 18 of this Agreement. Additionally, the Adjustment Form will contain the estimated dollar value of the Class Member Payment, as that term is defined in Paragraph 51 of this Agreement, assuming that Class Counsel's requests under Paragraphs 38 and 39 of this Agreement are granted in their entirety and that all information contained in the spreadsheet discussed in Paragraph 18 is correct. The Class Notice and Adjustment Form shall inform each Settling Class Member that they may submit a corrected Adjustment Form, along with supporting documentation, to the Claims Administrator to the extent a Settling Class Member believes that any of the information pertaining to that individual on the Adjustment Form is incorrect. The Settlement Class Notice and Adjustment Form shall further inform each Settling Class Member that, to be valid, the completed Adjustment Form must bear a postmark reflecting a date within thirty (30) calendar days from the date of first mailing of the Settlement Class Notice (the "Notice Period Deadline"). Settling Class Members bear the responsibility of ensuring that information on the Adjustment Form is correct and that any Adjustment Forms submitted to the Claims Administrator are actually received by the Claims Administrator in compliance with this Agreement.

47. The Settlement Class Notice shall contain the release and waiver of claims against Merrill Lynch contained in Paragraphs 53, 55, and 56 of this Agreement, and an easily understood statement alerting Settling Class Members that by failing to submit a Request for Exclusion the individual is executing a release and waiver of all such claims

1 contained in Paragraphs 53, 55, and 56 of this Agreement, whether or not they receive a
2 payment.

3 48. As provided in Paragraph 18, Merrill Lynch will provide the Claims
4 Administrator with the information required to individualize the Adjustment Forms
5 discussed in Paragraph 46 of this Agreement. The Claims Administrator will be solely
6 responsible for resolving any discrepancies between Merrill Lynch's documentation and
7 conflicting information provided by the Settling Class member in an Adjustment Form,
8 and said resolution by the Claims Administrator shall be final and binding on all parties.
9 Once the Claims Administrator resolves a given discrepancy, it will notify the Settling
10 Class Member of its decision in writing and within fifteen (15) calendar days. Merrill
11 Lynch agrees to provide additional available information that is reasonable and necessary
12 for the Claims Administrator to resolve any such discrepancies.

13 49. All putative Settling Class Members who have not returned a completed and
14 timely Request for Exclusion shall be bound by the dismissal of the Lawsuit and the release
15 of claims set forth in Paragraphs 53, 55, and 56 of this Agreement.

16 50. As soon as practicable after the Notice Period Deadline, the Claims
17 Administrator shall calculate the "Per OT Hour Payment" for use in the allocation and
18 distribution of the NSV to the Settling Class. The Per OT Hour Payment shall be
19 determined as follows:

20 (a) The Claims Administrator will determine, from either the spreadsheet
21 referenced in Paragraph 18 or the resolution of a dispute pursuant to Paragraph 48,
22 the number of overtime hours that a Settling Class member worked while actively
23 employed in a class-qualifying capacity during the Settling Class Period covered by
24 the spreadsheet discussed in Paragraph 18 (the "Compensable OT Hours");

25 (b) The total number of Compensable OT Hours attributable to all
26 Settling Class members will then be divided into the NSV, with the number of
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1 Compensable OT Hours as the denominator and the NSV as the numerator, with the
2 resulting number determined to two (2) decimal places.

3 (c) The product of this calculation will be the Per Compensable OT Hour
4 Payment.

5 51. The disbursement to each Settling Class Member shall be the number which
6 results from dividing the NSV by the total Compensable OT Hours worked by all Settling
7 Class Members and multiplying that number by the number of Compensable OT Hours
8 worked by the individual Settling Class Member (the “Class Member Payment”).

9 52. The Claims Administrator shall provide counsel for the Settling Parties with
10 a Final Accounting and Report not later than five (5) court days after the Effective Date.
11 This Final Accounting and Report will include the calculations discussed in this Section
12 XI.

13 XII. 14 RELEASES

15 53. **Release by Settling Class.** As of the Effective Date and in exchange for the
16 consideration, undertakings, and covenants undertaken by Merrill Lynch in this Agreement,
17 including but not limited to the provisions of Paragraph 8 and Section XIII, and to the
18 extent permitted by applicable law, the Settling Class hereby releases, discharges, and
19 covenants not to sue Merrill Lynch, Pierce, Fenner & Smith, Incorporated, including its
20 predecessors, successors, affiliates, parents, subsidiaries, related companies, employees,
21 agents, shareholders, officers, directors, attorneys, insurers, and any entity which could be
22 jointly liable with Merrill Lynch, Pierce, Fenner & Smith, Incorporated or any of them
23 (individually and collectively “the Merrill Lynch Releasees,”) from and with respect to any
24 and all actions, causes of action, suits, liabilities, claims, and demands whatsoever, whether
25 known or unknown, during the Settling Class Period, which the Settling Class, or
26 individual members thereof, has, or had against the Merrill Lynch Releasees, or any of
27 them, which are based on, or in any way related to any claims that the regular rate of
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1 compensation was miscalculated as alleged in the Lawsuit or as could have been alleged
2 in the Lawsuit based on the current or prior pleadings therein, including without limitation
3 claims for violation of: California Labor Code §§ 558, 1194, 226, 226.3, 1174, and 201-
4 203; Industrial Welfare Commission Order 4-2001 § 3(A) (and any other similar provision
5 of any applicable Wage Order); Business & Professions Code §§ 17200 *et seq.*; Labor Code
6 Private Attorney General Act of 2004, Labor Code §§ 2698 *et seq.*; or any other California
7 or local or federal law, ordinance, and/or administrative regulation relating to the proper
8 calculation of the regular rate of compensation for overtime purposes, and any additional
9 claims for penalties, wages, interest or other monies predicated on same (the “Released
10 Claims”). All other claims in the Lawsuit, not related in whole or in part to the alleged
11 miscalculation of the regular rate, will be dismissed without prejudice.

12 (a) The Released Claims include specifically, by way of further
13 description, but not by way of limitation, any and all claims arising out of or in any
14 way related to any and all attorneys’ fees, attorneys’ costs/expenses, fines, penalties,
15 wages, interest, restitution, liquidated damages, punitive damages, declaratory relief,
16 and/or injunctive relief allegedly due and owing by virtue of the Released Claims
17 referenced in this Paragraph 53, whether based on statutory, regulatory, or common
18 law (including but not limited to any such claims based on the California Labor
19 Code, Business and Professions Code, Civil Code, Order of the Industrial Welfare
20 Commission, and/or Code of Civil Procedure).

21 (b) The Settling Class Members acknowledge and/or are deemed to
22 acknowledge that they may hereafter discover claims in addition to or different from
23 those which they now know or believe to exist with respect to the subject matter of
24 this Agreement and/or this release, and which, if known or suspected at the time of
25 executing this Agreement, may have materially affected this release. Nevertheless,
26 the Settling Class Members hereby waive any right, claim, or cause of action that
27 might arise as a result of such different or additional claims or facts.
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1 54. **Additional Release by Named Plaintiff.** In exchange for the consideration,
2 undertakings, and covenants undertaken by Merrill Lynch in this Agreement, including but
3 not limited to the provisions of Paragraphs 8 and 39, and to the extent permitted by
4 applicable law, the Named Plaintiff – in addition to the release set out in Paragraph 53 of
5 this Agreement – further hereby releases, discharges, and covenants not to sue the Merrill
6 Lynch Releasees with respect to and from any and all claims, charges of discrimination,
7 demands, liens, agreements, contracts, covenants, actions, suits, causes of action, disputed
8 wages, obligations, debts, expenses, attorneys’ fees, damages, penalties, interest,
9 judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise,
10 whether now known or unknown, suspected or unsuspected, and whether or not concealed
11 or hidden, which they now own or hold or they have at any time heretofore owned or held,
12 arising out of or in any way connected with her employment, separation of employment,
13 or any other relationship with, the Merrill Lynch Releasees, or any other transactions,
14 occurrences, acts or omissions or any loss, damage or injury whatever, known or unknown,
15 suspected or unsuspected, resulting from any act or omission by or on the part of said
16 Merrill Lynch Releasees, or any of them, committed or omitted prior to the date of the
17 Court’s order granting final approval; provided, however, that claims under the Age
18 Discrimination in Employment Act, as modified by the Older Workers Benefits Protection
19 Act, are excluded (collectively, “Named Plaintiff’s Claims”). Aside from the
20 aforementioned limitation, the parties intend the Named Plaintiff’s release to be general
21 and comprehensive in nature and to release all Named Plaintiff’s Claims and potential
22 Named Plaintiff’s Claims against the Merrill Lynch Releasees to the maximum extent
23 permitted at law. Named Plaintiff’s Claims being released include specifically, by way of
24 description, but not by way of limitation, any and all claims arising out of or in any way
25 related to: (i) any interactions between Named Plaintiff and the Merrill Lynch Releasees;
26 (ii) Named Plaintiff’s employment, separation of employment, contractual, and/or quasi-
27 contractual relationship with the Merrill Lynch Releasees; (iii) any allegations as to
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1 disputed wages, remuneration, and/or other compensation, due by operation of statute,
2 ordinance, contract, or quasi-contract; (iv) any federal, state, or local law prohibiting
3 discrimination or retaliation on the basis of age, race, color, ancestry, religion, disability,
4 sex, national origin, or citizenship, including, without limitation, claims under Title VII,
5 the California Fair Employment and Housing Act, the California Labor Code, the
6 California IWC Orders, the Employee Retirement Income Security Act, and the Americans
7 With Disabilities Act or any other similar statutes whatever the city, county, state, or
8 country of enactment; (v) any claims under the Family and Medical Leave Act of 1993
9 and/or the California Family Rights Act; and (vi) any transactions, occurrences, acts,
10 statements, disclosures, or omissions occurring prior to the date of the Court's order
11 granting final approval.

12 55. **Waiver of California Civil Code Section 1542.** All Settling Class
13 Members (including, without limitation, the Named Plaintiff) intend and/or are deemed to
14 intend that this Agreement should be effective as a bar to any and all of the claims released
15 by Paragraphs 53 and 54. In furtherance of this intention, all Settling Class Members
16 expressly waive any and all rights or benefits conferred on them by the provisions of
17 Section 1542 of the California Civil Code, which provides as follows:

18 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
19 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**
20 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
21 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
22 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR**
23 **HER SETTLEMENT WITH THE DEBTOR.”**

24 All Settling Class Members understand fully the statutory language of Civil Code §
25 1542, and, with this understanding, assume all risks for claims released hereunder that have
26 already arisen or may in the future arise, whether known or unknown, suspected or
27 unsuspected, and specifically waive all rights they may have under California Civil Code
28 § 1542. The Settling Class Members understand that, if any of the facts relating in any
manner to the Lawsuit, or to the release and dismissal of claims as provided in this

1 Agreement, are hereafter found to be other than or different from the facts now believed to
2 be true, they have expressly accepted and assumed that risk and agree that this Agreement
3 and the release of claims contained herein shall nevertheless remain effective. The Settling
4 Class desires and intends, or is deemed to desire and intend, that this Agreement shall be
5 given full force and effect according to each and all of its express terms and provisions,
6 including those relating to unknown and unsuspected claims, if any, as well as those
7 relating to the claims referred to above.

8 56. The waiver contained in Paragraph 55, above, is not intended to expand the
9 nature of the claims released by the Settling Class beyond the Released Claims set out in
10 Paragraph 53, but rather is intended to ensure that the release set out in Paragraph 53 is
11 fully enforceable and is not impeded by Section 1542.

12 **XIII.**
13 **ADDITIONAL TERMS AND CONDITIONS**

14 57. Settlement Fair and Reasonable

15 Class Counsel has considerable experience in litigating and settling wage-
16 and-hour class actions of this type and is sufficiently familiar with the facts of this case and
17 the applicable laws and regulations to make an informed judgment as to the fairness of this
18 Settlement. In light of this experience, and for reasons that will be more fully explained in
19 Class Counsel's motion for preliminary approval, Class Counsel and the Named Plaintiff
20 believe that the settlement terms herein are fair and reasonable with regard to the interests
21 of the Settling Class.

22 58. Settlement the Result of Arm's-Length Bargaining.

23 The terms of the settlement of this Lawsuit resulted from approximately a
24 year of litigation generally, as well as a full day mediation before and many follow-up
25 communications with a third-party neutral.
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1 59. Notices.

2 Except for Settling Class Member notices which are required herein to be
3 made to or by the Claims Administrator, all notices, requests, demands, and other
4 communications related to or in connection with this Agreement shall be in writing, and
5 shall be provided by appropriate method depending on the urgency (*e.g.*, personal delivery,
6 facsimile, overnight delivery, or first-class U.S. mail) to:

7 **TO THE SETTLING CLASS:**

8 Edward J. Wynne
9 Wynne Law Firm
10 Wood Island
11 80 E. Sir Francis Drake Blvd., Ste. 3-G
12 Larkspur, CA 94939
13 Telephone: 415-461-6400
14 Facsimile: 415-461-3900

7 **TO MERRILL LYNCH:**

8 Adam P. KohSweeney
9 O'Melveny & Myers LLP
10 Two Embarcadero Center
11 San Francisco, CA 94111-3823
12 Telephone: 415-984-8912
13 Facsimile: 415-984-8701

12 60. No Admission of Liability.

13 Nothing herein shall constitute any admission by Merrill Lynch of
14 wrongdoing or liability or of the truth of any factual allegations in the Lawsuit. Nothing
15 herein shall constitute an admission by Merrill Lynch that the Lawsuit was properly
16 brought as a class or representative action other than for settlement purposes. To the
17 contrary, Merrill Lynch has denied and continues to deny each and every material factual,
18 procedural, and/or legal allegation and alleged claim asserted in the Lawsuit, and has
19 contended throughout that it has employment policies in place that meet or exceed the
20 requirements of applicable law. To this end, the settlement of the Lawsuit, the negotiation
21 and execution of this Agreement, and all acts performed or documents executed pursuant
22 to or in furtherance of this Agreement or the settlement: are not, shall not be deemed to be,
23 and may not be used as, an admission or evidence of any wrongdoing or liability on the
24 part of Merrill Lynch or of the truth of any of the factual allegations in the Complaint in
25 the Suit; and are not, shall not be deemed to be, and may not be used as, an admission or
26 evidence of any fault or omission on the part of Merrill Lynch in any civil, criminal or
27 administrative proceeding in any court, administrative agency, or other tribunal.
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1 61. Modification by Writing Only.

2 This Agreement, and its terms and Exhibits, may be modified only in a
3 writing signed by all counsel of record for the parties, and will not become effective unless
4 and until approved by the Court or otherwise as ordered by the Court.

5 62. Representations.

6 The Named Plaintiff and Class Counsel represent that they are presently
7 unaware of any other lawsuit or administrative proceeding which alleges any of the claims
8 asserted by the Lawsuit.

9 The Named Plaintiff, on behalf of themselves and the Settling Class, has expressly
10 authorized Class Counsel to take all appropriate action required or permitted to be taken
11 pursuant to this Agreement to effectuate its terms.

12 Each attorney executing this Agreement or any of its Exhibits on behalf of any party
13 hereto hereby warrants that full authority to do so has been given by his/her client(s).

14 Merrill Lynch, Class Counsel, and Named Plaintiff waive their right to file an appeal,
15 writ, or any challenge whatsoever to the terms of this Agreement; provided, however, that
16 Class Counsel and the Named Plaintiff may appeal the Court's determinations with regard
17 to the requests set out in Paragraphs 38 and 39. Consistent with Paragraph 42, however,
18 any such appeal will have no effect whatsoever on the other terms and provisions of this
19 Agreement, including, by way of example but not of limitation, the releases set out in
20 Paragraphs 53, 54, 55, and 56.

21 The Settling Parties represent and agree that neither have received and/or relied
22 upon any advice and/or representations from the other party and/or its attorneys as to the
23 necessity for withholding or the taxability of the consideration paid pursuant to this
24 Agreement, whether pursuant to federal, state, or local income tax statutes or otherwise.

25 63. Further Cooperation.

26 The Settling Parties and their respective counsel of record shall proceed
27 diligently to prepare and execute all documents, to seek the necessary Court approvals,
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1 and to do all other things reasonably necessary to conclude this Settlement.

2 64. Construction and Integration.

3 This Agreement, including its exhibits, constitutes the entire agreement and
4 understanding between the Settling Parties, and supersedes any previous agreements or
5 understandings between the Settling Parties. No representations, warranties, or
6 inducements have been made to any party concerning the subject matter of this Agreement
7 and/or exhibits other than the representations, warranties, and covenants contained in such
8 documents. This Agreement and related exhibits shall be construed each as a whole, and
9 with reference to one another, according to their fair meaning and intent. Each of the
10 Settling Parties represent that its/her counsel has participated and cooperated in the drafting
11 and preparation of this Agreement and related exhibits; hence, in any construction to be
12 made of this Agreement and/or exhibits, the same shall not be construed against any party
13 on the basis that said party was the drafter.

14 65. Governing Law.

15 This Agreement and the Exhibits hereto shall be deemed to have been
16 negotiated, executed, and delivered, and to be wholly performed, in the State of California.
17 The rights and obligations of the parties under the Agreement shall be construed and
18 enforced in accordance with, and be governed by, the substantive and procedural laws of
19 the State of California without regard to California's choice of law principles.

20 66. Counterparts.

21 This Agreement may be executed in one or more faxed or e-mailed
22 counterparts, which may be filed with the Court. All executed counterparts, and each of
23 them, shall be deemed to be one and the same instrument. Once available, a complete set
24 of executed counterparts shall be filed with the Court. Copies of the complete set of
25 executed counterparts may be used for all purposes in lieu of the originals and shall have
26 the same force and effect as the originals.

IN WITNESS WHEREOF, the undersigned Settling Parties and their duly authorized representatives accept and agree to the terms of this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.

Barbara Scrooc 12/14/2021
Date

Named Plaintiff and Class and
PAGA Representative

By: Aaron J. Longo Date

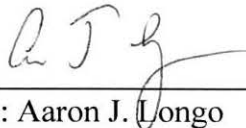
SVP & Assistant General Counsel,
for and on behalf of Merrill
Lynch, Pierce, Fenner & Smith,
Incorporated

1
2 **IN WITNESS WHEREOF**, the undersigned Settling Parties and their duly
3 authorized representatives accept and agree to the terms of this Agreement and hereby
4 execute it voluntarily and with a full understanding of its consequences.

5
6 _____
Barbara Scrooc

Date

7
8 Named Plaintiff and Class and
9 PAGA Representative

10
11 
12 _____
By: Aaron J. Longo

12/15/21

Date

13 SVP & Assistant General Counsel,
14 for and on behalf of Merrill
15 Lynch, Pierce, Fenner & Smith,
16 Incorporated

1
2 **APPROVED AS TO CONTENT AND**
3 **FORM:**

4 **WYNNE LAW FIRM**

Edward J. Wynne

5 **CLAPP & LAUINGER LLP**

James F. Clapp

7 

12/15/2021

8
9 By: Edward J. Wynne

Date

10 Class Counsel and
11 Attorneys for Named Plaintiff
Barbara Scrooc and the Class

12 **O'MELVENY & MYERS LLP**

13 Adam P. KohSweeney

14 Racquel B. Martin

15 

12/15/2021

16 By: Adam P. KohSweeney

Date

17 Attorneys for Defendant
18 Merrill Lynch, Pierce, Fenner &
19 Smith, Incorporated