

PAGA SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and General Release (“Agreement” or “Settlement”) is made by and between Xi Chen (“Plaintiff”) as a representative of the State of California and the allegedly “aggrieved employees”, and Defendant City National Bank (“Defendant”). Plaintiff and Defendant are collectively referred to as the “Parties” and may be individually referred to as a “Party.” The “Settlement Group” consists of all individuals employed by Defendant in California and classified as exempt in Credit Analyst and Credit Officer positions who worked any time from February 5, 2019 through the earlier of: (1) the date the Court approves this Settlement, or (2) December 31, 2020 (the “Covered Period”). This Agreement is made in consideration of the following facts:

WHEREAS, on February 5, 2020, Plaintiff filed a letter with the Labor and Workforce Development Agency (“LWDA”) giving notice of her intent to pursue a representative action pursuant to the California Private Attorney General Act (“PAGA”) set forth in California Labor Code §2698-99 *et. seq.*, on behalf of herself and the State of California as well as on behalf of a proposed group of aggrieved employees. Plaintiff alleged that Defendant violated various provisions of the California Labor Code, including Sections §§ 201, 202, 203, 204, 206, 210, 216, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1198, 2802, 2698, 2699.3, and Wage Order 4.

WHEREAS, on March 5, 2020, Plaintiff filed an amended notice with the LWDA to clarify the description of the proposed group of aggrieved employees.

WHEREAS, Plaintiff and Defendant entered into a tolling agreement on April 7, 2020 prior to mediations conducted on August 5, 2020 and September 14, 2020.

WHEREAS, Plaintiff will file a Complaint attached as Exhibit A in San Francisco Superior Court following execution of this Agreement.

WHEREAS, Defendant denies all of the allegations in the Complaint and denies that it has committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct.

WHEREAS, the Parties desire to compromise, settle, and release all claims for penalties and unpaid wages brought under PAGA asserted in the Complaint and LWDA notices, which occurred through to the date the Court approves this Agreement (the “Released Claims,” as defined below).

NOW, THEREFORE, in consideration of the covenants herein set forth, the Parties hereto agree as follows:

1. Effective Date

The Effective Date of this settlement is the date on which the settlement is approved and the Court’s order approving the settlement of the PAGA claim (“Judgment”) is entered becomes final. For purposes of this agreement, the Court’s Judgment as to the PAGA claim “becomes

final” the date of the Court’s judgment if the LWDA does not move to intervene in the lawsuit and does not object to the settlement. If the LWDA does move to intervene or objects to the settlement, then the Court’s Judgment as to the PAGA claim “becomes final” the later of: if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the Court’s Judgment (this time period shall not be less than 60 calendar days after the Court’s Judgment is entered); (ii) the date affirmance of an appeal of the Judgment becomes final under the California Rules; or (iii) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Judgment.

2. Non-Admission of Liability

Plaintiff acknowledges that the execution of this Agreement and the payment of consideration or any other obligation hereunder are not and shall not be construed in any way as an admission of wrongdoing or liability on the part Defendant and any of its related entities. Plaintiff further acknowledges that Defendant denies all allegations of wrongdoing alleged in the Complaint. Defendant intends, by this Agreement, merely to avoid the expense, delay, uncertainty, and burden of continued litigation. This Agreement is a settlement document and shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408 and/or any other similar law, be inadmissible in evidence in any proceeding, except in an action or proceeding to approve the Settlement, and/or interpret or enforce this Agreement.

3. Conditional Settlement and Court Approval

This Agreement is conditioned upon the San Francisco County Superior Court’s order granting approval of the Settlement and issuing a Judgment on the PAGA claim. Upon execution of this Agreement, Plaintiff’s counsel shall promptly prepare a joint motion for approval of the PAGA settlement which Defendant’s counsel will have at least seven (7) calendar days to review and revise prior to filing by Plaintiff. In the event that Defendant’s counsel does not provide revisions to the draft motion within this time period, then Plaintiff may file the motion as a unilateral motion for approval, in substantially similar form to the draft provided to Defendant.

The Parties and their counsel agree to cooperate fully with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents, and to take such other action as may be reasonably necessary to implement the terms of this Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions or actions that may become necessary to effectuate the terms of this Agreement, the Parties shall seek first the assistance of the Mediator (Howard Hay, Esq.) and then the Court to resolve such disagreement.

Provided that the Court’s order approving the Parties’ settlement of the PAGA claim and accompanying Judgment is substantially consistent with the terms and conditions of the Agreement, Plaintiff, on behalf of herself and the Settlement Group, hereby waives any and all rights to appeal in connection with any issue in the Order Approving Settlement, including, but

not limited to, all rights to any post-judgment proceeding and/or appellate proceeding, such as a motion to vacate or set-aside judgment, a motion for new trial, and any extraordinary writ, and the Order Approving Settlement will become final and non-appealable at the time it is entered.

Should the Court not approve the settlement as materially set forth in this Agreement, the Parties agree to cooperate in good faith to modify this Agreement and obtain Court approval.

4. Settlement Payments

The total gross amount of the settlement of the PAGA claim is \$500,000 (“Gross Settlement Amount”), which shall be broken down as set forth below (subject to the approval of the Court).

- (i) **Plaintiff’s Attorneys’ Fees.** \$125,000 shall be allocated to the payment of Plaintiff’s attorney’s fees incurred on behalf of Plaintiff and the Settlement Group. (“Plaintiff’s Counsel,” as used in this Agreement shall refer to Van Hook Law Firm and The Byrne Law Group.)
- (ii) **Plaintiff’s Attorneys’ Costs.** Up to \$6,500 shall be allocated for the reimbursement of Plaintiff’s Counsel’s out-of-pocket litigation costs incurred on behalf of Plaintiff and the Settlement Group.
- (iii) **Settlement Administration Costs.** Costs of up to \$5,000 shall be allocated to the Settlement Administration.
- (iv) **PAGA Penalties Payment.** Estimated net of \$363,500 of the Gross Settlement shall be allocated to resolve all potential PAGA penalties (“PAGA Penalties Payment”), Seventy five percent (75%) (\$272,625) of which shall be transmitted to the LWDA, and 25% (\$90,875) of which shall be distributed to the Settlement Group as described herein. The amounts paid to the Settlement Group will be reported on an IRS Form 1099.

Should the Court reduce Plaintiff’s Attorneys’ Fees and/or Plaintiff’s Attorneys’ Costs, the amount will be allocated back to the PAGA Penalties Payment.

Plaintiff acknowledges that she has obtained no tax advice from Defendant and that neither Defendant nor Counsel for Defendant has made any representations concerning the tax consequences, if any, of the above amounts in this Agreement. To the extent that this Agreement is interpreted to contain or constitute advice regarding any U.S. or Federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendant is not responsible for any employee tax obligations regarding the allocation of the allocation of the settlement payments.

5. Settlement Administration

The parties have agreed to use Phoenix Settlement Administrators to act as a third-party settlement administrator ("Settlement Administrator"). Phoenix Settlement Administrators has agreed to carry out all duties for an amount not to exceed \$5,000.

Within fifteen (15) days of the Effective Date, Defendant agree to provide the Settlement Administrator with the full names, last known addresses, Social Security Numbers, and the number of pay periods during the Covered Period for members of the Settlement Group in an Excel spreadsheet or similar format (the "Settlement Group Database"). Defendant will provide the Settlement Group Database to the third-party administrator on a confidential basis.

It is estimated that there are 384 Aggrieved Employees who collectively worked 13,052 pay periods through the date of the parties' September 14, 2020 mediation. Attached as Exhibit A to this Agreement is a list of the anticipated Aggrieved Employees (to be listed by City National Bank employee identification number) according to Defendant's records.

The Gross Settlement Amount shall be funded by wiring payment to the Settlement Administrator within 30 (thirty) days of the Effective Date.

Each member of the Settlement Group shall be assigned a percentage share of the estimated \$90,875 allocated to the PAGA Penalties Payment (the "Individual Settlement Payments"). The percentage share shall be based upon the total number of pay periods the member of the Settlement Group was employed during the period from February 5, 2019 through September 14, 2020 in comparison to the total number of pay periods all members of the Settlement Group were employed during the period from February 5, 2019 through the Covered Period. The number of pay periods employed by each member of the Settlement Group shall be determined based upon the records of Defendant.

Within 15 days after the Settlement Administrative has received from Defendant both: (1) the Settlement Group Database and (2) the Gross Settlement Amount, the Settlement Administrator shall cause all Settlement Payments to be paid, including the payment to the LWDA, the payment to the Settlement Group, and the payments to Plaintiff's Counsel for the approved attorney's fees and costs. The Settlement Administrator shall also provide each member of the Settlement Group with a writing stating that "City National Bank recently reached a settlement with a representative acting on behalf of the state of California under the California Labor Code Private Attorneys General Act, San Francisco Superior Court No. _____ and this check is your portion of the settlement," to be distributed with or on the check. As a result of this settlement, neither the LWDA, nor any person or entity purporting to act on its behalf, may pursue any of the Released Claims.

The Settlement Administrator shall make all appropriate information reports to the appropriate federal and state taxing authorities regarding all payments made pursuant to this Agreement.

Checks issued to members of the Settlement Group shall be valid and negotiable for 180 days from the date of issuance. However, it is possible that after all payments described herein are made, some residue may remain as the result of either: (1) one or more members of the

Settlement Group failing to cash checks mailed to them; or (2) circumstances that cannot be anticipated. If, after payment of the Gross Settlement Amount has been made as required herein and any residue remains, such residue shall be distributed by the Settlement Administrator to the California State Controller's Office for unclaimed property in the name of the Aggrieved Employee.

6. The Release of Claims on Behalf of Plaintiff, the State, and the Settlement Group

Upon the Effective Date, Plaintiff, on behalf of herself and as a PAGA representative of the LWDA, the State of California, and the Settlement Group, (which includes any legal heirs and/or successors-in-interest of each and every member of the Settlement Group) hereby and forever mutually and fully release, acquit, and discharge and covenant not to sue City National Bank, including any of its past present, and future divisions, affiliates, parents, subsidiaries, predecessors, successors, assigns, shareholders, owners, officers, directors, employees, agents, trustees, attorneys, representatives, administrators, fiduciaries, beneficiaries, subrogees, executors, partners and privies (collectively the "Released Parties" and each a "Released Party" or "Releasee") for any and all debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorneys' fees, damages, or interest based on any and all PAGA claims seeking civil penalties under California Labor Code sections 201, 202, 203, 204, 206, 210, 216, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1198, 2802, 2698, 2699.3, Wage Order 4, and other applicable Wage Order(s) ("Released Claims") predicated on claims that are or could have been alleged against Defendant in the Complaint and PAGA notices that occurred during the Covered Period, including all PAGA claims that could arise based on allegations of misclassification, meal and rest break violations, unpaid wages, minimum wage violations, regular rate and overtime violations, failure to make timely payments, wage statement violations, failure to reimburse business expenses, failure to maintain payroll records, and failure to pay final wages (the "Released Claims").

The consideration provided to the LWDA and the Settlement Group in this Agreement shall be the sole relief, legal or equitable, provided for the Released Claims.

7. Representation From Plaintiff's Counsel

Plaintiff's Counsel represent that their firms do not currently represent any other member of the Settlement Group aside from Plaintiff Chen or any other individual seeking claims against Defendant for violations of the California Labor Code or federal wage statutes.

8. Voluntary Agreement

The Parties expressly declare and represent that they have read the foregoing Agreement and have consulted with counsel, or had the opportunity to consult with counsel, regarding the meaning of the provisions, terms, and conditions contained herein. The Parties further expressly declare and represent that they fully understand the content and effect of this Agreement, and that they approve and accept the terms and conditions contained herein, and that this Agreement is executed freely and voluntarily.

9. Binding Effect

This Agreement shall be binding upon and inure to the benefit of the respective Parties hereto, or their respective legal successors, heirs, administrators, executors, assigns, and each of them.

10. Captions

The captions utilized herein have been inserted solely for identification and reference purposes only and shall not be used in the construction or interpretation of this Agreement.

11. Choice of Law

The rights and obligations of the Parties shall be construed and enforced in accordance with, and governed by, the laws of the State of California. California law shall govern the interpretation of this Agreement even if a choice of law analysis under state or federal law would dictate that another forum's law be applied.

12. Severability

If any non-material provision, term, section, or paragraph of this Agreement shall be found to be invalid, illegal or unenforceable, all remaining provisions, terms, sections, or paragraphs shall continue in full force and effect and remain binding on all parties. If any provision, term, section or paragraph of this Agreement is determined to be unenforceable, such provision, term, section or paragraph shall be modified so that the unenforceable provision, term, section or paragraph is enforceable to the greatest extent possible while maintaining the objective intent of the Agreement.

13. Modifications

This Agreement may be amended only by a written instrument executed by all Parties hereto.

14. Counterparts and PDF signatures sent by email

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute but one and the same instrument. Parties' signatures sent via PDF through email and/or signatures through DocuSign or similar electronic signature program, shall be considered original signatures and enforceable for all purposes, including but not limited to a motion to enforce settlement pursuant to California Code of Civil Procedure 664.6.

15. Continuing Jurisdiction

The Court shall retain continuing jurisdiction over this case to ensure the continuing implementation of the provisions of this settlement agreement pursuant to California Code of Civil Procedure 664.6.

16. Construction

The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arm's-length negotiations between the Parties and that this Agreement constitutes the entire agreement between Plaintiff and Defendant regarding the PAGA claim in the Complaint and PAGA notices asserted by Plaintiff against Releasees.

17. Integration Clause

This Agreement, including all documents incorporated herein by reference, sets forth the entire understanding of the Parties in connection with the Settlement of the PAGA action. None of the Parties hereto has made any statement, representation, or warranty in connection herewith, except as expressly set forth herein, which has been relied upon by the other Party or which served as an inducement for the other Party to enter into this Agreement and supersedes any prior or contemporaneous negotiations, representations, promises, agreements, and/or understandings of the Parties with respect to the PAGA action, whether written or oral.

IN WITNESS WHEREOF, the Parties knowingly and voluntarily executed this Agreement as of the date set forth below.

Agreed to by Plaintiff:

Dated: 12/12/20

Xi Chen

Signature: Xi Chen (Dec 12, 2020 23:47 GMT+8)

Print Name: Xi Chen

Agreed to by Defendant:

CITY NATIONAL BANK.

Dated: _____

Signature: _____

Print Name: _____

Title: _____

APPROVED AS TO FORM ONLY:

VAN HOOK LAW FIRM

Dated: 12/12/2020


John Van Hook
Attorney for Plaintiff Xi Chen

Dated: 12/12/20

THE BYRNE LAW GROUP

Adrian Byrne

Adrian Byrne (Dec 12, 2020 13:12 PST)

Adrian Byrne
Attorney for Plaintiff Xi Chen

SEYFARTH SHAW LLP

Michael Kopp

Dated: 12-31-20

Michael Kopp
Attorneys for Defendant City National Bank

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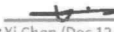
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Agreed to by Plaintiff:

Xi Chen

Dated: 12/12/20

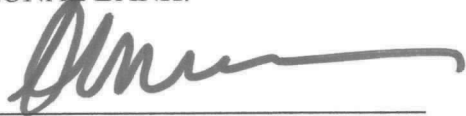
Signature: 
Xi Chen (Dec 12, 2020 23:47 GMT+8)

Print Name: Xi Chen

Agreed to by Defendant:

CITY NATIONAL BANK.

Dated: 12/28/20

Signature: 

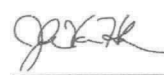
Print Name: Stacey R. Turner

Title: Assoc. General Counsel

APPROVED AS TO FORM ONLY:

VAN HOOK LAW FIRM

Dated: 12/12/2020


John Van Hook
Attorney for Plaintiff Xi Chen