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ANGELA ANTENUCCI

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF SAN FRANCISCO

16 ANGELA ANTENUCCI, an individual, on
17 behalf of herself and all others similarly
situated,

18 Plaintiff,

19 v.

20 BANK OF THE WEST; a California
21 corporation; and DOES 1 THROUGH 10,
inclusive,

22 Defendants.

Case No. CGC-20-583746

CLASS ACTION

*[Assigned for All Purposes Hon. Andrew
Y.S. Cheng, Dept. 613]*

**CLASS AND REPRESENTATIVE
ACTION SETTLEMENT AND
AGREEMENT**

Action Filed: March 16, 2020

1 **CLASS AND REPRESENTATIVE ACTION SETTLEMENT AGREEMENT**

2 This Class and Representative Action Settlement and Release Agreement (“Settlement”
3 or “Agreement”) is entered into between Plaintiff Angela Antenucci (“Plaintiff”), individually
4 and in her capacity as the representative of Class Members and Aggrieved Employees as defined
5 herein, on the one hand, and Defendant Bank of the West (“Defendant”), on the other hand,
6 subject to the terms and conditions hereof and the approval of the Court. Plaintiff and Defendant
7 are referenced collectively herein as “the Parties.”¹

8 **I. CONDITIONAL NATURE OF SETTLEMENT**

9 This Settlement is made in compromise of disputed claims as set forth in the class action
10 lawsuit captioned *Angela Antenucci v. Bank of the West*, which is now pending in the Superior
11 Court of California, County of San Francisco as Case No. CGC-20-583746. This lawsuit will be
12 referred to herein as “the Lawsuit.” This Agreement is made for the sole purpose of settling the
13 Lawsuit on a class-wide basis. The Settling Parties (as defined in Section 2 of this Agreement)
14 enter into this Agreement on a conditional basis.

15 Furthermore, in the event that the Court does not enter the Final Approval Order, or a
16 Judgment is not entered in the Lawsuit, or the conditions precedent are not met for any reason,
17 this Settlement shall be deemed null and void *ab initio*, it shall be of no force or effect
18 whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the negotiations,
19 terms and entry of the Agreement shall remain subject to the provisions of California Evidence
20 Code sections 1119 and 1152 and any other analogous rules of evidence that might apply.
21 Notwithstanding this provision, the Parties hereby stipulate that the terms of Section 15.13 shall
22 survive and be admissible in evidence even if the Settlement does not become final.

23 Defendant denies all claims as to liability, damages, penalties, interest, fees, restitution,
24 injunctive relief, and all other forms of relief as well as the class allegations asserted in the
25 Lawsuit. Defendant has agreed to resolve the Lawsuit through this Settlement, but to the extent
26 this Settlement is deemed void, Defendant does not waive, but rather expressly reserves, all
27 rights to challenge all such claims and allegations in the Lawsuit upon all procedural and factual

28 _____
¹ Capitalized terms are defined in Section 3 unless otherwise noted.

1 grounds, including without limitation the ability to challenge class, collective, and representative
2 action treatment on any grounds, as well as asserting any and all other potential defenses or
3 privileges. The Class Representative and Class Counsel agree that Defendant retains and reserves
4 these rights. Specifically, the Class Representative and Class Counsel agree not to argue or
5 present any argument that, in the event this Settlement is not approved in full, that Defendant
6 could not file a motion for decertification, contest any class action certification on any grounds, or
7 assert any and all other potential defenses and privileges if this Lawsuit were to proceed. The
8 Class Representative and Class Counsel hereby waive such arguments and agree they will not
9 take a position contrary to this provision.

10 **II. PARTIES TO AGREEMENT**

11 This Agreement is made and entered into by and among the following, herein referred to
12 as the “Settling Parties”: (i) the Class Representative (on behalf of herself and each of the Class
13 Members and Aggrieved Employees), with the assistance of Class Counsel; and (ii) Defendant,
14 with the assistance of its counsel of choice. The Settling Parties intend this Agreement to fully,
15 finally, and forever resolve, discharge, and settle the Released Claims upon and subject to the
16 terms and conditions hereof.

17 **III. DEFINITIONS**

18 As used in this Agreement, the following terms shall have the meanings specified below:

19 3.1 “Aggrieved Employees” means all current and former non-exempt employees of
20 Defendant who, during the time period from March 6, 2019 to until the date the Court grants
21 preliminary approval of this Settlement, worked for Defendant in California in one of the
22 following three job titles within the Commercial Banking Group: Senior Loan Administrator
23 Specialist II, Senior Loan Administrator Specialist, and Loan Administrator Specialist II.

24 3.2 “Alleged Claims” means all claims alleged in the complaint(s) filed in the Lawsuit,
25 and all wage and hour class claims which could have been brought based on the factual allegations
26 contained in the complaint(s) filed in the Lawsuit, including but not limited to claims for: (1)
27 Failure to Pay Regular Wages; (2) Failure to Pay Overtime Compensation; (3) Failure to Provide
28 Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Furnish Timely and Accurate

1 Wage Statements; (6) Failure to Pay All Wages Due Upon Termination; (7) Violation of
2 California's Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200 et seq.; and (8)
3 Violation of Private Attorneys General Act (PAGA) (Lab. Code § 2698, et seq.). Alleged Claims
4 also means any and all claims asserted by the Class Representative for interest and attorneys' fees
5 and costs.

6 3.3 "Attorneys' Fees" means the fees for work performed by Class Counsel and
7 approved for reimbursement by the Court as set forth in Section 8.2 of this Agreement.

8 3.4 "Claims Administrator" or "Administrator" means Simpluris, Inc., who the
9 Parties have selected to administer this Settlement. The Parties may jointly select a different
10 claims administrator, subject to the approval of the Court.

11 3.5 "Claims Administration Costs" mean the fees and expenses reasonably and
12 necessarily incurred by the Claims Administrator as a result of performing the settlement
13 administration procedures and functions expressly required in this Settlement and shall include all
14 costs of administering the Settlement, including but not limited to: formatting, printing and
15 mailing the Notice Packet, including filling in individuating information about the amount each
16 Settlement Class Member is estimated to receive; performing a National Change of Address
17 database search of Class Member addresses to update prior to the initial mailing of the Notice
18 Packet; skip-tracing of bad addresses upon the return of undelivered Notice Packets; establishing
19 a toll-free phone number and post office box for receipt of Class Member communications;
20 establishing a website where Class Members may view and download the operative complaint,
21 this Settlement Agreement, the Settlement Notice, approval motions/briefing, as well as any
22 Orders issued by the Court; calculating, processing, reviewing, and issuing Settlement Payments
23 to participating Class Members and others as ordered by the Court; reviewing and resolving Class
24 Members' disputed claims regarding payments under this Agreement; calculating tax
25 withholdings and payroll taxes, making related payment to federal and state tax authorities, and
26 issuing tax forms relating to payments made under the Settlement; establishing a QSF or other
27 appropriate vehicle for receipt of the Gross Settlement Amount and disbursement of payments
28 provided by this Agreement and ordered by the Court; preparing any tax returns and any other

1 filings required by any governmental taxing authority or agency; and any other costs and fees
2 incurred and/or charged by the Claims Administrator in connection with the execution of its
3 duties under this Agreement, which is estimated at Three Thousand, Four Hundred and Ninety-
4 Five U.S. Dollars and No Cents (\$3,495.00).

5 3.6 "Class," "Class Members," and "Putative Class" means all current and former non-
6 exempt employees of Defendant who, during the time period from March 16, 2016 to until the
7 date the Court grants preliminary approval of this Settlement, worked for Defendant in California
8 in one of the following three job titles within the Commercial Banking Group: Senior Loan
9 Administrator Specialist II, Senior Loan Administrator Specialist, and Loan Administrator
10 Specialist II. The Class as defined is broad enough to encompass all classes and subclasses
11 outlined in Plaintiff's First Amended Complaint filed on May 8, 2020.

12 3.7 "Class Counsel" means:

13 David R. Markham (SBN 71814)
14 Maggie Realin (SBN 263639)
15 Lisa Brevard (SBN 323391)
16 THE MARKHAM LAW FIRM
17 888 Prospect Street, Suite 200
18 La Jolla, CA 92037
19 Telephone: 619-399-3995
20 Facsimile: 619-615-2067

21 Walter L. Haines (SBN 071075)
22 UNITED EMPLOYEES LAW GROUP
23 5500 Bolsa Avenue, Suite 201
24 Huntington Beach, California 92649
25 Telephone: 310-234-5678

26 3.8 "Class Period" means the period from March 16, 2016, through the date the Court
27 grants preliminary approval of this Settlement.

28 3.9 "Class Representative" and "Plaintiff" means Plaintiff Angela Antenucci.

3.10 "Court" means the Superior Court for the State of California, County of San
Francisco.

3.11 "Day" means calendar day, unless expressly stated otherwise.

3.12 "Defendant" and "Defendant" mean defendant Bank of the West.

3.13 "Defendant's Counsel" means:

1 Andrew R. Livingston (SBN 148646)
2 Kayla D. Grundy (SBN 300513)
3 Tierra D. Piens (SBN 315290)
4 ORRICK, HERRINGTON & SUTCLIFFE LLP
5 The Orrick Building
6 405 Howard Street
7 San Francisco, California 94105-2669
8 Telephone: 415-773-5700
9 Facsimile: 415-773-5759

10 3.14 "Effective Date" means the date on which the Court's Final Approval Order
11 becomes final. For purposes of this paragraph, the Court's Final Approval Order "becomes final"
12 upon the last to occur of the following: (a) the date of final affirmance on appeal of the Judgment;
13 (b) the date of final dismissal of any appeal from the Judgment or the final dismissal of any
14 proceeding to review the Judgment; or (c) if no appeal is filed, the expiration date of the time for
15 the filing or noticing of any appeal from the Court's Judgment.

16 3.15 "Employer Payroll Tax Liability" means payroll taxes paid by the employer
17 (FICA, FUTA, Medicare, and California payroll and withholding taxes).

18 3.16 "Final Approval Order" means an Order Granting Final Approval of Settlement of
19 the Lawsuit.

20 3.17 "Gross Settlement Amount," "Settlement Fund," and "Gross Settlement Fund" is
21 the sum of Seven Hundred and Fifty Thousand U.S. Dollars (\$750,000.00), which shall cover
22 payment of all claims on behalf of the Class and Aggrieved Employees, Claims Administration
23 Costs, Attorneys' Fees, Litigation Expenses, the portion of the PAGA Penalty Payment payable
24 to the State of California, the Service Enhancement Payment to the Class Representative, and
25 Employer Payroll Tax Liability. The Gross Settlement Amount is the maximum amount
26 Defendant may be required to pay under this Settlement.

27 3.18 "Judgment" means a judgment entered by the Court following entry of the Final
28 Approval Order.

3.19 "Last Known Address" means the most recently recorded mailing address for a
Class Member as such information is contained in the personnel records maintained by
Defendant.

1 3.20 “Lawsuit” means the lawsuit captioned lawsuit captioned *Angela Antenucci v.*
2 *Bank of the West*, which is now pending in the Superior Court of California, County of San
3 Francisco as Case No. CGC-20-583746.

4 3.21 “Litigation Expenses” means the expenses and costs of litigation incurred by Class
5 Counsel as detailed in their billing statement and approved for reimbursement by the Court as set
6 forth in Section 8.2 of this Agreement.

7 3.22 “LWDA” means the California Labor and Workforce Development Agency.

8 3.23 “Net Settlement Amount” means the Gross Settlement Amount less Class
9 Counsel’s Attorneys’ Fees, Litigation Expenses, Claims Administration Costs, the portion of the
10 PAGA Penalty Payment payable to the State of California, the Service Enhancement Payment to
11 the Class Representative, and the Employer Payroll Tax Liability. To the extent the Court does
12 not approve the full requested amount of Attorneys’ Fees, Litigation Expenses, Claims
13 Administration Costs, or the Service Enhancement Payment, the Net Settlement Amount will
14 increase accordingly.

15 3.24 “Notice of Pendency of Class Action Settlement And Final Hearing” or “Notice”
16 shall mean the notice of this Settlement to be provided to Class Members, in the same or
17 substantially same form as set forth in **Exhibit A** to this Agreement, pending approval by the
18 Court.

19 3.25 “Notice Packet” refers collectively to the documents mailed to the Class Members
20 pursuant to the terms of this Settlement and includes the following: (1) Notice (**Exhibit A**); (2)
21 Request for Exclusion Form (**Exhibit B**); (3) a Change of Address Form (**Exhibit C**), and (4) a
22 pre-printed return envelope addressed to the Claims Administrator.

23 3.26 “Notice Period” means a period of sixty (60) calendar days from the date the
24 Claims Administrator first mails the Notice Packet to Class Members. If the 60th day falls on a
25 Sunday or holiday, the Notice Period shall end on the next business day that is not a Sunday or
26 holiday.

27 3.27 “Notice Response Deadline” shall be the last day of the Notice Period.

28 3.28 “PAGA Penalty Payment” means amount to be paid to settle any and all Alleged

1 Claims for which penalties under California's Private Attorneys General Act ("PAGA"),
2 California Labor Code sections 2698 *et seq.*, may be sought or are otherwise available, as set
3 forth in Section 8.4 of this Agreement.

4 3.29 "PAGA Period" means period from March 6, 2019, through the date the Court
5 grants preliminary approval of this Settlement.

6 3.29(a) "PAGA Work Weeks" means the total number of weeks worked by an Aggrieved
7 Employee during the PAGA Period, rounded up to the next full week.

8 3.30 "Parties" mean the Plaintiff/Class Representative and the Bank of the West.

9 3.31 "QSF" shall mean the Qualified Settlement Fund established by the Claims
10 Administrator for the benefit of the Class Members and from which the Settlement Payments and,
11 if applicable, employee-side payroll taxes shall be paid.

12 3.32 "Reasonable Address Verification Measure" means utilization of the National
13 Change of Address Database maintained by the United States Postal Service prior to the initial
14 mailing of the Notice Packets, the customary skip-tracing measures used by the Administrator
15 upon the return of undelivered Notice Packets, and the forwarding of Notice Packets returned to
16 the Administrator with updated addresses affixed thereto by the U.S. Postal Service to the
17 updated address.

18 3.33 "Released Claims" shall have the meaning set forth in Section 11 of this
19 Agreement.

20 3.34 "Released Parties" means Defendant and each and all of its respective past and
21 present parents, subsidiaries, affiliated companies and corporations, and each and all of their
22 respective past and present directors, officers, managers, employees, general partners, limited
23 partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives,
24 predecessors, successors, divisions, joint venturers, assigns, or related entities, and each and all of
25 their respective executors, successors, assigns and legal representatives.

26 3.35 "Request for Exclusion" means the document which a Class Member must
27 complete and timely submit to request exclusion from the Settlement, in the form set forth in
28 **Exhibit B** to this Agreement, pending approval by the Court.

1 3.36 “Service Enhancement Payment” shall have the meaning set forth in Section 8.5 of
2 this Agreement.

3 3.37 “Settlement” means the terms and conditions set forth in this Agreement.

4 3.38 “Settlement Class” and “Settlement Class Member” mean all Class Members who
5 have not validly and timely requested exclusion from the Settlement after Notice and thus who
6 will become bound by the Judgment if and once the Effective Date occurs.

7 3.39 “Settlement Payment” means the total amount due to an individual Settlement
8 Class Member, which shall be calculated as described in Section 8.7 of this Agreement.

9 3.40 “Updated Address” means a mailing address that was updated via a Reasonable
10 Address Verification Measure, or an updated mailing address provided by the United States
11 Postal Service, a Settlement Class Member, or any other valid source.

12 3.41 “Work Weeks” means the total number of weeks worked by a Class Member
13 during the Class Period, rounded up to the next full week.

14 **IV. PROCEDURAL BACKGROUND**

15 On March 16, 2020, Plaintiff Angela Antenucci filed a class action lawsuit in San
16 Francisco Superior Court (Case No. CGC-20-583746) on behalf of herself and a putative class of
17 *all current and former non-exempt employees of Defendant, employed in California, who, during*
18 *the time period commencing four years before this complaint was filed, and until the date of*
19 *preliminary approval of this Settlement (“class period”), worked at any of Defendant’s offices as*
20 *a Commercial Banking Group Loan Administrator or a position with similar duties and/or job*
21 *titles.* Plaintiff’s operative complaint seeks damages on behalf of herself and a class including
22 unpaid wages, statutory penalties, interest, and attorney’s fees and costs.

23 The Parties have engaged in formal discovery. On June 25, 2020, Plaintiff served her first
24 set of interrogatories and document production requests. Defendant provided responses on
25 September 3, 2020. The Parties engaged in extensive meet and confer communications regarding
26 Defendant’s provided responses. On April 19, 2021, Defendant provided supplemental responses
27 to Plaintiff’s first set of interrogatories, and produced documents responsive to Plaintiff’s
28 production requests, including the policies and employee handbooks in effect during the class

1 period. On April 29, 2021, Defendant produced an agreed upon sampling of class member time
2 and pay records. Between May 18, 2021, to October 24, 2021, Defendant made eight other sets
3 of productions. In total, Defendant produced hundreds of pages of documents and data.

4 Around October 12, 2021, the Parties agreed to pursue private mediation and the Court
5 granted multiple stipulated proposed orders to continue all briefing and trial deadlines during the
6 pendency of mediation. The Parties engaged in arm's length negotiation including, but not limited
7 to, a full day mediation session on March 28, 2022, facilitated by David Rotman, who has
8 extensive experience in labor and employment litigation. Towards the end of the day-long
9 mediation, the Parties agreed to a memorandum of understanding of the key terms of the
10 Settlement, which was memorialized on the same day.

11 The Parties and their counsel are sufficiently familiar with the facts of this case and the
12 applicable laws to make an informed judgment as to the fairness of the Settlement, the respective
13 strengths and weaknesses of the claims of the class and the sub-classes Plaintiff sought to certify,
14 and the risks of proceeding in litigation. The Parties are represented by competent counsel and
15 have had the opportunity to consult with counsel prior to the signing this Agreement.

16 **V. DEFENDANT'S DENIAL OF LIABILITY**

17 Defendant specifically and generally denies any and all liability or wrongdoing of any sort
18 with regard to any of the Alleged Claims and makes no concessions or admissions of liability of
19 any sort. Defendant maintains that for any purpose other than settlement, the Lawsuit is not
20 appropriate for class action treatment pursuant to California Code of Civil Procedure § 382, and
21 that had this matter proceeded, Defendant have opposed class certification pursuant to California
22 Code of Civil Procedure § 382. Nonetheless, Defendant has concluded that further litigation
23 would be protracted, distracting and expensive, and that it is desirable that the Lawsuit be fully
24 and finally settled in the manner and upon the terms and conditions set forth in this Agreement.
25 Defendant has also taken into account the uncertainty and risks inherent in any litigation.
26 Defendant has therefore determined that it is desirable and beneficial to settle the Lawsuit in the
27 manner and upon the terms and conditions set forth in this Agreement.

28 The Parties agree there is a bona fide dispute as to whether wages and/or penalties are

owed to Plaintiff and the Class Members and neither this Agreement, nor the Settlement-related documents, nor the Settlement itself shall be construed as an admission of either fact or law on any issue by any Party.

VI. CLAIMS OF THE CLASS REPRESENTATIVE AND BENEFITS OF SETTLEMENT

The Class Representative and Class Counsel believe that the claims asserted in the Lawsuit have merit and that evidence developed to date supports the claims. However, the Class Representative and Class Counsel recognize and acknowledge the significant expense, resources and time required to continue proceedings necessary to prosecute the Lawsuit against Defendant through trial and through appeals. The Class Representative and Class Counsel have also taken into account the uncertain outcome and the risks of litigation, the difficulties and delays inherent in this and similar litigation, the challenges of maintaining class certification throughout the Lawsuit, and the problems of proving liability and damages and rebutting possible defenses to the Consolidated Class Action Complaint. Based upon their evaluation, the Class Representative and Class Counsel have determined that the settlement set forth in this Agreement is fair, reasonable, adequate, and in the best interests of the Class Representative, the Class, and the State of California. Both Class Counsel and the Class Representative believe that the settlement set forth in this Agreement confers substantial benefits upon the Class and each of the Class Members.

VII. CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT

7.1 The Parties enter into this Agreement and the Settlement on a conditional basis. This Agreement and Settlement will become final and effective only upon the occurrence of all of the following events:

- 7.1.1 The Court enters an order granting conditional certification of the proposed class and subclasses;
- 7.1.2 The Court enters an order granting preliminary approval of the Settlement;
- 7.1.3 The Court enters a Final Approval Order; and
- 7.1.4 The Effective Date occurs, and any challenge to the Settlement, whether by objection or appeal, is resolved in favor of enforcement of the Settlement.

1 7.2 Unless the Court orders otherwise or agreed in writing by the Parties, this
2 Agreement shall be deemed null and void *ab initio* upon the failure of any of these four
3 conditions to occur.

4 **VIII. SETTLEMENT CONSIDERATION—NO CLAIM FORM REQUIRED;**
5 **DEDUCTIONS FROM THE GROSS SETTLEMENT AMOUNT; CALCULATION**
6 **OF SETTLEMENT PAYMENTS FROM THE NET SETTLEMENT AMOUNT**

7 This shall be an all-in Settlement without a reversion. Class Members who do not request
8 exclusion from the Settlement using the procedures specified below will be automatically paid
9 without submitting any claim form.

10 8.1 **Payment of the Gross Settlement Amount:** Defendant will pay the
11 Gross Settlement Amount in full and final settlement of the Lawsuit. The Gross Settlement
12 Amount will constitute adequate consideration for this Settlement. Since any uncashed settlement
13 check funds will be distributed pursuant to the *cy pres* doctrine, this Agreement and the
14 associated Judgment do not and will not create any unpaid residue or unpaid residual, and no
15 distribution of such shall be required. No money shall revert to Defendant.

16 8.2 **Attorneys' Fees and Litigation Expenses:** Class Counsel will submit an
17 application for: (a) an award of Attorneys' Fees of no more than 33 1/3% or one third of the Gross
18 Settlement Amount (Two Hundred and Fifty Thousand U.S. Dollars (\$250,000)); and (b) an award
19 of Class Counsel's actual Litigation Expenses in the amount not to exceed \$28,000 (as documented
20 on an itemized cost sheet with appropriate support), both of which would be paid out of the Gross
21 Settlement Amount. The amounts set forth in this section will constitute complete consideration for
22 all work performed and expenses incurred to date and for all work to be performed and expenses
23 to be incurred through the completion of the Lawsuit, its settlement, and the effort to secure final
24 Judgment by Class Counsel. The Attorneys' Fees shall be allocated between the firms that serve
25 as Class Counsel as set forth in their fee-sharing agreements which will be disclosed to the Court
26 as part of filing the motion for preliminary approval.

27 8.2.1 In the event that the Court (or any appellate court) awards less than the
28 amount requested for Attorneys' Fees or Litigation Expenses, only the awarded amounts shall be
paid and shall constitute satisfaction of those obligations and full payment thereunder, and any

1 remaining or unawarded portion of the requested Attorneys' Fees or Litigation Expenses shall be
2 made a part of the Net Settlement Amount for distribution to Settlement Class Members. To the
3 extent the Court does not approve any or all of the amount of Attorneys' Fees or Litigation
4 Expenses, the Settlement shall remain binding except as otherwise provided, and this will not be a
5 justification for Plaintiff to withdraw from the Settlement.

6 8.2.2 Plaintiff's Counsel agrees to be solely responsible for any claims, liens or
7 other demands from persons or entities who previously represented Plaintiff and may seek to be
8 compensated out of the Gross Settlement Amount for attorneys' fees and/or legal costs arising
9 from prosecution of the Action against Defendant. If it is ever claimed or determined that some
10 portion of the Gross Settlement Amount should have been paid as Plaintiff's attorneys' fees
11 and/or costs to some person or entity other than Class Counsel, Class Counsel warrants and
12 agrees to pay and/or indemnify said amount, defend any claim for this amount, and hold
13 Defendant harmless from such liens or claims.

14 8.3 **Claims Administration Costs:** From the Gross Settlement Amount, Claims
15 Administration Costs shall be paid in an amount estimated at Three Thousand Four Hundred and
16 Ninety Five U.S. Dollars and No Cents (\$3,495.00), subject to approval from the Court.

17 8.4 **Payment of the PAGA Penalties:** From the Gross Settlement Amount,
18 Defendant will pay Sixty Thousand Dollars (\$60,000.00) for settlement of any and all Alleged
19 Claims for which penalties under PAGA, Labor Code section 2698 *et seq.*, may be sought or are
20 otherwise available, as the PAGA Penalty Payment. Pursuant to the express requirements of
21 Labor Code section 2699(i), the PAGA Penalty Payment shall be allocated as follows: \$45,000
22 (75%) to the LWDA for the enforcement of labor laws and education of employers, and \$15,000
23 (25%) to the Settlement Class Members who are also Aggrieved Employees as a part of the Net
24 Settlement Amount. The PAGA Penalty Payments to Settlement Class Members are not wages.

25 8.5 **Service Enhancement Payment to the Class Representative:** From the Gross
26 Settlement Amount, Plaintiff intends to request approval for, subject to Court approval, a Service
27 Enhancement Payment of up to Ten Thousand Dollars (\$10,000.00) for the Class Representative,
28 Plaintiff Angela Antenucci. The amount paid to the Class Representative is in consideration for

1 her efforts in connection with this Lawsuit. Class Representative is not providing a general
2 release, thus the Service Enhancement Award is not tethered in any way to any general releases.
3 The Class Representative shall be issued an Internal Revenue Service Form 1099 for any Service
4 Enhancement Payment. The Class Representative hereby acknowledges that she has obtained no
5 tax advice from Defendant and that neither Defendant nor its attorneys have made any
6 representation concerning the tax consequences, if any, of the Service Enhancement Payment.
7 The Class Representative agrees that she is solely responsible for the tax consequences of the
8 Service Enhancement Payment.

9 8.5.1 In the event that the Court (or any appellate court) awards less than the
10 amount requested for the Service Enhancement Payment, only the awarded amount shall be paid
11 and shall constitute satisfaction of those obligations and full payment thereunder, and any
12 remaining or unawarded portion of the requested Service Enhancement Payment shall be made a
13 part of the Net Settlement Amount for distribution to Settlement Class Members. To the extent the
14 Court does not approve any or all of the amount of the Service Enhancement Payment, the
15 Settlement shall remain binding except as otherwise provided, and this will not be a justification
16 for Plaintiff to withdraw from the Settlement.

17 8.5.2 The Service Enhancement Payment, if approved by the Court, is in addition
18 to Plaintiff's Settlement Payment as described in Section 8.7 below.

19 8.6 **Employer Payroll Tax Liability:** The Employer Payroll Tax Liability on the
20 portions of all Settlement Payments on account of wages in the form of back pay (as described in
21 Section 8.8 of this Agreement) shall be paid out of the Gross Settlement Amount.

22 8.7 **Payment to Settlement Class Members:** The Net Settlement Amount (as defined
23 in Section 3.23, after payment of all enumerated amounts from the Gross Settlement Amount)
24 shall be used to make the Settlement Payments described below.

25 8.7.1 Each Settlement Payment (not including the additional payment to
26 Aggrieved Employees) shall be calculated by dividing the Net Settlement Amount (less the
27 PAGA allocation) by the total number of Work Weeks worked by Settlement Class Members
28 then multiplying that amount by the number of Work Weeks the individual Settlement Class

1 Member worked as a non-exempt hourly employee working for Defendant in California during
2 the Class Period. Each additional payment to Aggrieved Employees will be calculated by
3 dividing the portion of the PAGA allocation to be paid to Aggrieved Employees by the total
4 number of PAGA Work Weeks worked by Aggrieved Employees then multiplying that amount
5 by the number of PAGA Work Weeks the Aggrieved Employee worked.

6 **8.8 Taxes:** For the purpose of calculating applicable taxes for the Settlement
7 Payments to Settlement Class Members (including any payments to the Class Representative
8 exclusive of any Service Enhancement Payment), the Parties agree that one-half (1/2) of each
9 Settlement Payment constitutes wages in the form of back pay (and each Settlement Class Member
10 will be issued an Internal Revenue Service Form W-2 for such payment to him or her), and one-
11 half (1/2) of each Settlement Payment constitutes interest, penalties, liquidated damages and other
12 non-wage payments (and each Settlement Class Member will be issued an Internal Revenue
13 Service Form 1099 for such payment to him or her). Defendant shall not be responsible for
14 payroll tax payments on any portion of the Gross Settlement Amount that is attributable to
15 Attorneys' Fees, Litigation Expenses, PAGA Penalty Payments, penalties, or interest. The Parties
16 further understand that the Class Representative and any Class Member who receives any
17 Settlement Payment pursuant to this Agreement shall be solely responsible for any and all tax
18 obligations associated with such receipt.

19 **8.9** Defendant will not use the Settlement Payments to calculate any additional
20 benefits including without limitation vacation, holiday pay, pension, or 401(k) plan contributions.
21 Defendant contends that the Settlement Payments do not represent any modification of previously
22 credited hours of service or other eligibility criteria under any employee pension or employee
23 welfare benefit plan sponsored by Defendant. Nor does Defendant consider the Settlement
24 Payments "compensation" for purposes of determining eligibility for, or benefit accrual within, an
25 employee pension benefit plan, an employee welfare benefit plan, or other plan sponsored by
26 Defendant or its predecessors, subsidiaries, or successors.

27 **IX. NOTICE PROCEDURE**

28 **9.1 Selection and Compensation of Claims Administrator:** The Parties agree to

1 jointly utilize a third-party Claims Administrator to give notice of and communicate with Class
2 Members regarding the Settlement and to establish a website where Class Members may view
3 and download the operative complaint, this Settlement Agreement, the Settlement Notice,
4 approval motions/briefing, as well as any Orders issued by the Court that relate to the Settlement.
5 The Parties have selected Simpluris, Inc., to administer the Settlement. If the actual cost of
6 claims administration is less than the amount approved by the Court, the remaining amount shall
7 be added to the Net Settlement Amount and distributed as set forth in Section 8.7 of this
8 Agreement. All costs associated with claims administration as approved by the Court shall come
9 out of the Gross Settlement Amount. The Claims Administrator's actions shall be governed by
10 the terms of this Agreement.

11 9.2 **Establishment and Funding of the QSF:** The Parties agree that the QSF is
12 intended to be a "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code and
13 Treasury Regulation § 1.468B-1 (26 C.F.R. § 1.468B-1 *et seq.*) and will be administered by the
14 Claims Administrator as such. With respect to the QSF, the Claims Administrator shall: 1) open
15 and administer a settlement account in such a manner as to qualify and maintain the qualification of
16 the QSF as a "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code and
17 Treasury Regulation § 1.468B-1; (2) calculate, withhold, remit and report each Settlement Class
18 Member's share of applicable payroll taxes (including, without limitation, federal, state and local
19 income tax withholding, FICA, Medicare and any state or local employment taxes) and indemnify
20 Defendant for any penalty arising out of any error or incorrect calculation and/or interest (if
21 applicable) with respect to any late deposit of the same; (3) satisfy all federal, state and local
22 income and other tax reporting, return, and filing requirements with respect to the QSF; and (4)
23 satisfy out of the QSF all fees, expenses and costs incurred in connection with the opening and
24 administration of the QSF and the performance of its duties and functions as described in this
25 Agreement. The aforementioned taxes, fees, expenses, and costs shall be treated as and included in
26 the costs of administering the QSF and as Claims Administration Costs. The Parties and the
27 Claims Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund
28 on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1(j)(2)(i), and such election

1 statement shall be attached to the appropriate returns as required by 26 C.F.R. § 1.468B-
2 1(j)(2)(ii). The Parties agree to cooperate with the Claims Administrator and one another to the
3 extent reasonably necessary to carry out the provisions of this section of the Agreement.

4 **9.3 Claims Administration:** Defendant will provide for each Class Member the
5 following information drawn from records of Defendant: 1) name; 2) Social Security number; 3)
6 last known residential address; 4) last known telephone numbers; and 5) number of Work Weeks
7 for which the Class Member would be entitled to recover as set forth in Section 8.7 (“Class
8 Data”) to the Claims Administrator. Defendant will provide the Class Data to the Claims
9 Administrator no later than fourteen (14) days (or, if that date falls on a weekend or holiday, the
10 next business day thereafter) after the date the Court enters an order granting preliminary
11 approval of the Settlement. Class Data shall be used by the Claims Administrator solely for the
12 purpose of notifying the Class Members of the Settlement. The Claims Administrator shall run
13 the Class Data list through the National Change of Address database and will use the most recent
14 address for each Class Member when mailing the Class Notice. Class Data shall be provided in a
15 format to be mutually agreed upon by the Claims Administrator and Defendant.

16 **9.4 Notice to Class Members:** As soon as practicable after receiving the Class Data,
17 but no later than ten (10) business days after its receipt, the Claims Administrator shall send the
18 Notice Packet to the Class Members via United States First Class Mail. The envelope containing
19 the Notice Packet shall include language beneath the Administrator’s address which reads as
20 follows: *Important Legal Document – You May Get Money From A Class Action Settlement; Your*
21 *Prompt Reply To Correct A Bad Address Is Required.* The Notice shall specify the Court-approved
22 Notice Response Deadline by which Class Members must submit any dispute regarding the
23 payment amount, Requests for Exclusion, or objections to the Settlement. The costs of mailing this
24 Notice Packet will be considered part of the Claims Administration Costs to be paid from the Gross
25 Settlement Amount. Except as specifically set forth in Subsections 9.4.1 through 9.4.3 below, the
26 Notice Packet shall be deemed received by the Class Member to whom it was sent.

27 **9.4.1** In the event that subsequent to the first mailing of a Notice Packet and prior
28 to the Notice Response Deadline, that Notice Packet is returned to the Claims Administrator by the

1 United States Postal Service with a forwarding address for the recipient, the Claims Administrator
2 shall re-mail the Notice Packet to that address within five (5) business days, the Notice Packet will
3 be deemed mailed as of the date of re-mailing, the forwarding address shall be deemed the
4 Updated Address for that Class Member, and any responses from the Class Member (*i.e.*, a dispute
5 regarding calculation of Work Weeks, a Request for Exclusion, or an objection) are due to the
6 Claims Administrator by the Notice Response Deadline or within twenty-one (21) days from the
7 date of re-mailing, whichever is later.

8 9.4.2 In the event that subsequent to the first mailing of a Notice Packet, the
9 Notice Packet is returned to the Claims Administrator by the United States Postal Service because
10 the address of the recipient is no longer valid, but no forwarding address is provided, the Claims
11 Administrator shall perform Reasonable Address Verification Measures in an effort to ascertain
12 the current address of the particular Class Member in question. If such an address is ascertained,
13 the Claims Administrator shall re-mail the Notice Packet within five (5) business days of
14 receiving such information, the Notice Packet will be deemed mailed as of that date of re-mailing,
15 the newly obtained address shall be deemed the Updated Address for that Class Member, and any
16 responses from the Class Member (*i.e.*, a dispute regarding calculation of Work Weeks, a Request
17 for Exclusion, or an objection) are due to the Claims Administrator by the Notice Response
18 Deadline or within twenty-one (21) days from the date of re-mailing, whichever is later.

19 9.4.3 In the event that subsequent to the first mailing of a Notice Packet, the
20 Notice Packet is returned to the Claims Administrator by the United States Postal Service but no
21 Updated Address is obtained for that Class Member using either method specified above, the
22 Notice Packet shall be re-mailed to the Last Known Address within five (5) business days of
23 receiving such information, the Notice Packet will be deemed mailed as of that date of re-mailing,
24 and the Class Member shall have until the Notice Response Deadline or within twenty-one (21)
25 days from the date of re-mailing to submit a response, whichever is later. In either event, the
26 Notice Packet shall be deemed received when it is mailed for the second time under this
27 paragraph.

28 9.4.4 In the event that any Notice Packet is returned to the Claims Administrator

1 as undeliverable is associated with a Class Member who is currently employed by Defendant,
2 counsel for Defendant will make immediate efforts to obtain a current mailing address and
3 provide such updated address to the Claims Administrator for re-mailing of the Notice Packet. In
4 that scenario, the Notice Packet will be deemed mailed as of that date of re-mailing, and the Class
5 Member shall have until the Notice Response Deadline or within twenty-one (21) days from the
6 date of re-mailing to submit a response, whichever is later.

7 **9.5 Disputes Regarding Work Weeks:** In calculating each individual Class
8 Member's share of the settlement, Defendant's reasonably available records regarding the Work
9 Weeks of Class Members shall be presumed to be correct. Class Members will be provided with
10 the individualized information upon which their respective shares of the Net Settlement Amount
11 will be based. Class Members who dispute Defendant's records must submit a challenge in
12 writing to the Claims Administrator and will bear the burden of proof, *i.e.*, a Class Member who
13 fails to provide written documentation supporting a different the number of Work Weeks than
14 that specified in his or her Notice will have his or her dispute denied. All such disputes must be
15 submitted to the Claims Administrator by the Notice Response Deadline (as evidenced by the
16 date of the postmark of the submission). Defendant will investigate the dispute and determine
17 whether any correction to the number of Work Weeks for the Class Member raising the dispute
18 should be made. The Claims Administrator will inform the Class Member of resolution of the
19 Work Week dispute in writing (*i.e.* if a Class Member submitted a dispute via e-mail, the Claims
20 Administrator will inform him or her of the resolution via e-mail.) In no case will a dispute
21 regarding the number of Work Weeks result in a payment by Defendant in excess of the Gross
22 Settlement Amount.

23 **9.6 Requests for Exclusion:** Class Members who wish to be excluded from the
24 Settlement must submit a written Request for Exclusion to the Claims Administrator by the Notice
25 Response Deadline (as evidenced by the date of the postmark of the submission). The Request for
26 Exclusion must be submitted on the form attached as **Exhibit B** hereto and signed by the Class
27 Member. Requests for Exclusion must be made individually and cannot be made on behalf of a
28 group or other Class Members. If a Class Member submits a Request for Exclusion that fails to

1 include all required information or that cannot be verified by the Claims Administrator as being an
2 authentic submission by the Class Member, it will be considered invalid, and the Claims
3 Administrator shall mail notification of the deficiency to the Class Member within five (5)
4 business days of receipt. The Class Member shall have until the Notice Response Deadline or
5 twenty-one (21) days from the date of the mailing of notification of the deficiency (whichever is
6 later), to cure any deficiencies, at which point his or her Request for Exclusion will be rejected if
7 not received and that Class Member will be mailed his or her share of the Net Settlement Amount
8 (according to the formulas set forth in this Agreement). In the event that seven percent (7%) or
9 more of all Class Members timely request exclusion from the Class by submitting Requests for
10 Exclusion or comparable documentation, Defendant shall have the absolute right in its sole
11 discretion to revoke, terminate, and withdraw from this Agreement in its entirety.

12 Any valid Request for Exclusion will be effective only as to the Class Settlement. Any
13 Class Member who is an Aggrieved Employee will be bound by the release of PAGA claims and
14 will receive their share of the PAGA amount regardless of submitting a Request for Exclusion.

15 **9.7 No Request for Exclusion by Class Representative:** The Class Representative
16 shall not request exclusion from the Settlement. The Class Representative agrees that by signing
17 this Agreement she is accepting the terms of this Settlement.

18 **9.8 Objections to Settlement:** Class Members who do not request exclusion from the
19 Class may object to the Agreement by submitting copies of their written objections to the Claims
20 Administrator (as evidenced by the date of the postmark of the submission) by the Notice
21 Response Deadline. This Notice Response Deadline applies to any objections notwithstanding any
22 argument regarding alleged non-receipt of the Notice Packet. Written objections should be signed
23 by the Class Member and should: (1) state the objecting Class Member's name, address, telephone
24 number and the last four digits of his/her Social Security number, (2) state the case name and
25 number as follows: *Angela Antenucci v. Bank of the West*, Case No. CGC-20-583746, (3) state
26 concisely each objection to the Settlement, (4) explain the basis for each such objection, and (5)
27 be dated and signed. If the Class Member intends to use any document(s) to support his or her
28 objection, a copy of the document(s) should be included with the written objection at the time of

1 submission. The Parties agree that written objections which substantially comply with these
2 requirements will be accepted, with the exception of written objections which are **not** postmarked
3 by the Notice Response Deadline. Submitting an objection to this Settlement does not affect the
4 Class Members' right to obtain the benefits of this Settlement. The Claims Administrator shall
5 forward a copy of any written objections and/or supporting documentation that it receives to both
6 Class Counsel and Counsel for Defendant within two (2) business days of receipt. Plaintiff
7 and/or Defendant may file responses to any properly filed objections at least five (5) court days
8 before the date of the Final Approval Hearing.

9 **9.9 Anyone wishing to appear at the final approval hearing to discuss concerns or**
10 **objections to the Settlement shall be permitted to do so, whether or not they submit a written**
11 **objection.** Anyone wishing to appear at the final approval hearing to object to the Settlement can,
12 but is not required to, indicate this in his or her written objections. Class members who wish to
13 appear at the final fairness hearing may contact Class Counsel to arrange a telephonic appearance
14 through CourtCall, at least five days before the hearing if possible. **Any CourtCall fees for an**
15 **appearance by an objecting class member will be paid by Class Counsel,** subject to
16 reimbursement to Class Counsel as provided in paragraph 8.2, above.

17 **9.10** Any Class Member who fails to serve timely written objections in the manner set
18 forth herein be deemed to have waived any objections and shall be foreclosed both from making
19 any objection to the Settlement and from filing any appeal from any Final Approval Order issued
20 by the Court. Class Members who timely and validly request exclusion from the Settlement shall
21 have no right to object and shall be foreclosed from making any objection to the Settlement.

22 **X. PAYMENT OF CLAIMS**

23 **10.1 Eligibility for Settlement Payments:** Settlement Class Members need not submit a
24 claim form to receive a Settlement Payment. As a condition of receiving any Settlement Payment
25 under this Agreement, Class Members must not request exclusion from the Class. Each Settlement
26 Class Member shall be entitled to a payment equal to the sum of their individually determined
27 Settlement Payment, less the required taxes and withholdings. Class Members who have
28 submitted untimely or invalid Requests for Exclusion will still be considered part of the

1 Settlement Class, will still be bound by the Settlement and the Released Claims, and will be
2 entitled to receive Settlement Payments.

3 **10.2 Distribution of Settlement Payments.** After the Court grants final approval of
4 the Settlement, and the Effective Date has passed, the Claims Administrator shall prepare a final
5 list of all Settlement Class Members. For each Settlement Class Member on this list, the Claims
6 Administrator will calculate the amounts due to each Settlement Class Member using the
7 methodology set forth in Section 8.7 of this Agreement (excluding any individuals who
8 effectively and timely requested exclusion from the Settlement) and provide that calculation to
9 Class Counsel and Defendant's Counsel within five (5) days after the Effective Date.

10 **10.3** No later than ten (10) business days after the Effective Date has passed, Defendant
11 shall pay to the Claims Administrator the Gross Settlement Amount of \$750,000.00. Defendant
12 will wire the funds requested by the Claims Administrator into the QSF set up and controlled by
13 the Claims Administrator.

14 **10.4** The Settlement Payments to the Settlement Class and the PAGA Penalty Payment
15 to the LWDA will be paid by the Claims Administrator no later than twenty-five (25) business
16 days after the Effective Date.

17 **10.5** Class Counsel's Attorneys' Fees and Litigation Expenses and the Service
18 Enhancement Payment to the Class Representative will be paid by the Claims Administrator no
19 later than twenty-five (25) business days after the Effective Date. Payments made shall constitute
20 full satisfaction of any claim for fees or costs. Class Representative and Class Counsel, on behalf
21 of themselves and all Settlement Class Members, agree that they shall not seek nor be entitled to
22 any additional attorneys' fees or costs for the Released Claims. Class Counsel shall provide the
23 Claims Administrator with the pertinent taxpayer identification numbers and instructions on the
24 total amount of the payment for wiring and reporting purposes within five (5) days after the
25 Effective Date has passed (or, if that date falls on a weekend or holiday, the next business day
26 thereafter). Other than any reporting of this fee payment as required by this Agreement or law,
27 which Defendant shall make, Class Counsel shall be responsible for the reporting and payment of
28 any federal, state, and/or local income or other form of tax on any payment that they receive

1 pursuant to this Agreement.

2 10.6 Not later than seventy-five (75) calendar days following the Effective Date (or, if
3 that date falls on a weekend or holiday, the next business day thereafter), the Claims Administrator
4 shall provide Class Counsel and Defendant's Counsel with a declaration under oath to verify the
5 mailing of Settlement Payment checks and the other distributions from the Gross Settlement
6 Amount. Any checks issued to Settlement Class Members shall remain negotiable for a period of
7 one hundred eighty (180) calendar days from the date of mailing of the Settlement Payment
8 checks. Uncashed checks will be voided, and, subject to the Court's approval, the funds
9 represented by uncashed checks, plus interest, will be delivered to California's Unclaimed
10 Property Fund in the name of the intended recipient. No later than two hundred ten (210) calendar
11 days from the date of mailing of the Settlement Payment checks (or, if that date falls on a weekend
12 or holiday, the next business day thereafter), the Claims Administrator shall provide Class Counsel
13 and Defendant's Counsel with a declaration as to the total amount of any uncashed settlement
14 checks. Settlement Class Members who fail to negotiate their Settlement Payment check(s) in a
15 timely fashion shall remain subject to the terms of the Settlement, the Released Claims, and the
16 Final Approval Order from the Court.

17 10.7 Defendant understands its legal obligation not to retaliate against the Class
18 Representative or Class Members for their participation and/or election to participate in the
19 benefits to be afforded any of them by the Settlement Payments and/or the Lawsuit.

20 **XI. RELEASED CLAIMS**

21 11.1 **Settlement Class Member Released Claims.** Upon the Effective Date, each of
22 the Settlement Class Members, on behalf of themselves and each of their heirs, representatives,
23 successors, assigns, and attorneys, shall be deemed to have, and by operation of the Judgment
24 shall have, fully, finally, and forever released, relinquished, and discharged the Released Parties
25 from the following claims, which pursuant to the Agreement are being released through and
26 including the dates of the Class Period: all wage and hour class claims which were or could have
27 been alleged based on the factual allegations contained in the Complaint(s) filed in the Lawsuit.
28 For the avoidance of doubt, these released claims include, but are not limited to (1) Failure to Pay

1 Regular Wages; (2) Failure to Pay Overtime Compensation; (3) Failure to Provide Meal Periods;
2 (4) Failure to Provide Rest Periods; (5) Failure to Furnish Timely and Accurate Wage Statements;
3 (6) Failure to Pay All Wages Due Upon Termination; (7) Violation of California's Unfair
4 Competition Law ("UCL"), Bus. & Prof. Code § 17200 et seq.; and (8) Violation of Private
5 Attorneys General Act (PAGA) (Lab. Code § 2698, et seq.); and claims related to any and all
6 wages, commissions, bonuses, overtime, meal and rest break premiums, damages, penalties,
7 interest, punitive damages, liquidated damages, attorneys' fees, costs, injunctive relief,
8 declaratory relief, or accounting based on or related to the above claims (the "Released Claims").
9 The Released Claims expressly exclude all unrelated claims including but not limited to claims
10 for retaliation, discrimination, unemployment insurance, disability, workers' compensation, and
11 claims outside the Class Period.

12 11.1.1 All Class Members shall be bound by the release described in Section 11.1
13 and considered Participating Class Members in this Settlement *unless* they formally request
14 exclusion from this Settlement by submitting a valid and timely Request for Exclusion or
15 comparable documentation.

16 11.1.2 Consistent with the foregoing, Settlement Class Members may not sue or
17 otherwise make a claim against any of the Released Parties that is in any way related to, arises out
18 of, or is connected with any of the Released Claims set forth in this section.

19 11.2 **Class Representative Released Claims:** Upon the Effective Date, Class
20 Representative, on behalf of herself and her heirs, representatives, successors, assigns, and
21 attorneys, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and
22 forever released, finally, and forever released, relinquished, and discharged the Released Parties
23 from the following claims, which pursuant to the Agreement are being released through and
24 including the dates of the Class Period: all wage and hour class claims which were or could have
25 been alleged based on the factual allegations contained in the Complaint(s) filed in the Lawsuit.
26 For the avoidance of doubt, these released claims include, but are not limited to: (1) Failure to
27 Pay Regular Wages; (2) Failure to Pay Overtime Compensation; (3) Failure to Provide Meal
28 Periods; (4) Failure to Provide Rest Periods; (5) Failure to Furnish Timely and Accurate Wage

1 Statements; (6) Failure to Pay All Wages Due Upon Termination; (7) Violation of California's
2 Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200 et seq.; and (8) Violation of Private
3 Attorneys General Act (PAGA) (Lab. Code § 2698, et seq.); and claims related to any and all
4 wages, commissions, bonuses, overtime, meal and rest break premiums, unreimbursed expenses,
5 damages, penalties, interest, punitive damages, liquidated damages, attorneys' fees, costs,
6 injunctive relief, declaratory relief, or accounting based on or related to the above claims (the
7 "Class Representative Released Claims"). The Class Representative Released Claims expressly
8 exclude all unrelated claims including but not limited to claims for retaliation, discrimination,
9 unemployment insurance, disability, workers' compensation, and claims outside the Class Period.

10 11.2.1 With regard to the Class Representative Released Claims, the Class
11 Representative does not provide a general release.

12 11.2.2 The Class Representative may hereafter discover facts in addition to or
13 different from those which she now knows or believes to be true with respect to the subject matter
14 of the Class Representative Released Claims, but she shall be deemed to have, and by operation of
15 the Judgment shall have, fully, finally, and forever settled and released any and all Class
16 Representative Released Claims, known or unknown, suspected or unsuspected, contingent or non-
17 contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon
18 any theory of law or equity now existing or coming into existence in the future, including, but not
19 limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty,
20 law or rule, without regard to the subsequent discovery or existence of such different or additional
21 facts.

22 **XII. MOTIONS FOR COURT APPROVAL**

23 12.1 **Motion for Preliminary Approval:** Class Counsel will file a motion for
24 preliminary approval. Class Counsel shall endeavor to provide to Defendant for review and
25 comment at least five (5) business days before the filing of the motion. Class Counsel shall file, if
26 required by the Court: (i) this Agreement and its Exhibits, (ii) a noticed motion seeking the Court's
27 preliminary approval of this Settlement, (iii) a proposed order granting such preliminary approval
28 and setting hearing for final approval, and (iv) any other document consistent with the Settlement

1 and reasonably necessary to obtain the Court's preliminary approval of the Settlement.

2 **12.2 Motion for Final Approval:** The Parties shall request that the motion for final
3 approval be set for hearing a reasonable period of time after the Notice Response Deadline, as the
4 Court's calendar will allow. Class Counsel shall prepare the motion for final approval of the
5 Settlement according to the timeline the Court directs, and shall provide to Defendant for review
6 and comment a draft motion for final approval at least five (5) business days before the filing of
7 the motion. Sufficiently in advance of the final approval hearing to meet the statutory notice
8 requirements, Plaintiff shall file with the Court: (i) a noticed motion for final approval which shall
9 include Class Counsel's motion for Attorneys' Fees, Litigation Expenses, and Service
10 Enhancement Payments, (ii) a proposed order granting final approval and entering Judgment
11 thereon, and (iii) any other documents consistent with the Settlement and reasonably necessary to
12 obtain the Court's final approval of the Settlement and entry of Judgment. The Parties will ask
13 the Court to maintain jurisdiction of this matter for the purpose of monitoring compliance with
14 and performance under this Agreement and any and all orders and judgments, including the
15 Judgment, entered by the Court.

16 **XIII. RIGHT TO REVOKE**

17 **13.1 Defendant's Right to Revoke:** Defendant has the right in its sole and exclusive
18 discretion to terminate this Agreement and withdraw from the Settlement at any time prior to date
19 the Court enters the Final Approval Order on this Settlement if: (a) the Settlement is construed in
20 such a fashion that Defendant is required to pay more than the Gross Settlement Amount, with the
21 exception of the Escalation Clause described in paragraph 13.2, below; or (b) the Court does not
22 grant preliminary approval of the Settlement; or (c) 7% or more of all Class Members timely and
23 validly request exclusion from the Settlement. In the event that Defendant exercises its right to
24 revoke, Defendant shall be responsible for all settlement administration costs incurred.

25 **13.2 Escalation Clause:** During negotiations Defendant estimated that the Settlement
26 Class consisted of approximately 99 employees who worked approximately 12,251 Workweeks.
27 If the actual number of Workweeks exceeds this estimate by seven- and one-half percent (7.5%) or
28

1 more then the Gross Settlement Amount shall increase by the same percentage in excess of 7.5%
2 (i.e., an 8.5% increase shall require an additional 1% added to the Gross Settlement Amount).

3 **13.3 Termination of Settlement Agreement:** If the conditions of the Settlement set
4 forth in this Agreement are not satisfied, or if Defendant terminates and withdraws from the
5 Agreement pursuant to Sections 13.1 above, or if the Court does not enter the Final Approval Order
6 as provided for in this Agreement, or if appellate review is sought and on such review the Court's
7 Final Approval Order is materially modified or reversed, or if one or more of the terms of the
8 Settlement is not approved or the Settlement with respect to one or more such terms is materially
9 modified or reversed, then this Settlement shall be canceled, terminated, and shall have no force or
10 effect , and any class certified for settlement purposes will be vacated. In such an event, neither
11 the Agreement, nor the settlement documents, nor the negotiations leading to the Settlement may
12 be used as evidence for any purpose, and Defendant shall retain the right to challenge all claims
13 and allegations in the Lawsuit, to assert all applicable defenses, and to dispute the propriety of
14 class certification on all applicable grounds. If the Effective Date does not occur (due to failure of
15 the Court to grant final approval or otherwise), or if this Settlement is terminated, revoked, or
16 canceled pursuant to its terms, the Parties to this Settlement shall be deemed to have reverted to
17 their respective status as of the date immediately prior to the execution of this Settlement.
18 Notwithstanding this provision, the Parties hereby stipulate that the terms of Section 15.12 shall
19 survive and be admissible in evidence even if the Settlement does not become final.

20 **XIV. COOPERATION**

21 14.1 The Parties shall cooperate fully with one another in seeking approval of the Court
22 of this Agreement and to use their respective best efforts to consummate the Settlement and cause
23 the Final Approval Order and Judgment to be entered and to become final. The Parties therefore
24 agree to cooperate in good faith to promptly prepare, execute and finalize all Settlement-related
25 documents, seek all necessary Court approvals, and do all other things necessary to consummate
26 the Settlement. The Parties also agree to mutually seek to stay any pending or subsequently filed
27 class action lawsuits that allege any of the Released Claims set forth in Section 11 of this
28 Agreement.

1 14.2 No Party to this Agreement shall seek to evade his, her, or its good faith
2 obligations to seek approval and implementation of this Settlement by virtue of any ruling, order,
3 governmental report, or other development, whether in the Lawsuit, in any other litigation, or
4 otherwise, that hereafter might occur and might be deemed to alter the relative strengths of the
5 Parties with respect to any claims or defenses or their relative bargaining power with respect to
6 negotiating.

7 14.3 The Parties and their respective counsel of record deem this Settlement to be fair
8 and reasonable and have arrived at this Settlement after arms-length negotiations taking into
9 account all relevant factors, present and potential.

10 14.4 The Class Representative and Class Counsel agree to waive appeals of an order
11 granting final approval of this Settlement or entering Judgment in the Lawsuit as to Defendant so
12 long as such order is consistent with the material terms of this Agreement.

13 14.5 Other than as necessary to implement the Settlement, neither Plaintiff nor Class
14 Counsel shall initiate any publicity, disclosure or contact with the media, or respond to any
15 inquiry from the media, regarding the Settlement other than to confirm that this Action has
16 settled. Any confirmation of settlement shall remain confidential until Notice is mailed.

17 **XV. MISCELLANEOUS PROVISIONS**

18 15.1 All of the Parties have been represented by counsel throughout all negotiations that
19 preceded the execution of this Agreement, and this Agreement is made with the consent and
20 advice of counsel.

21 15.2 This Agreement may not be modified or amended, except in a writing that is
22 signed by the respective counsel of record for the Parties and approved by the Court.

23 15.3 This Agreement and its Exhibits attached hereto constitute the entire agreement
24 between the Parties concerning the subject matter hereof, and supersede and replace all prior
25 negotiations, understandings, memoranda of understanding and proposed agreements, written and
26 oral, relating thereto. No extrinsic oral or written representations or terms shall modify, vary, or
27 contradict the terms of the Agreement unless made in writing, signed by duly authorized
28 representatives of all Parties, and approved in writing by a final order of the Court. No waiver of

1 any term, provision, or condition of this Agreement, whether by conduct or otherwise, in any one
2 or more instance shall be deemed to be or construed as a further or continuing waiver of any such
3 term, provision or condition.

4 15.4 This Agreement shall be subject to, governed by, construed, enforced, and
5 administered in accordance with the laws of the State of California, without giving effect to the
6 principles of conflict of laws, both in its procedural and substantive aspects, and shall be subject to
7 the continuing jurisdiction of the Court. This Agreement shall be construed as a whole according to
8 its fair meaning and intent, and not strictly for or against any party, regardless of who drafted (or
9 was principally responsible for drafting) this Agreement or any specific term or condition thereof.
10 In any construction to be made of the Agreement, the Agreement shall not be construed against any
11 party and the canon of contract interpretation set forth in California Civil Code section 1654 shall
12 not be applied.

13 15.5 The Settlement shall be binding upon and inure to the benefit of the Settling
14 Parties' respective successors, assigns, heirs, spouses, marital communities, executors,
15 administrators and legal representatives. The Agreement and Settlement are not designed to and
16 do not create any third-party beneficiaries either express or implied.

17 15.6 The Parties agree they can consult mediator David Rotman to advise on disputes
18 that may arise in connection with interpreting the terms of the Settlement. However, Mr.
19 Rotman's opinions will be non-binding on the Parties and the Parties agree only the Court shall
20 retain jurisdiction with respect to disputes that may arise in connection with interpreting the terms
21 of the Agreement, and the implementation and enforcement of the terms of the Agreement, and
22 all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and
23 enforcing the terms of the Agreement.

24 15.7 This Agreement may be executed in one or more counterparts, each of which shall
25 be deemed an original and together shall constitute one and the same instrument. When each of
26 the Parties has signed at least one such counterpart, this Agreement shall become effective and
27 binding as to all of the Parties as of the day and year last executed. Fax and/or electronically
28 scanned signatures shall be deemed as effective as originals.

15.8 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

15.9 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 (or parties) for which that individual signs.

15.10 Any notices or other documents that must or may be transmitted to Class Counsel and/or Defendant's Counsel, pursuant to any section of this Agreement, shall be transmitted to the addresses and/or e-mails set forth in the definitions of Class Counsel and Defendant's Counsel, respectively, set forth above.

15.11 The Parties and all counsel acknowledge and agree that for the purposes of any claims, actions, and/or proceedings arising out of this Agreement, notice provided to Class Counsel shall be deemed to be notice to the Plaintiff.

15.12 The Parties have stipulated to stay any and all deadline(s) to bring the case to trial, including pursuant to Cal. Civ. Code Section 583.320. This stay shall remain in place until such time as the Settlement is either approved or nullified, as set forth herein.

[signatures on following page]

1 IN WITNESS WHEREOF, each of the undersigned has agreed to and accepted the
2 foregoing terms and conditions by executing this Agreement as of the date indicated below.

3 **APPROVED AND AGREED:**

4 Dated: May 31, 2022

5 By: Angela Antenucci
6 ANGELA ANTENUCCI
7 Representative Plaintiff

8 Dated: _____

DEFENDANT BANK OF THE WEST

9 By: _____
10 Angela Perez, Executive Vice President,
11 Head of Employee Relations
12 Defendant Bank of the West

13 **APPROVED AS TO FORM:**

14 Dated: May 31, 2022

THE MARKHAM LAW FIRM

15 By: David R. Markham
16 DAVID R. MARKHAM
17 MAGGIE REALIN
18 LISA BREVARD
19 Attorneys for Plaintiff ANGELA ANTENUCCI
20 and the Proposed Class

21 Dated: _____

UNITED EMPLOYEES LAW GROUP

22 By: _____
23 WALTER L. HAINES
24 Attorneys for Plaintiff ANGELA ANTENUCCI
25 and the Proposed Class

26 Dated: _____

ORRICK HERRINGTON & SUTCLIFFE LLP

27 By: _____
28 ANDREW R. LIVINGSTON
TIERRA D. PIENS
Attorneys for Defendant BANK OF THE WEST

1 IN WITNESS WHEREOF, each of the undersigned has agreed to and accepted the
2 foregoing terms and conditions by executing this Agreement as of the date indicated below.

3 **APPROVED AND AGREED:**

4
5 Dated: _____

By: _____
ANGELA ANTENUCCI
Representative Plaintiff

6
7
8 Dated: 5/31/2022

DEFENDANT BANK OF THE WEST

9
10 By: Angela Perez
Angela Perez, Executive Vice President,
Head of Employee Relations
Defendant Bank of the West

11
12 **APPROVED AS TO FORM:**

13
14 Dated: _____

THE MARKHAM LAW FIRM

15
16 By: _____
DAVID R. MARKHAM
MAGGIE REALIN
LISA BREVARD
Attorneys for Plaintiff ANGELA ANTENUCCI
and the Proposed Class

17
18
19
20 Dated: May 31, 2022

UNITED EMPLOYEES LAW GROUP

21
22 By: Walter L. Haines
WALTER L. HAINES
Attorneys for Plaintiff ANGELA ANTENUCCI
and the Proposed Class

23
24
25 Dated: 5/31/2022

ORRICK HERRINGTON & SUTCLIFFE LLP

26
27 By: Andrew Livingston
ANDREW R. LIVINGSTON
TIERRA D. PIENS
Attorneys for Defendant BANK OF THE WEST

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN FRANCISCO
ANTENUCCI V. BANK OF THE WEST (CASE NO. CGC-20-583746.)

ATTENTION: IF YOU WORKED AS A NON-EXEMPT LOAN ADMINISTRATOR SPECIALIST OF BANK OF THE WEST IN CALIFORNIA BETWEEN MARCH 16, 2016 AND [INSERT PRELIMINARY APPROVAL DATE], INCLUSIVE, THEN YOU COULD GET A PAYMENT FROM THIS SETTLEMENT.

A Court authorized this notice. This is not a solicitation from a lawyer.

- If approved by the Court, the Settlement will provide \$750,000.00 to resolve claims of approximately 99 individuals who were employed as non-exempt employees by Bank of the West in California between March 16, 2016 and [insert preliminary approval date], inclusive, in one of the following three job titles within the Commercial Banking Group: Senior Loan Administrator Specialist II, Senior Loan Administrator Specialist, and Loan Administrator Specialist II (collectively referred to as “Loan Administrators”).
- Plaintiff’s lawsuit alleges wage and hour claims against Bank of the West, including but not limited to, that Bank of the West did not properly compensate Loan Administrators for all hours worked (including time spent logging in and out of Defendant’s computer systems), did not provide required meal and rest breaks, and did not pay all overtime worked.
- The two sides disagree over whether there is liability for Plaintiff’s claims, as well as how much money, if any, could have been awarded at trial.
- Your legal rights are affected whether you act or don’t act. **READ THIS NOTICE CAREFULLY!**

OVERVIEW OF YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT	
DO NOTHING	If the Court grants final approval of settlement, receive a payment, as estimated on page 3 of this Notice, (“Individual Settlement Payment,”) in exchange for a release of covered legal claims.
UPDATE YOUR CONTACT INFORMATION	Update your contact information with Simpluris, Inc. so that future notices and settlement check(s) are sent to the correct address. Enclosed as Exhibit C is a Change of Address Form that you can use to update your address. This should be returned via U.S. Mail to the Claims Administrator at P.O. Box 26170, Santa Ana, CA 92799, or via email at [REDACTED]. If you lose the form, then you may contact the Claims Administrator or Class Counsel directly to provide your new address.

OVERVIEW OF YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT	
GO TO FINAL FAIRNESS HEARING	If you have an objection or concerns about the settlement, you may attend the final approval hearing which will be held on [insert date] in department 613 of the San Francisco County Superior Court, located at 400 McAllister Street, San Francisco, CA 94102.
EXCLUDE YOURSELF	Get no Individual Settlement payment. See page 5 of this Notice for more information. Deadline to Request Exclusion: [insert date] You may opt out of the settlement by submitting a Request for Exclusion. However, if you are a PAGA Employee and the Court grants final approval of the settlement, <u>you will still receive a share of the portion of the Net Settlement Amount allocated to the PAGA Employees and will be bound by the PAGA release provisions of the settlement, whether or not you submit a Request for Exclusion.</u>
OBJECT	If you do not exclude yourself from the Settlement, you may object to the Settlement. See page 6 of this Notice for more information. Deadline to Object: [insert date]
DISPUTE “WORKWEEKS”	Settlement amounts will be based on the number of weeks you worked in a covered position during the Class Period. If Bank of the West’s records regarding your eligible workweeks are incorrect then you may dispute your workweeks by informing the Claims Administrator, Simpluris, Inc. See page 3 of this Notice for more information (“Defendant’s Records Will be Presumed Correct But May Be Disputed.”) Deadline to Dispute Workweeks: [insert date]
• These rights and options – and the deadlines to exercise them- are explained in further detail in this notice • The Court handling this case still has to decide whether to approve the Settlement. Settlement payments will only be issued if the Court approves the Settlement and, if applicable, any appeal resolved. Please be patient. • Additional information is available by contacting Class Counsel, the Claims Administrator, or online at [insert].	

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BASIC INFORMATION

1. Why did I get this notice?

Defendant Bank of the West's records show that you were employed as a non-exempt employee in California between March 16, 2016 and [insert preliminary approval date] in one of the following three job titles within the Commercial Banking Group: Senior Loan Administrator Specialist II, Senior Loan Administrator Specialist, and Loan Administrator Specialist II.

This notice explains the lawsuit, the Settlement, and your legal rights.

2. What is this lawsuit about?

This class action lawsuit, known as ***ANTENUCCI V. BANK OF THE WEST*** (Case No. CGC-20-583746) [filed March 16, 2020], is pending in the Superior Court of California for the County of San Francisco.

The lawsuit involves claims under California's wage and hour laws. Plaintiff worked as Loan Administrator II for Defendant. She alleges numerous claims against Defendant, including but not limited to that the Defendant did not properly compensate loan administrators for all hours worked (including time spent logging in and out of Defendant's computer systems), did not provide required meal and rest breaks, and did not pay all overtime worked.

Plaintiff's complaint alleges claims on behalf of herself, individually, and on behalf of the Class Members for wage and hour violations, including: (1) Failure to Pay Regular Wages; (2) Failure to Pay Overtime Compensation; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Furnish Timely and Accurate Wage Statements; (6) Failure to Pay All Wages Due Upon Termination; (7) Violation of California's Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200 et seq.; and (8) Violation of Private Attorneys General Act (PAGA) (Lab. Code § 2698, et seq.).

Defendant denies engaging in any wrongful conduct or that it violated the law in any way and believes that Plaintiff and the Settlement Class were properly compensated for all time worked.

Both Plaintiff and Defendant believe that the Settlement is fair, adequate, and reasonable, and that it is in the best interest of the members of the Settlement Class.

3. What is a class action lawsuit?

In a class action, one or more people called the "Plaintiff" or "Plaintiffs" (in this case, Plaintiff Angela Antenucci) sue on behalf of people who have similar alleged claims. All of these similar people are a "class" or "class members." The Court resolves the issues for all class members, except for those who exclude themselves from the class. On [Insert Date], the Court certified the class for purposes of settlement only.

4. Who is in the Settlement Class?

“Settlement Class Members” or “Settlement Class” means all individuals who were employed by Defendant Bank of the West as a non-exempt employee in California as a Senior Loan Administrator Specialist II, Senior Loan Administrator Specialist, or Loan Administrator Specialist II within the Commercial Banking Group (“Class Members”) at any time between March 16, 2016 and [insert preliminary approval date], inclusive (“Class Period”).

5. Why is there a settlement?

After conducting a substantial investigation, including review of policies, payroll records and computer records, both sides agreed to the Settlement to avoid the cost and risk of further litigation. The Settlement does not mean that any law was broken. Defendant denies all of the claims asserted in the Action and denies that it has violated any laws. Plaintiff and her lawyers think the Settlement is in the best interests of all Settlement Class Members.

THE SETTLEMENT BENEFITS

6. What are the terms of the settlement, and what do I get?

Terms of the Settlement

Under the proposed Settlement Defendant has agreed to pay a Gross Settlement Amount of \$750,000.00. This Gross Settlement Amount will be used to pay Plaintiffs’ attorneys’ fees (not to exceed 33 1/3% of the Gross Settlement Amount, *i.e.*, \$250,000) and actual litigation expenses (not to exceed \$28,000), the employer-side payroll taxes (estimated at \$), a Class Representative Enhancement Award to Plaintiff (not tied to a general release), not to exceed \$10,000.00, a payment of \$45,000 to the Labor and Workforce Development Agency (“LWDA”) for alleged penalties under the Private Attorneys General Act (“PAGA”), and the fees and expenses of the Claims Administrator, Simpluris, Inc., (estimated to be \$3,495.00). The remainder, referred to as the Net Settlement Amount, which is estimated to be \$, will be distributed in full to participating Class Members.

The Settlement provides that if more than 7% of Class Members choose to exclude themselves from the Settlement (not to participate in the Settlement), Defendant has the option to void this Settlement.

PAGA Settlement Payment

The employees shall first share \$15,000 (*i.e.*, 25% of the \$60,000 total amount allocated to the PAGA claim) which shall be split amongst all Class Members that worked for Bank of the West between March 6, 2019 through [insert preliminary approval date], inclusive (the “PAGA Period”). This payment will be distributed to Class Members based on the number of Work Weeks worked for Defendant in a class position during the PAGA Period relative to the total number of Work Weeks worked by all Class Members during the PAGA Period.

According to the Bank's records, you worked for [REDACTED] weeks in a covered position during the PAGA Period. Based on these dates, your portion of the PAGA settlement payment is estimated to be \$ [REDACTED].

Class Members will receive their portion of the PAGA settlement payment regardless of whether they request exclusion or object to the Settlement. This payment shall be reported as penalties and reported by IRS Form 1099.

Individual Settlement Payment

Class Members who do not submit a timely request for exclusion will receive an Individual Settlement Payment along with the PAGA Settlement Payment described above.

The Net Settlement Amount will be distributed to Settlement Class Members based on the number of Work Weeks worked for Defendant in covered positions during the Class Period relative to the total number of Workweeks worked by all Settlement Class Members during the Class Period. The Net Settlement Amount, estimated to be \$ [REDACTED], will be distributed in full to participating Class Members, who worked an estimated [REDACTED] total workweeks during the Class Period.¹

According to Defendant's records, you worked for [REDACTED] weeks in a covered position during the Class Period. Based on these dates, your Individual Settlement Award is estimated to be \$ [REDACTED]. Your actual Individual Settlement Award may be different than this amount depending on, for example, the number of Settlement Class Members who participate and/or request to opt out of the Settlement.

One-half (50%) of each Settlement Class Member's Individual Settlement Payment shall be treated as wages (reported on IRS Form W-2) and one-half (50%) shall be treated as interest and penalties (reported on IRS Form 1099). The employee's share of payroll taxes (FICA, EDD) shall be withheld from the W2 wage payment.

Class Members will receive their portion of the PAGA settlement payment regardless of whether they request exclusion or object to the Settlement. PAGA payments are not wages and shall be reported as penalties on 1099.

Class members should consult with their tax advisors concerning the tax consequences of any payment they receive. No provision of the Settlement, and no written communication or disclosure between or among the parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended). You must rely exclusively upon your own, independent legal and tax advisers-for advice (including tax advice) in connection with this Settlement. Your participation in this Settlement is not based upon the recommendation of any other party or any attorney or advisor to any other party. You are not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on you. No attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such

¹ The final amount of your settlement share will be calculated based upon the final Net Settlement Amount and the final Total Number of Workweeks worked by the Settlement Class.

attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by you of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement.

Defendant's Records Will be Presumed Correct But May Be Disputed

Defendant's records regarding workweeks, as set forth above, shall be presumed correct, unless evidence to the contrary is timely submitted to the Claims Administrator, Simpluris, Inc. at the following contact information: [insert email], [insert address]. Class Members who disagree with Defendant's records of their workweeks total, as presented above, must notify the Claims Administrator of the dispute, and submit documentation to support their claimed dates of employment (such as, without limitation, payroll or time keeping records or paycheck stubs). The dispute must be received by **[RESPONSE DEADLINE]** or else it will be disregarded and you will be paid according to the dates listed in Defendant's records.

NOTE: A Class Member can only dispute his/her workweeks outside the PAGA Period if he/she does not exclude himself/herself from the Settlement. If there is a dispute, the Claims Administrator will consult with the Parties to determine whether an adjustment is warranted. The Parties shall engage in a good faith effort to reach an agreement as to whether an adjustment for the Class Member is warranted and, if the Parties are unable to reach an agreement, the determination of the Claims Administrator shall be deemed final. The Settlement Administrator will notify you of the resolution of your dispute by mail, and if you submitted your dispute by email, the Settlement Administrator will also notify you by message to that email address.

7. What am I giving up?

In this action, Plaintiff alleged she and other Class Members were not paid for all time, including overtime, for time spent booting up and shutting down their computer and necessary programs, were unable to take uninterrupted meal and rest periods due to the need to complete time-sensitive tasks and meet required deadlines, and were unable to leave the premises for rest periods. Additionally, Plaintiff alleged that as a result, that her and Class Members' wage statements were not accurate, and they were not paid all the wages owed after termination of employment. The "release," as described in detail below, means that you will be barred from separately pursuing these claims. The release applies to claims between March 16, 2016 and [preliminary approval date].

If the Settlement is approved then Plaintiff and each member of the Settlement Class who do not submit a timely Request for Exclusion form (see response to Question 10 below) shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the "Released Parties" [Defendant and each and all of its respective past and present parents, subsidiaries, affiliated companies and corporations, and each and all of their respective past and present directors, officers, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint venturers, assigns, or related entities, and each and all of their respective executors, successors, assigns and legal representatives] from the following claims, which pursuant to the Agreement are being released through and including the dates of the Class Period: all wage and hour class claims which were or could have been brought based on the

factual allegations contained in the Complaint(s) filed in the Lawsuit, including but not limited to the: ((1) Failure to Pay Regular Wages; (2) Failure to Pay Overtime Compensation; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Furnish Timely and Accurate Wage Statements; (6) Failure to Pay All Wages Due Upon Termination; (7) Violation of California's Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200 et seq.; and (8) Violation of Private Attorneys General Act (PAGA) (Lab. Code § 2698, et seq.); and claims related to any and all wages, commissions, bonuses, overtime, meal and rest break premiums, damages, penalties, interest, punitive damages, liquidated damages, attorneys' fees, costs, injunctive relief, declaratory relief, or accounting based on or related to the above claims (the "Released Claims"). The Released Claims expressly exclude all unrelated claims, including but not limited to, claims for retaliation, discrimination, unemployment insurance, disability, workers' compensation, and claims outside the Class Period.

All Class Members shall be bound by this release unless they formally request exclusion from this Settlement by submitting the enclosed Request for Exclusion form by **[RESPONSE DEADLINE]**. To request exclusion please complete and submit the enclosed Request for Exclusion Form. See Section 10 of this Notice for more information requests for exclusion. However, if you are a PAGA Employee and the Court grants final approval of the settlement, you will still receive a share of the portion of the Net Settlement Amount allocated to the PAGA Employees and will be bound by the PAGA release provisions of the settlement, whether or not you submit a Request for Exclusion.

HOW TO GET A SETTLEMENT PAYMENT

8. How do I get a settlement payment?

You need not do anything in order to receive a PAGA Settlement Payment and Individual Settlement Payment from this Settlement. If you do not make a timely request to be excluded then, provided the Settlement is approved by the Court, you will be sent both settlement payment(s) (to the extent you are eligible) at the address where this Notice was mailed.

IMPORTANT: If this was sent to the wrong address, or you move before receiving all settlement checks and tax return documents, then it is very important that you provide a forwarding address to the Claims Administrator! Otherwise, your settlement check(s) and/or your tax return documentation could be sent to the wrong address.

Enclosed as Exhibit C is a **Change of Address Form** that you can use to update your address. This should be returned to the Claims Administrator at: [address, email address, and fax] . If you lose the form, you may contact the Claims Administrator or Class Counsel directly to provide your new address.

9. When will I get my check?

If the Court approves the Settlement Defendant will be required to fund the \$750,000.00 Maximum Settlement Amount within 10 business days of the Effective Date of the Settlement. The Claims

Administrator will issue settlement payment(s) within 25 business days of the Effective Date of the Settlement.

The “Effective Date” is defined as the date on which the Court’s Final Approval Order becomes final. The Court’s Final Approval Order “becomes final” upon the last to occur of the following: (a) the date of final affirmance on appeal of the Judgment; (b) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding to review the Judgment; or (c) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the Court’s Judgment.

Please be advised that you will only have 180 days from the date that the check is issued to cash it. This is why it is so important to ensure the Claims Administrator has your most up to date contact information. If Class Members fail to cash their settlement checks within 180 days, the checks will be cancelled and the respective funds will be delivered to California’s Unclaimed Property Fund in the name of the intended recipient. No money will revert to Defendant.

EXCLUDING YOURSELF FROM THE SETTLEMENT

10. How do I ask the Court to exclude me from the Settlement Class?

If you do not want to participate in the Settlement (“opt out” or “request to be excluded”), you must complete, sign, and return the enclosed **Request for Exclusion Form**. You must fill out the form correctly for your exclusion request to be valid. Class Members who timely request exclusion will no longer be eligible to receive an Individual Settlement Award but will also not be bound by the release of claims in the Class Settlement. Class Members cannot, however, seek exclusion from the PAGA component of the Settlement and will receive a PAGA Settlement Payment even if they submit a timely request for exclusion, to the extent they worked during the PAGA Period.

In order to be valid, your Request for Exclusion Form must be completed, signed, dated, and mailed by First Class U.S. Mail, or the equivalent, postmarked no later than **[insert 60 days from date of mailing]** to the Claims Administrator:

Simpluris, Inc.
P.O. Box 26170
Santa Ana, CA 92799
888-369-3780, option 2

Requests that do not include all required information and/or that are not timely will be deemed null, void, and ineffective. Class Members who fail to submit a valid and timely Request for Exclusion Form on or before **[RESPONSE DEADLINE]** shall be converted to Settlement Class Members, bound by all terms of the Settlement, and any Final Judgment entered in the Action if the Settlement is approved by the Court.

11. If I exclude myself, can I get anything from the settlement?

Yes. *If you exclude yourself now using the enclosed Request for Exclusion Form you will still get a pro rata share of the PAGA Settlement Payment if you are eligible for one.* You will not

get an Individual Settlement Payment and you will not be bound by the non-PAGA component of the Settlement.

12. If I don't exclude myself, can I sue later?

No. Unless you exclude yourself, you give up the right to sue Defendant for the claims in this lawsuit that are released by the Settlement. You must exclude yourself from the Settlement Class to start or continue your own lawsuit.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court has appointed two law firms to act as Class Counsel. They represent the named Plaintiff and the Settlement Class Members in this lawsuit. Their contact information is listed in Paragraph 20 ("Getting More Information").

OBJECTING TO THE SETTLEMENT

14. How do I object to the Settlement?

If you do not think the Settlement is fair then you may object to the proposed settlement in writing and/or you may appear at the Final Approval Hearing [on **date/time**] at your expense in person, or through an attorney, or telephonically via CourtCall at Class Counsel's expense. **Anyone wishing to appear at the final approval hearing to make an objection to the Settlement shall be permitted to do so, whether or not they submit a written objection as set forth below.**

Only Class Members who do not request exclusion from the Class may object to the Agreement.

Written objections should be signed by the Class Member and should: (1) state the objecting Class Member's name, address, telephone number and the last four digits of his/her Social Security number, (2) state the case name and number as follows: *Antenucci v. Bank of the West*, Case No. CGC-20-583746, (3) state concisely each objection to the Settlement, (4) explain the basis for each such objection, and (5) be signed and dated. If the Class Member intends to use any document(s) to support his or her objection, a copy of the document(s) should be included with the written objection at the time of submission. Submitting an objection to this Settlement does not affect the Class Members' right to obtain the benefits of this Settlement.

Written objections must be submitted to the Claims Administrator (at the address set forth in Section 10) by [**DATE (60 days from date of notice mailing)**]. In order to be timely, the mailed Written Objection must be postmarked on or before the above date. **DO NOT FILE YOUR OBJECTION OR ANY OTHER DOCUMENTS WITH THE COURT.**

If you opt out of the Settlement, you may not object. You must be a Settlement Class Member in order to object to the Settlement. Any Settlement Class Member who submits an objection remains eligible to get paid from the Settlement so long as they did not request to be excluded from the Settlement.

15. What's the difference between objecting and asking to be excluded?

Excluding yourself is telling the Court that you do not want to be part of the Settlement. Objecting is telling the Court a reason(s) you do not want the Settlement to be approved by the Court.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing on [date/time] to decide whether to finally approve the settlement. Whether you have submitted an objection or not you may attend and you may ask to speak, but you don't have to. See Section 16 below for more details.

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

The Court will hold a Final Approval Hearing on [insert time/date] in Department 613 at the Superior Court of California for the County of San Francisco, located at **400 McAllister Street, San Francisco, CA 94102**. The hearing may be moved to a different date and/or time without additional notice. If you plan to attend the Final Approval Hearing, you may contact the Settlement Administrator to confirm the date and time. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate, the plan of distribution, and Class Counsel's request for attorneys' fees and costs and Plaintiff's Enhancement Award.

17. Do I have to come to the hearing?

No, you are not required to attend the hearing, although you may choose to do so. Class Counsel will be present at the hearing to answer any questions and provide any information requested by the Court. Due to the COVID-19 pandemic, many hearings are currently being conducted remotely with the assistance of a third-party service provider, CourtCall. Class Members who wish to appear at the final fairness hearing on [date/time] should contact Class Counsel to arrange a telephonic appearance through CourtCall, at least five business days before the hearing if possible. **Any CourtCall fees for an appearance by an objecting Class Member will be paid by Class Counsel.**

If you send a written objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay (at your own expense) a lawyer to attend, but it is not required.

18. May I speak at the hearing?

Anyone wishing to appear at the final approval hearing on [date/time] to discuss concerns or objections to the Settlement shall be permitted to do so, whether or not they submit a written objection as set forth above.

IF YOU DO NOTHING

19. What happens if I do nothing at all?

If you do nothing and the Settlement is approved, you will be bound by the release of claims described in Section 7 above and will receive the Individual Settlement Payment(s) described in Section 6.

GETTING MORE INFORMATION

20. How do I get more information?

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, and to review the Settlement documents and court filings, as well as Orders issued by the Court thereon, please go to [Settlement Administrator's website]. There you can find the operative complaint (*ANTENUCCI v. BANK OF THE WEST USA, Inc.* (San Francisco CGC-20-583746)); this Notice, the Settlement Agreement, the Court's Preliminary Approval Order, and all filings made in this matter relating to settlement approval, including all orders, and (once final approval is granted) all documents, orders, and judgment related to final approval of the Settlement. (Copies can also be requested from Class Counsel.)

The pleadings and other records in the Action, including the proposed Settlement, may also be examined at any time during regular business hours at the Office of the Clerk of Court for the Superior Court of California, County of San Francisco, 400 McAllister Street, San Francisco, CA 94102. You may also review most of the filings, including the Motion for Preliminary Approval of the proposed Settlement, and the Settlement itself on the Court's website which is located at <https://www.sfsuperiorcourt.org/online-services>. Accessing the Court's docket online is free and can be accessed by entering the case number (CGC-20-583746) into the "Case Query" feature, and selecting the "View" button to review documents.

If you want additional information about the Action and its proceedings, or copies of settlement paperwork, then you may also contact Class Counsel:

David R. Markham (SBN 71814)

dmarkham@markham-law.com

Maggie Realin (SBN 263639)

mrealin@markham-law.com

Lisa Brevard (SBN 323391)

lbrevard@markham-law.com

THE MARKHAM LAW FIRM

888 Prospect Street, Suite 200

La Jolla, CA 92037

Telephone: 619-399-3995

Facsimile: 619-615-2067

Walter L. Haines (SBN 071075)

walter@uelglaw.com

UNITED EMPLOYEES LAW GROUP

5500 Bolsa Avenue, Suite 203

Huntington Beach, California 92649

Telephone: 310-234-5678

Additionally, the Settlement Administrator may be contacted at the contact information below:

[Insert]

EXHIBIT B

Bank of the West Wage and Hour Class Administration
SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN FRANCISCO
Antenucci v. Bank of the West (Case No. CGC-20-583746)

REQUEST FOR EXCLUSION FROM CLASS SETTLEMENT

To exclude yourself from the proposed Class Action Settlement, please fill out this form in its entirety. Write your name and address below, sign this form, and return this postcard in the envelope provided no later than [INSERT DATE].

NOTE: ONLY RETURN THIS POSTCARD IF WISH TO EXCLUDE YOURSELF FROM THE SETTLEMENT. IF YOU EXCLUDE YOURSELF YOU CANNOT OBJECT AND WILL NOT RECEIVE AN INDIVIDUAL SETTLEMENT AWARD. YOU CANNOT EXCLUDE YOURSELF FROM THE PAGA PORTION OF THE SETTLEMENT AND WILL RECEIVE A PAGA PAYMENT EVEN IF YOU EXCLUDE YOURSELF FROM THE CLASS ACTION SETTLEMENT.

Name: _____

Address: _____

Signature _____

EXHIBIT C

Bank of the West Wage and Hour Class Administration
SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN FRANCISCO
Antenucci v. Bank of the West (Case No. CGC-20-583746)

CHANGE OF ADDRESS FORM

Please use this form if your Notice was sent to the wrong address, or you move before receiving your settlement checks and tax return documents. *FAILURE MAY RESULT IN YOUR CHECKS AND TAX RETURN DOCUMENTS BEING SENT TO THE WRONG ADDRESS.*

Name: _____

Address: _____

Signature _____