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Attorneys for Plaintiff
Charlotte Lee

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

CHARLOTTE LEE, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA
CORPORATION, a Delaware
corporation doing business in California;
BANK OF AMERICA, NATIONAL
ASSOCIATION, a national association
bank doing business in California; and
DOES 1 through 50, inclusive;

Defendants.

Case No. BCV-21-100770

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

**I.
PREAMBLE**

1. This Class Settlement Agreement (“Settlement” or “Agreement”) is entered into between Plaintiff Charlotte Lee (“Lee” or “Named Plaintiff”), individually and as class representative on behalf of all individuals defined in Section III of this Agreement (collectively, with Named Plaintiff, the “Settling Class”), on the one hand, and defendants Bank of America Corporation and Bank of America, National Association (“Defendant” or “BofA”), on the other hand. The Settling Class and BofA are referred to collectively herein as the “Settling Parties.”

2. Lee, who has been employed by Bank of America, National Association first as a Mortgage Loan Coordinator and later as a FC Lending Officer, filed a Complaint commencing the above-captioned action in the Superior Court of the State of California for the County of Kern on April 6, 2021, where it was assigned case number BCV-21-100770 (the “Lawsuit”). BofA filed an Answer denying all allegations in the Lawsuit on May 19, 2021.

3. The Lawsuit seeks to assert claims on behalf of a putative class, which is plead to consist of “All non-exempt Loan Officers of Defendant who held a job title of Sr WM Lending Officer-Covered (SM603), Sr WM Lending Officer (SM604), WM Lending Officer (SM605), Sr Lending Officer (SM172), Sr FC Lending Officer - E (SM610); FC Lending Officer (SM611), Sr FC Lending Officer - NE (SM614), Lending Associate (SM171), and/or Lending Consultant (SM612), and who were employed by Defendant at any time from February I, 2019 through the date notice is mailed to the Class.” (Compl. ¶ 16.) The Lawsuit generally alleges that BofA: failed to provide rest breaks, in violation of Labor Code §§ 226.7, 512, and 1194, as well as Industrial Welfare Commission (“IWC”) Wage Order No. 4-2001 § 12; failed to pay wages timely when due, in violation of Labor Code §§ 201, 202, and 203; and engaged in unfair competition pursuant to Business & Professions Code §§ 17200 *et seq.* (the “UCL”). The Lawsuit is framed as both a putative class action and a non-class representative action pursuant to the California Labor Code

1 Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.* (“PAGA”). In
2 general, the Lawsuit alleges that the putative class are paid on the basis of a non-
3 recoverable draw, and that this method of compensation fails to pay the putative class for
4 non-productive time including, *inter alia*, rest breaks. The Lawsuit seeks compensatory
5 damages (unpaid wages and premium wages), statutory and/or civil penalties, liquidated
6 damages, restitution, declaratory relief, interest, reasonable attorneys’ fees and costs, and
7 such other relief as the Court may award.

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

11 5. On August 6, 2021, the Settling Parties remotely attended a full day
12 mediation before private mediator David A. Rotman of David A. Rotman – Mediated
13 Negotiations, a highly regarded mediator who is intensely familiar with employment class
14 actions lawsuits. The mediation was not successful. However, the Settling Parties agreed
15 to a second day of mediation, which was held remotely on October 19, 2021, and resulted
16 in a settlement in principle.

17 6. Over the course of the Lawsuit, the Settling Parties have engaged in
18 significant discussion of the validity of the legal claims at issue and have exchanged
19 extensive documents and information, which have allowed the Settling Parties to fully
20 assess the value of the claims involved. The Settling Parties have agreed to avoid further
21 litigation and to settle and resolve the Lawsuit, as well as all existing and potential disputes,
22 actions, lawsuits, charges, and claims that are or could have been raised in the Lawsuit,
23 that the Settling Class has or may have against BofA, to the fullest extent permitted by law
24 and without any admission of liability or wrongdoing by either party. The Named Plaintiff
25 and her counsel have concluded that the Settlement is fair, reasonable, and in the best
26 interests of the Settling Class and respectfully request that the Settlement be approved by
27 the Court.
28

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

II. PAYMENTS TO THE SETTLING CLASS, CLASS COUNSEL, NAMED PLAINTIFF, AND THE CLAIMS ADMINISTRATOR

8. Subject to Court approval, and the provisions of this Agreement, BofA shall pay an aggregate total of one million, nine hundred ninety thousand United States dollars and zero cents (\$1,990,000.00) (the “Gross Settlement Value” or “GSV”) in consideration for the settlement and dismissal with prejudice of the Lawsuit and the related release of all claims the Named Plaintiff and the Settling Class Members may have against the BofA Releasees, as contained in Paragraphs 31, 53, 54, 55, and 56 of this Agreement. Fifty thousand U.S. dollars and no cents (\$50,000.00) of the GSV (the “PAGA Allocation”) shall be allocated to claims under PAGA.

9. BofA shall deposit the full GSV in a non-interest bearing account to be established by the Claims Administrator (as defined in Paragraph 14) no later than December 24, 2021, provided, however, that the Claims Administrator must provide wire information on its official letterhead, and complete, current, and accurate forms SS-4, W-9, and CA Form 590, by no later than December 15, 2021. If said information is provided after December 15, 2021, BofA shall deposit the full GSV no later than January 17, 2022. Should the Settlement Effective Date never be reached for any reason, the Gross Settlement Amount shall be returned to BofA. The GSV shall remain in said account, pending

occurrence of the Effective Date as defined in Section VII of the Agreement. The Claims Administrator shall not disburse any portion of these funds until after the Effective Date.

10. The GSV is the maximum amount that BofA shall be required to pay for settlement of the Lawsuit. The GSV will cover compensation to the Settling Class, payment to the State of California (Labor and Workforce Development Agency (“LWDA”)) for penalties under PAGA, additional compensation to the Named Plaintiff as class representative, the cost of claims administration and notice, employer’s payroll taxes, and attorneys’ fees and reimbursement of litigation costs and expenses to Class Counsel (as defined in Sections IV and IX). This is a non-reversionary settlement, which means that once the Agreement is final and effective, no part of the GSV shall revert to BofA.

III. SETTLING CLASS

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

All non-exempt Loan Officers of Defendant who held a job title of Lending Associate (SM171), FC Lending Officer (SM611), FC Lending Consultant (SM612), and Senior FCLO (SM614), and who were employed by Defendant at any time from February 1, 2019 through the date of Preliminary Approval of the Settlement.

Accordingly, the “Settling Class Period” is defined as February 1, 2019, through the date this Settlement receives Preliminary Approval.

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

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

14. Subject to Court approval, the Settling Parties agree that ILYM will be appointed as Claims Administrator. The Claims Administrator will be responsible for establishing and maintaining a non-interest bearing account for the GSV; mailing the class notices; receiving and logging adjustment forms and requests for exclusion; researching and updating addresses through skip-traces and similar means; answering questions from the Settling Class members; reporting on the status of the Settlement to the Settling Parties; preparing a declaration regarding its due diligence in the claims administration process; providing the Settling Parties with data regarding the filing of adjustment forms and requests for exclusion; calculating and distributing settlement checks; calculating tax obligations; remitting any and all tax obligations, including the employer's share of payroll taxes, to the appropriate taxing authorities; processing the PAGA Allocation; and doing such other things as the Settling Parties may direct.

IV.
APPOINTMENT OF NAMED PLAINTIFF’S COUNSEL
AS SETTLING CLASS COUNSEL

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

Mark R. Thierman
Joshua D. Buck
Thierman Buck LLP
7287 Lakeside Drive
Reno, NV 89511
Telephone: (775) 284-1500
Facsimile: (775) 703-5027

V.
**SETTLEMENT APPROVAL PROCEDURES
AND NOTICE TO CLASS MEMBERS**

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

17. At the earliest possible opportunity, Class Counsel shall file a motion requesting an order which, *inter alia*, grants preliminary approval of the Settlement Agreement, modifies the litigation class for settlement purposes only, and sets a date for the settlement fairness hearing ("Final Approval Hearing"). In conjunction with this request, Class Counsel shall submit this Agreement, supporting papers, and proposed forms of all notices and other documents, in the form attached hereto, necessary to implement the Settlement Agreement. The Preliminary Approval Order shall provide for notice of the Agreement and related matters ("Settlement Class Notice"), including notice of the procedure to withdraw from the Class to be sent to the Settling Class as specified herein. The Preliminary Approval Order submitted to the Court shall be in the form attached hereto as Exhibit A, and the Settlement Class Notice shall be in the form attached hereto as Exhibit B, and as further described in Paragraph 47 of this Agreement.

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

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

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

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

VI.

PROCEDURE FOR OBJECTIONS AND OPT-OUTS

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

1 23. Class members are requested to submit written objections within forty-five
2 (45) days from the date the Settlement Class Notice is first mailed. Class members will
3 also be notified by the Settlement Class Notice that they may appear at the Court hearing
4 scheduled for final approval of the Settlement to have objections heard by the Court. Any
5 attorney who represents an individual objecting to the Settlement must file a Notice of
6 Appearance with the Court and timely serve counsel for all parties. All objections or other
7 correspondence must state the name and number of the case, which is *Charlotte Lee v.*
8 *Bank of America, National Association*, Case No. BCV-21-100770.

9 24. Any Settling Class Member who does not want to participate in this
10 Settlement may “opt-out” of the Settlement by mailing a written request for exclusion to
11 the Claims Administrator. Requests for exclusions must be post-marked no later than thirty
12 (30) calendar days after the Settlement Class Notice is first mailed. For a request for
13 exclusion to be valid, it must be actually received by the Claims Administrator and contain
14 the name and signature of the Settling Class Member.

15 25. If a Class member submits both a timely and valid Adjustment Form and a
16 timely and valid request for exclusion, the latter-filed shall be determinative. If the two
17 documents are filed simultaneously, and both are timely and valid, the Claims
18 Administrator shall attempt to contact the individual and determine his or her intent. If this
19 attempt is unsuccessful, the request for exclusion shall be deemed invalid and the Settling
20 Class Members shall be bound by and have the right to receive a payment through this
21 Settlement.

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

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

3 VII.

4 THE EFFECTIVE DATE

5
6 28. This Agreement shall become final and effective (the "Effective Date") on
7 the occurrence of all of the following events described in Paragraphs 29 through 32.

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

11 30. Class Counsel filing, at or before the Final Approval Hearing, a declaration
12 from the Claims Administrator:

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

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

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

22 31. Entry by the Court of an Order and Judgment Granting Final Approval and
23 dismissing the Lawsuit with prejudice. The Settling Parties shall jointly prepare and lodge
24 a proposed Order and Judgment to this effect in advance of the Final Approval Hearing,
25 which shall reflect, *inter alia*: the dismissal of the Lawsuit with prejudice; that the
26 Settlement is effective as a release of all claims alleged in the Lawsuit as to all individuals
27 who did not exclude themselves from the Settlement, including those who did not cash a
28 check or receive a payment; and the Court's approval of the settlement pursuant to the

1 terms of this Agreement, including but not limited to the releases set out in Paragraphs 53,
2 54, 55, and 56.

3 32. The occurrence of the “Effective Date of Judgment,” which shall be deemed
4 to be the last to occur of the following:

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

8 (b) If an appeal or other review is sought from the Order and Judgment
9 Granting Final Approval and Dismissing Lawsuit with Prejudice by a Settling Class
10 Member, the day after the trial court’s judgment is affirmed or the appeal or other
11 review is dismissed or denied, and the judgment is no longer subject to judicial
12 review or other challenge.

13 **VIII.**
14 **EFFECT OF NON-APPROVAL,**
15 **FAILURE OF THE EFFECTIVE DATE TO OCCUR, OPT-OUTS**
16 **IN EXCESS OF FIVE PERCENT**

17 33. If any one of the events specified in Section VII do not occur, this Agreement
18 shall be voidable at BofA’s discretion, and any portion of the GSV previously deposited
19 with the Claims Administrator shall immediately be returned to BofA.

20 34. The Claims Administrator shall provide written notice to Class Counsel and
21 counsel for BofA no later than five (5) business days after the Notice Period Deadline with
22 a complete list of all putative Settling Class Members who have timely requested exclusion
23 from the class and the number of workweeks associated with each. BofA, in its sole and
24 independent discretion, shall have the right, but not the obligation, to revoke this
25 Agreement if requests for exclusion from the settlement are filed by five percent (5%) or
26 more of the Settling Class, measured on a headcount or shift basis.

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

36. In the event that the Agreement is voided pursuant to Paragraphs 34 or 63, then the following shall apply:

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

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

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

(d) BofA shall pay any costs for notice or claims administration incurred by the Claims Administrator through that date.

IX.
ATTORNEYS' FEES, COSTS AND EXPENSES, AND ENHANCEMENT
AWARDS

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

38. BofA recognizes that Class Counsel will apply to the Court for an award of: (i) attorneys' fees in an amount up to, but not more than, six hundred sixty-three thousand three hundred thirty-three U.S. dollars and thirty-three cents (\$663,333.33); and (ii) reasonable and necessary costs and expenses (including expenses incurred by Named Plaintiff in the prosecution of this action) in an amount up to, but not more than, twenty-five thousand U.S. dollars and no cents (\$25,000.00). BofA will not oppose Class

1 Counsel's application under this Paragraph 38 and the Named Plaintiff, Class Counsel, and
2 Settling Class Members shall not seek payment of attorneys' fees or reimbursement of
3 costs or expenses except as set forth herein. Class Counsel's application under this
4 Paragraph 38 shall be scheduled for determination at the Final Approval Hearing, but Class
5 Counsel's application shall be filed and served before the Class Notice is distributed and
6 will be posted on Class Counsel's website and the Claims Administrator's website.

7 39. BofA recognizes that, at the same time the application under Paragraph 38 is
8 made, Class Counsel will also apply to the Court for an additional award to Named Plaintiff,
9 in an amount not to exceed twenty-five thousand United States Dollars and no cents
10 (\$25,000.00), as reasonable additional compensation for the time and effort expended by
11 her in connection with the initiation and maintenance of the Lawsuit and in consideration
12 for the additional release set out in Paragraph 54 (the "Enhancement Award"). BofA will
13 not oppose Class Counsel's application under this Paragraph 39 and the Named Plaintiff,
14 Class Counsel, and Settling Class Members shall not seek payment of any additional
15 enhancement awards except as set forth herein. Any Enhancement Award will be in
16 addition to any amount Lee may be entitled to receive on account of her own individual
17 claims pursuant to Section XI of this Agreement. Class Counsel's application under this
18 Paragraph 39 shall be scheduled for determination at the Final Approval Hearing, but Class
19 Counsel's application shall be filed and served before the Class Notice is distributed and
20 will be posted on Class Counsel's website and the Claims Administrator's website.

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

23 41. If the Court does not approve the total amount of attorneys' fees, costs, and/or
24 Enhancement Award requested by Class Counsel pursuant to Paragraphs 38 and/or 39 of
25 this Agreement, any remaining portion of requested amount will be added to the Net
26 Settlement Value (as that term is defined in Paragraph 43(e) of this Agreement). The
27 Claims Administrator shall recalculate the Class Member payments to account for any
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1 reduction in the amount of attorneys' fees, costs and/or Enhancement Award made by the
2 Court.

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

11 **X.**
12 **PLAN OF ALLOCATION AND**
13 **DISTRIBUTION OF THE SETTLEMENT**

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

15 (a) First, to any attorneys' fees and reasonable and necessary costs and
16 expenses of Class Counsel (including expenses incurred by Named Plaintiff in the
17 prosecution of this action), as may be awarded by the Court pursuant to Paragraph
18 38 of this Agreement.

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

21 (c) Third, to the State of California in the amount of thirty-seven thousand
22 five hundred U.S. dollars and no cents (\$37,500.00) in penalties pursuant to PAGA
23 (75% of the PAGA Allocation);

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

27 (e) Fifth, to the "Net Settlement Value" or "NSV." The Net Settlement
28 Value shall be defined as the value of the GSV less the items described in

1 Subparagraphs 43(a)-(d). The NSV shall include the Settling Class' share of the
2 PAGA payment in the amount of twelve thousand five hundred U.S. dollars ad and
3 no cents (\$12,500.00) (*i.e.*, 25% of the PAGA Allocation). The Net Settlement
4 Value shall be allocated to the Settling Class as described in Section XI. The Claims
5 Administrator shall be responsible for the allocation and distribution of the Net
6 Settlement Value to the Settling Class Members who submit timely Adjustment
7 Forms as set forth in Paragraph 46 herein.

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

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

17 45. In light of the nature of the claims in the Lawsuit, for the purposes of
18 determining and/or calculating applicable taxes, sixty-six percent (66%) of each Class
19 Member Payment (as that term is defined in Paragraph 51 of this Agreement) shall be
20 classified as ordinary income and penalties, payable on a Form 1099 and thirty-four percent
21 (34%) of each Class Member Payment shall be classified as wages, payable on a Form W2.
22 One hundred percent (100%) of the Named Plaintiff's Enhancement Award will be
23 allocated to ordinary income, payable on a Form 1099. The Named Plaintiff and Settling
24 Class Members shall be individually responsible for any and all tax implications or
25 obligations attributable to receipt of the Enhancement Award and/or Class Member
26 Payments. The Claims Administrator shall be responsible for generating any necessary or
27 appropriate documents and remitting any necessary monies to the appropriate agencies in
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1 connection with payments hereunder (including remitting 75% of the PAGA Allocation to
2 the State of California). BofA shall provide the Claims Administrator with any information
3 reasonably necessary to perform the calculations discussed in this Paragraph 45.

4 **XI.**
5 **DETERMINATION OF THE AMOUNT, PROCESSING,**
6 **AND PAYMENT OF CLASS MEMBER CLAIMS**

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

27 47. The Settlement Class Notice shall contain the release and waiver of claims
28 against BofA contained in Paragraphs 53, 55, and 56 of this Agreement, and an easily

1 understood statement alerting Settling Class Members that by failing to submit a Request
2 for Exclusion the individual is executing a release and waiver of all such claims the
3 employee may have against BofA, whether or not they receive a payment.

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

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

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

21 (a) The Claims Administrator will determine, from either the spreadsheet
22 referenced in Paragraph 18 or the resolution of a dispute pursuant to Paragraph 48,
23 the number of four-hour shifts that a Settling Class member was actively employed
24 during the Settling Class Period covered by the spreadsheet discussed in Paragraph
25 18 (the "Compensable Shifts");

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

(c) The product of this calculation will be the Per Shift Payment.

51. The disbursement to each Settling Class Member shall be the number which results from dividing the NSV by the total Compensable Shifts worked by all Settling Class Members and multiplying that number by the number of Compensable Shifts for the individual Settling Class Member (the "Class Member Payment").

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

XII. RELEASES

53. **Release by Settling Class.** As of the Effective Date and in exchange for the consideration, undertakings, and covenants undertaken by BofA in this Agreement, including but not limited to the provisions of Paragraph 8 and Section XIII, and to the extent permitted by applicable law, the Settling Class hereby releases, discharges, and covenants not to sue Bank of America Corporation and Bank of America, National Association, including its and their predecessors, successors, affiliates, parents, subsidiaries, related companies, employees, agents, shareholders, officers, directors, attorneys, insurers, and any entity which could be jointly liable with Bank of America Corporation or Bank of America, National Association, or any of them (individually and collectively "the BofA Releasees,") from and with respect to any and all actions, causes of action, suits, liabilities, claims, and demands whatsoever, whether known or unknown, during the Settling Class Period, which the Settling Class, or individual members thereof, has, or had against the BofA Releasees, or any of them, which are based on, or in any way related to any claims that were alleged in the Lawsuit or could have been alleged in the

1 Lawsuit based on the current or prior pleadings therein, including without limitation claims
2 for violation of: California Labor Code §§ 201, 202, 203, 226.7, 512, and/or 1194;
3 Industrial Welfare Commission Order 4-2001 § 12; Business & Professions Code §§ 17200
4 *et seq.*, to the extent predicated in whole or in part on the foregoing alleged violations of
5 the Labor Code; Labor Code Private Attorney General Act of 2004, Labor Code §§ 2698
6 *et seq.*, to the extent predicated in whole or in part on the foregoing alleged violations of
7 the Labor Code; or any other California or local or federal law, ordinance, and/or
8 administrative regulation relating to the provision of, and payment for, rest breaks for non-
9 exempt employees, and any additional claims for penalties, wages, interest or other monies
10 predicated on same (the “Released Claims”).

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

20 (b) The Settling Class Members acknowledge and/or are deemed to
21 acknowledge that they may hereafter discover claims in addition to or different from
22 those which they now know or believe to exist with respect to the subject matter of
23 this Agreement and/or this release, and which, if known or suspected at the time of
24 executing this Agreement, may have materially affected this release. Nevertheless,
25 the Settling Class Members hereby waive any right, claim, or cause of action that
26 might arise as a result of such different or additional claims or facts.

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

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

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

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

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

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

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

13 57. Settlement Fair and Reasonable

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

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

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

25 59. Notices.

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

TO THE SETTLING CLASS:

Mark R. Thierman
Joshua D. Buck
Thierman Buck LLP
7287 Lakeside Drive
Reno, NV 89511
Telephone: (775) 284-1500
Facsimile: (775) 703-5027

TO BOFA:

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

60. No Admission of Liability.

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

1 61. Modification by Writing Only.

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

5 62. Representations.

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

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

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

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

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

25 63. Further Cooperation.

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

2 64. Construction and Integration.

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

14 65. Governing Law.

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

20 66. Counterparts.

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

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

4 *Charlotte Lee*

12 / 16 / 2021

5 _____
Charlotte Lee

Date

6
7 Named Plaintiff and Class and
8 PAGA Representative

9
10 *A J Longo*

12/15/21

11 _____
By: Aaron J. Longo

Date

12 SVP & Assistant General Counsel,
13 for and on behalf of Bank for
14 America Corporation and Bank of
15 America, National Association

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

4 **THIERMAN BUCK LLP**

5 Mark R. Thierman

6 Joshua D. Buck

7 

12 / 16 / 2021

8 By: Joshua D. Buck

Date

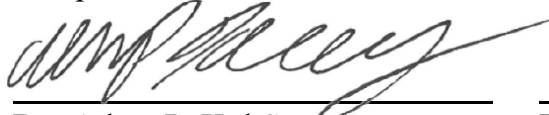
9 Attorneys for Named Plaintiff

Charlotte Lee

10 **O'MELVENY & MYERS LLP**

11 Adam P. KohSweeney

12 Racquel B. Martin

13 

12/15/2021

14 By: Adam P. KohSweeney

Date

15 Attorneys for Defendant

16 Bank of America Corporation and

17 Bank of America, National

Association

TITLE	2021.12.16 - REVISED BofA Settlement - For JDB Signature.pdf
FILE NAME	2021.12.16%20-%20...B%20Signature.pdf
DOCUMENT ID	13e7af63701d24ae4b04d8406589e0ff4d50317c
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Completed

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Document History



SENT

12 / 16 / 2021

21:11:18 UTC

Sent for signature to Joshua D Buck (josh@thiermanbuck.com)
from jennifer@thiermanbuck.com
IP: 24.176.187.110



VIEWED

12 / 16 / 2021

21:12:03 UTC

Viewed by Joshua D Buck (josh@thiermanbuck.com)
IP: 76.101.135.164



SIGNED

12 / 16 / 2021

21:12:18 UTC

Signed by Joshua D Buck (josh@thiermanbuck.com)
IP: 76.101.135.164



COMPLETED

12 / 16 / 2021

21:12:18 UTC

The document has been completed.

EXHIBIT A

Notice of Settlement of Class Action

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN**

CHARLOTTE LEE, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA CORPORATION, a
Delaware corporation doing business in
California; BANK OF AMERICA,
NATIONAL ASSOCIATION, a national
association bank doing business in
California; and DOES 1 through 50,
inclusive;

Defendants.

Case No. BCV-21-100770

**CLASS & REPRESENTATIVE
ACTION**

**NOTICE OF CLASS &
REPRESENTATIVE ACTION
SETTLEMENT**

To: All non-exempt Loan Officers of Defendant who held a job title of Lending Associate (SM171), FC Lending Officer (SM611), FC Lending Consultant (SM612), and Senior FCLO (SM614), and who were employed by BoA at any time from February 1, 2019 through [**Insert date of Preliminary Approval of the Settlement**].

PLEASE READ THIS NOTICE CAREFULLY. It pertains to a class and representative action that may affect your rights.

If you wish to exclude yourself from the settlement, you must make a written and signed request for exclusion so that it is actually received by the Claims Administrator with a postmark no later thirty (30) days after the date on this notice.

PLEASE DO NOT CONTACT MANAGEMENT OR HUMAN RESOURCES OF BANK OF AMERICA CORPORATION OR BANK OF AMERICA NATIONAL ASSOCIATION REGARDING THIS NOTICE. Questions should be directed to the Claims Administrator as described herein.

Pursuant to the order dated **[Insert Date of Order]** of the Superior Court of the State of California, County of Kern, **YOU ARE HEREBY NOTIFIED AS FOLLOWS:**

A proposed settlement (the “Settlement”) has been reached between the parties in a putative class and representative action pending in the Superior Court of the State of California, County of Kern (the “Court”), *Charlotte Lee v. Bank of America Corporation, et al.*, Case No. BCV-21-100770 (the “Lawsuit”), brought on behalf of all non-exempt Loan Officers of Bank of America Corporation or Bank of America National Association (collectively, “BofA”) who held a job title of Lending Associate (SM171), FC Lending Officer (SM611), FC Lending Consultant (SM612), and Senior FCLO (SM614), and who were employed by BoA at any time from February 1, 2019 through **[Insert Date of Preliminary Approval]** (the “Settling Class”). This putative class action contends that BofA failed to provide rest breaks in violation of Labor Code §§ 226.7, 512, and 1194, as well as Industrial Welfare Commission (“IWC”) Wage Order No. 4-2001 § 12; failed to pay wages timely when due in violation of Labor Code §§ 201, 202, and 203; and engaged in unfair competition pursuant to Business & Professions Code §§ 17200 *et seq.* (the “UCL”).

The Court has preliminarily approved the Settlement and conditionally certified the putative class for purposes of the Settlement only. The Court has not ruled on the validity of Plaintiff’s claims, and BofA denies all allegations made in the Lawsuit. You have received this notice because BofA’s records indicate that you may be a Settling Class Member. This notice is designed to inform you of the Settlement’s terms.

Depending on the actions you take (or do not take), one of three things will happen:

1. ***If you do nothing***, and the Settlement receives final approval from the Court, a payment will be mailed to you, all claims covered by this Settlement will be extinguished, and you will forfeit your right to bring or participate in a similar action against BofA and the other Releasees;
2. ***If you timely submit a Request for Exclusion***, you will not be a Settling Class Member and will no longer be part of the Lawsuit. You will not receive a payment, but all your potential claims will be preserved, even if the Settlement receives final approval from the Court; or

3. ***If you timely submit an Adjustment Form***, and if the Settlement receives final approval from the Court, the Claims Administrator will review the records you provide and may, or may not, adjust the calculation used to arrive at your payment. Regardless of what the Claims Administrator decides, payment will be mailed to you, all claims covered by this Settlement will be extinguished, and you will forfeit your right to bring or participate in a similar action against BofA and the other Releasees.

I. BACKGROUND OF THE CASE

Plaintiff Charlotte Lee (“Plaintiff” or “the Named Plaintiff”) has worked for Bank of America, National Association first as a Mortgage Loan Coordinator and later as a FC Lending Officer. On April 8, 2021, she filed the above-captioned action in the Superior Court of the State of California, County of Kern. BofA filed an Answer denying all allegations in the Lawsuit on May 19, 2021.

The Lawsuit seeks to assert claims on behalf of a putative class, which is plead to consist of “All non-exempt Loan Officers of Defendant who held a job title of Sr WM Lending Officer-Covered (SM603), Sr WM Lending Officer (SM604), WM Lending Officer (SM605), Sr Lending Officer (SM172), Sr FC Lending Officer - E (SM610); FC Lending Officer (SM611), Sr FC Lending Officer - NE (SM614), Lending Associate (SM171), and/or Lending Consultant (SM612), and who were employed by Defendant at any time from February 1, 2019 through the date notice is mailed to the Class. The Lawsuit generally alleges that BofA: failed to provide rest breaks, in violation of Labor Code §§ 226.7, 512, and 1194, as well as Industrial Welfare Commission IWC Wage Order No. 4-2001 § 12; failed to pay wages timely when due, in violation of Labor Code §§ 201, 202, and 203; and engaged in unfair competition pursuant to the UCL. The Lawsuit is framed as both a putative class action and a non-class representative action pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.* (“PAGA”). In general, the Lawsuit alleges that the putative class are paid on the basis of a nonrecoverable draw, and that this method of compensation fails to pay the putative class for

non-productive time including, *inter alia*, rest breaks. The Lawsuit seeks compensatory damages (unpaid wages and premium wages), statutory and/or civil penalties, liquidated damages, restitution, declaratory relief, interest, reasonable attorneys' fees and costs, and such other relief as the Court may award.

BofA believes that the claims in the Lawsuit are meritless and contends that at all times it has complied with relevant California law to the extent that said law applies to the Settling Class.

On August 6, 2021, Plaintiff and BofA remotely attended a full day mediation before private mediator David A. Rotman of David A. Rotman – Mediated Negotiations. The mediation was not successful. However, Plaintiff and BofA agreed to a second day of mediation, which was held remotely on October 19, 2021, and resulted in a settlement in principle.

Over the course of the Lawsuit, Plaintiff and BofA have engaged in significant discussion of the validity of the legal claims at issue and have exchanged extensive documents and information, which have allowed Plaintiff and BofA to fully assess the value of the claims involved. Subject to the Court's approval, Plaintiff and BofA have agreed to avoid further litigation and to settle and resolve the Lawsuit, as well as all existing and potential disputes, actions, lawsuits, charges, and claims that are or could have been raised in the Lawsuit, that the Settling Class has or may have against BofA, to the fullest extent permitted by law and without any admission of liability or wrongdoing by either party. Plaintiff and BofA, and their counsel, have concluded that the Settlement is advantageous, considering the risks, uncertainties, and costs to each side of continued litigation. Class Counsel have determined that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settling Class.

This Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended to or will be construed as an admission by BofA that Plaintiff's claims have any merit or that BofA has any liability to Plaintiff or the Settling Class on those claims, or that class treatment of those claims would be appropriate in litigation (as opposed to settlement).

As a Settling Class member, your rights will be affected by the Settlement unless you elect

to exclude yourself by timely filing a Request for Exclusion.

II. SUMMARY OF THE SETTLEMENT

Assuming the Settlement receives final approval from the Court, BofA shall make available a total amount of one million, nine hundred ninety-nine thousand U.S. dollars and zero cents (\$1,999,000.000) (the “Gross Settlement Value” or “GSV”). The following amounts shall be deducted from the Gross Settlement Value: (i) attorneys’ fees and reimbursement of litigation costs and expenses to Class Counsel, to the extent approved by the Court; (ii) an Enhancement Award to Charlotte Lee, for her service as class representative and her efforts in bringing the lawsuit, to the extent approved by the Court; (iii) PAGA penalties to the State of California; and (iv) the cost of claims administration and notice, to the extent approved by the Court. The Gross Settlement Value, less these items, is referred to as the “Net Settlement Value” or “NSV.”

A. Who Is Included in the Settlement?

Non-exempt Loan Officers of Bank of America Corporation or Bank of America National Association (collectively, “BofA”) who held a job title of Lending Associate (SM171), FC Lending Officer (SM611), FC Lending Consultant (SM612), and Senior FCLO (SM614), and who were employed by BoA at any time from February 1, 2019 through **[Insert Date of Preliminary Approval]**.

B. Who Is Representing the Settling Class?

The attorneys for the Settling Class (“Class Counsel”) are:

Mark R. Thierman
Joshua D. Buck
Thierman Buck LLP
7287 Lakeside Drive
Reno, NV 89511
Telephone: (775) 284-1500
Facsimile: (775) 703-5027

C. When Is the Class Period?

February 1, 2019, through **[Insert date of preliminary approval]**.

D. What Will I Receive from the Settlement?

The Claims Administrator shall distribute a settlement payment to each Settling Class Member. This amount will be distributed from the Net Settlement Value and will be calculated based on the number of four-hour shifts each Settling Class Member worked in a class-qualifying capacity during the Settling Class Period. The enclosed Adjustment Form contains an *estimate* of the payment you may be eligible to receive. Please note that this amount may increase or decrease without further notice to you. If you disagree with the number of four-hour shifts allocated to you in the Adjustment Form, you may follow the directions on that form to submit documentation to the Claims Administrator regarding the number of four-hour shifts you believe you worked. . The Claims Administrator will have final authority to resolve any such disputes.

E. When Will I Receive My Settlement Payment?

The Settlement Payments will be paid after final court approval of the Settlement and after all rights to appeal or review are exhausted or any appeal or review has been resolved in favor of the Settlement. It is up to you to maintain a current address with the Claims Administrator so that if this Settlement is finally approved, your payment will go to the correct address.

F. Who Is Administering the Settlement?

The Court has appointed the following as Claims Administrator:

ILYM Group, Inc.
14771 Plaza Drive, Suite L
Tustin, CA 92780
jonathan@ilymgroup.com

The Claims Administrator will mail forms, receive forms back, calculate payments, distribute checks, and answer basic questions about the Settlement.

G. What Claims Are Being Released?

Settling Class Members (other than those who submit a Request for Exclusion) will release, discharge, and covenant not to sue Bank of America Corporation and Bank of America, National Association, including its and their predecessors, successors, affiliates, parents,

subsidiaries, related companies, employees, agents, shareholders, officers, directors, attorneys, insurers, and any entity which could be jointly liable with Bank of America Corporation or Bank of America, National Association, or any of them (individually and collectively, “the BofA Releasees”) from and with respect to any and all actions, causes of action, suits, liabilities, claims, and demands whatsoever, whether known or unknown, during the Settling Class Period, which the Settling Class, or individual members thereof, has, or had against the BofA Releasees, or any of them, which are based on, or in any way related to any claims that were alleged in the Lawsuit or could have been alleged in the Lawsuit based on the current or prior pleadings therein, including without limitation claims for violation of: California Labor Code §§ 201, 202, 203, 226.7, 512, and/or 1194; Industrial Welfare Commission Order 4-2001 § 12; Business & Professions Code §§ 17200 *et seq.*, to the extent predicated in whole or in part on the foregoing alleged violations of the Labor Code; Labor Code Private Attorney General Act of 2004, Labor Code §§ 2698 *et seq.*, to the extent predicated in whole or in part on the foregoing alleged violations of the Labor Code; or any other California or local or federal law, ordinance, and/or administrative regulation relating to the provision of, and payment for, rest breaks for nonexempt employees, and any additional claims for penalties, wages, interest or other monies predicated on same (the “Released Claims”).

The parties intend the Settling Class’ release to be general and comprehensive in nature and to release all claims and potential claims against the BofA Releasees to the extent such claims relate to the Released Claims which were or could have been brought by the Lawsuit to the maximum extent permitted at law.

The Released Claims include specifically, by way of further description, but not by way of limitation, any and all claims arising out of or in any way related to any and all attorneys’ fees, attorneys’ costs/expenses, fines, penalties, wages, interest, restitution, liquidated damages, punitive damages, declaratory relief, and/or injunctive relief allegedly due and owing by virtue of the allegations set out in the Lawsuit and/or the claims referenced in the Released Claims, whether based on statutory, regulatory, or common law (including but not limited to any such claims based on the California Labor Code, Business and Professions Code, Civil Code, Order of the Industrial

Welfare Commission, and/or Code of Civil Procedure).

The Settling Class Members acknowledge and/or are deemed to acknowledge that they may hereafter discover claims in addition to or different from those which they now know or believe to exist with respect to the subject matter of this Agreement and/or this release, and which, if known or suspected at the time of executing this Agreement, may have materially affected this release. Nevertheless, the Settling Class Members hereby waive any right, claim, or cause of action that might arise as a result of such different or additional claims or facts.

All Settling Class Members (including, without limitation, the Named Plaintiff) intend and/or are deemed to intend that this Agreement should be effective as a bar to any and all of the claims discussed above. In furtherance of this intention, all Settling Class Members expressly waive any and all rights or benefits conferred on them by the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

All Settling Class Members understand fully the statutory language of Civil Code § 1542, and, with this understanding, assume all risks for claims released hereunder that have already arisen or may in the future arise, whether known or unknown, suspected or unsuspected, and specifically waive all rights they may have under California Civil Code § 1542. Settling Class Members understand that, if any of the facts relating in any manner to the Lawsuit, or to the release and dismissal of claims as provided in this Agreement, are hereafter found to be other than or different from the facts now believed to be true, they have expressly accepted and assumed that risk and agree that this Agreement and the release of claims contained herein shall nevertheless remain effective. The Settling Class desires and intends, or is deemed to desire and intend, that this Agreement shall be given full force and effect according to each and all of its express terms

and provisions, including those relating to unknown and unsuspected claims, if any, as well as those relating to the claims referred to above.

H. What Do Class Counsel, the Class Representative, and the Claims Administrator Receive?

Subject to final approval by the Court as to each of the following items, which BofA has agreed not to oppose, the following amounts shall be deducted from the \$1,999,000 Gross Settlement Value: (i) attorneys' fees, which shall not be more than six hundred sixty-three thousand three hundred thirty-three U.S. dollars and thirty-three cents (\$663,333.33); (ii) reasonable and necessary costs and expenses (including expenses incurred by Named Plaintiff in the prosecution of this action), which shall not be more than twenty-five thousand U.S. dollars and no cents (\$25,000.00); (iii) an Enhancement Award to Charlotte Lee for her initiation and maintenance of the Lawsuit and in consideration for the additional release set out in Paragraph 54 of the Settlement Agreement, in an amount not to exceed twenty-five thousand United States Dollars and no cents (\$25,000.00) and in addition to her share as a participating class member, to the extent approved by the Court; (iv) thirty-seven thousand five hundred U.S. dollars and zero cents (\$37,500.00) in PAGA penalties to the State of California; and (v) the cost of claims administration and notice (currently estimated to be [Insert amount]), to the extent approved by the Court. If approved by the Court, these amounts will be deducted from the GSV pursuant to the Settlement prior to arriving at the NSV. Class Counsel believe the amount for costs and attorneys' fees requested are fair and reasonable, and BofA has agreed not to oppose their request for that amount.

III. PLAINTIFF AND CLASS COUNSEL SUPPORT THE SETTLEMENT

Class Counsel and Charlotte Lee as Class Representative support this Settlement. Their reasons include the inherent risk of denial of class certification, the risk of a trial on the merits, the inherent delays and uncertainties associated with litigation, and recent case law which pertains to certain of the ambiguities in this litigation. Based on their experience litigating similar cases, Class Counsel believe that further proceedings in this case, include a trial and probable appeals,

would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including the amount of damages, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, Plaintiff and Class Counsel believe that the Settlement is fair, reasonable, and adequate.

IV. WHAT ARE YOUR RIGHTS AS A MEMBER OF THE SETTLING CLASS?

Plaintiff as Class Representative and Class Counsel represent your interests as a Settling Class Member. Unless you elect to exclude yourself from the Settlement by timely filing a Request for Exclusion, you are a part of the Settling Class and you will be bound by the terms of the Settlement, regardless of whether or not you receive a payment, as described above and as more fully discussed in the Settlement Agreement on file with the Court. As a Settling Class Member, any final judgment that may be entered by the Court pursuant to the Settlement will effectuate a release of your claims against BoA and the other released parties as described above. As a Settling Class Member, you will not be responsible for the payment of attorneys' fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorneys' fees and costs.

A. Objecting to the Settlement.

If you are dissatisfied with any of the terms of the Settlement, you may object to the Settlement. Any objection to the Settlement must be in writing and must explain, in clear and concise terms, the basis for your objection. In addition, in order to be considered, your objection must be mailed to all of the following via first class mail and actually received within thirty (30) days after the date on this Notice:

Superior Court of California, County of Kern
Metropolitan Division
1415 Truxtun Ave.
Department 17
Bakersfield, CA 93301

Mark R. Thierman
Joshua D. Buck
Thierman Buck LLP

7287 Lakeside Drive
Reno, NV 89511

Adam P. KohSweeney
O'Melveny & Myers LLP
Two Embarcadero Center
San Francisco, CA 94111-3823

Your objection must include your full name, address, and dates and place of your employment at BofA and must reference the Lawsuit, *Charlotte Lee v. Bank of America Corporation et al.*, Case No. BCV-21-100770. In addition, you must appear at the Final Approval Hearing scheduled for [DATE] at [TIME].

PLEASE DO NOT TELEPHONE THE COURT, COUNSEL, OR DEFENDANTS. SPECIFICALLY, DO NOT CONTACT BOFA MANAGEMENT OR HUMAN RESOURCES. QUESTIONS SHOULD BE DIRECTED TO THE CLAIMS ADMINISTRATOR.

Any Settling Class Member who does not object to the Settlement in the manner described above will be deemed to have waived any objections and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. If the Court rejects your objection, you will still be bound by the terms of the Settlement with respect to covered claims, unless you also submit a Request for Exclusion in the manner described in this Notice.

B. Excluding Yourself from the Settlement.

If you do not wish to participate in the Settlement, you must file a Request for Exclusion. To be valid, the Request for Exclusion must be signed by you and returned via first class mail to:

[REDACTED]
ILYM Group, Inc.
14771 Plaza Drive, Suite L
Tustin, CA 92780

The Request for Exclusion must be actually received by the Claims Administrator with a postmark of no later than thirty (30) days after the date on this Notice.

Any person who files a complete and timely Request for Exclusion will, upon receipt, no longer be a Settling Class Member, will be barred from participating in any portion of the Settlement, and will receive no benefits from the Settlement. Any such person, at their own expense, may pursue any claims they may have against BofA.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a final approval hearing at the Superior Court of the State of California, County of Kern, Metropolitan Division, 1415 Truxtun Ave., Bakersfield, CA 93301, Department 17, on [DATE] at [TIME], to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for costs and attorneys' fees, the Enhancement Award made to the Class Representative, and the fees and costs of the Claims Administrator.

The hearing may be postponed without further notice to the Class. It is not necessary for you to appear at this hearing.

VI. GETTING MORE INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Joint Stipulation of Class and Representative Action Settlement and Release between Plaintiff and BofA, which will be on file with the Court and available through the Claims Administrator. The pleadings and other records in this litigation may be examined at any time during regular business hours at the records office of the Superior Court of the State of California, County of Kern, Metropolitan Division, 1415 Truxtun Ave., Bakersfield, CA 93301, or you may contact the Claims Administrator.

PLEASE DO NOT TELEPHONE THE COURT, BOFA'S COUNSEL, OR BOFA FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS. SPECIFICALLY, DO NOT CONTACT BOFA'S MANAGEMENT OR HUMAN RESOURCES. QUESTIONS SHOULD BE DIRECTED TO THE CLAIMS ADMINISTRATOR.