

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement is made by and between Plaintiff Alexia Razo-Orrego (“Plaintiff”), on behalf of herself and on behalf of the State of California and all Private Attorneys General Act (“PAGA”) Settlement Group Members, on the one hand, and Defendant Poppy Bank (“Defendant”), on the other (Plaintiff and Defendant are collectively referred herein as the “Parties,” and individually as a “Party”), subject to the approval of the Court in accordance with California Labor Code section 2699(1)(2), upon and subject to the following terms and conditions.

I. DEFINITIONS

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- A. “Action” means the civil action titled *Alexia Razo-Orrego, as an individual and on behalf of all similarly situated employees v. Poppy Bank, and DOES 1 through 50, inclusive* (the “Action”), pending before the Superior Court of the State of California for the County of Sonoma (the “Court”), No. SCV-268515.
- B. “Agreement” or “Settlement Agreement” means this PAGA Settlement Agreement.
- C. “Complaint” means the Complaint filed by Plaintiff on June 3, 2021 in the Action, and all amendments thereto.
- D. “Court” means the Superior Court for the State of California, County of Sonoma.
- E. “Covered Period” means the period of time from March 26, 2020 through the date upon entry of an Order by the Court approving the Settlement Agreement.
- F. “Defendant” means the defendant in this Action, Poppy Bank.
- G. “Effective Date” means the date upon entry of an Order by the Court approving the Settlement Agreement.
- H. “Defendant’s Counsel” means Kenneth Nabity and William Abramovitz of Coblentz Patch Duffy & Bass LLP.
- I. “Judgment” means the Order Granting Approval of Settlement and Entering Final Judgment entered by the Court in substantially the same form evidenced by Exhibit A to this Agreement and incorporated by reference into this Agreement.
- J. “LWDA” means the California Labor and Workforce Development Agency.
- K. “LWDA Payment” means the portion of the payment from the Total Settlement Amount to be paid to the LWDA under the Settlement Agreement.
- L. “Net Settlement Amount” means the amount from the Total Settlement Amount that is available for distribution as Settlement Shares to PAGA Settlement Group

Members and the LWDA Payment after deduction for (i) the Representative Plaintiff's Payment (ii) Plaintiff's Counsel Fees and Expenses Payment, and (iii) the Settlement Administrator's fees and expenses. If any Settlement Share check is not timely cashed by a Settlement Group Member, that share will be sent to the California State Controllers' Office Unclaimed Property Fund in the name of the PAGA Settlement Group Member.

- M. "PAGA" means the Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.*
- N. "PAGA Notice" means a notice of proposed settlement pursuant to PAGA, substantially in the form evidenced by Exhibit B to this Agreement.
- O. "PAGA Released Claims" means any and all claims under PAGA that are pled in Plaintiff's Complaint, or which could have been pled under the PAGA based on the factual allegations in Plaintiff's Complaint, that arose during the Covered Period.
- P. "PAGA Settlement Group Members" means, based upon Defendant's representation to Plaintiff, the allotted for one hundred forty-three (143) current and former non-exempt employees of Defendant in California at any time during the period from March 26, 2020 to January 21, 2022.
- Q. "Plaintiff" means the plaintiff in the Action, Alexia Razo-Orrego.
- R. "Plaintiff's Counsel" means Kevin Mahoney, Esq. and John A. Young, Esq., of Mahoney Law Group, APC.
- S. "Released Parties" means Defendant and any present and former parents, subsidiaries, owners, members, and their respective officers, directors, employees, representatives, insurers, and agents, and any other successors, assigns and legal representatives.
- T. "Representative Plaintiff's Payment" means the special payment made to Plaintiff to compensate her for initiating and pursuing the Action, undertaking the risk of liability for attorneys' fees and expenses in the event that she was unsuccessful in the prosecution of the Action.
- U. "Settlement" means the Parties' agreement, as detailed herein, to dispose of the Action and all other claims, demands, rights, promises, covenants, actions, suits, causes of action, obligations, debts, expenses, administration costs, damages, penalties fines, interest, injuries, compensation, judgments, orders and liabilities alleged in, arising from, or related to the Action.
- V. "Settlement Administrator" means the administrator proposed by the Parties and appointed by the Court to administer the Settlement. The Parties have agreed to propose Phoenix Class Action Administrator to serve in this capacity.

- W. “Settlement Share” means the portion of the Net Settlement Amount allocable to each PAGA Settlement Group Member as provided by this Agreement.
- X. “Total Settlement Amount” means the total amount to be paid by Defendant as provided by this Agreement. The Total Settlement Amount is two hundred twenty-seven thousand five hundred dollars (\$227,500.00). The Total Settlement Amount will cover (i) all Settlement Shares to PAGA Settlement Group Members, (ii) the LWDA Payment, (iii) the Representative Plaintiff’s Payment, (iv) the Plaintiff’s Counsel Fees and Expenses Payment, and (iv) the Settlement Administrator’s fees and expenses.

II. FACTUAL BACKGROUND

- A. On March 26, 2021, Plaintiff served a letter to the LWDA and Defendant in accordance with the requirements of Labor Code section 2699.3, to notify the LWDA of alleged violations by Defendant of California Labor Code sections 201-204, 226, 226.7, 227.2, 510, 1174, 1194, and 2698 *et seq.*, for alleged failures to properly pay employees all wages, provide meal and rest periods, and provide accurate itemized wage statements. The LWDA declined to investigate the alleged violations, and Plaintiff initiated this Action.
- B. On June 3, 2021, Plaintiff commenced this Action as a PAGA action.
- C. In the Action, Plaintiff seeks penalties under PAGA on behalf of herself and the PAGA Settlement Group Members for the alleged violations of California’s Labor Code.
- D. On January 11, 2022, the Parties participated in a mediation presided over by Jill Sperber, Esq. Prior to mediation, the Parties exchanged informal discovery. Defendant supplied Plaintiff with employee and payroll data, which Plaintiff’s Counsel reviewed and analyzed.
- E. During the mediation, each side, represented by its respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action, and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement. Although this Action did not resolve during the mediation, both Parties accepted a subsequent mediator’s proposal.
- F. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that Plaintiff’s claims in the Action have merit or that they have any liability to Plaintiff or the PAGA Settlement Group on those claims, or as an admission by Plaintiff that Defendant’s defenses in the Action have merit.

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Non-Admission.** Nothing in this Settlement nor the acts to be performed or judgments to be entered pursuant to the terms of the Settlement shall be construed to be an admission by Plaintiff that her claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved Employees or any other person. Defendant specifically disclaims any such liability or wrongdoing. Defendant denies the allegations in the Action and specifically denies that it has committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.
- B. **Total Settlement Amount.** Subject to the terms and conditions of this Agreement and court approval, the Total Settlement Amount is two hundred twenty-seven thousand five hundred dollars (\$227,500.00). The Total Settlement Amount will cover (i) all Settlement Shares to PAGA Settlement Group Members, (ii) the LWDA Payment, (iii) the Representative Plaintiff's Payment, (iv) the Plaintiff's Counsel Fees and Expenses Payment, and (iv) the Settlement Administrator's fees and expenses. Defendant has represented that there were one hundred forty-three (143) PAGA Settlement Group Members. If the number of PAGA Settlement Group Members is more than fifteen percent (15%) greater than this figure (i.e., if there are 164 or more total PAGA Settlement Group Members), Defendant agrees to increase the Gross Settlement Amount on a proportional basis (i.e. if there was a 16% increase in the number of PAGA Settlement Group Members, Defendant would agree to increase the Gross Settlement Amount by 16%). The settlement is non-reversionary, such that the entire Gross Settlement Amount will be disbursed.
- C. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Maximum Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees: (1) Payments to Settlement Administrator; (2) Payment to Plaintiff's Counsel; and (3) Payment to Plaintiff.
- D. **Payments to Settlement Administrator.** The Settlement Administrator will pay to itself out of the Total Settlement Amount its reasonable fees and expenses as approved by the Court, and not to exceed three thousand five hundred dollars (\$3,500.00).
- E. **Payments to LWDA.** The Settlement Administrator shall pay to the LWDA 75% of the Net Settlement Amount.
- F. **Payment to Plaintiff's Counsel.** Defendant will not oppose Plaintiff's Counsel's request for a Fees and Expenses Payment in the total, maximum amount of seventy-five thousand eight hundred thirty-three dollars and thirty-three cents (\$75,833.33)

for attorneys' fees (one-third of the Total Settlement Amount), and expenses not to exceed twelve thousand dollars (\$12,000.00). The Settlement Administrator will issue to Plaintiff's Counsel a Form 1099 with respect to the awarded attorneys' fees and costs.

- G. **Payment to Plaintiff.** In addition to her Settlement Share, Plaintiff will apply to the Superior Court for a Representative Plaintiff's Payment of not more than two thousand five hundred dollars (\$2,500.00). Defendant will not oppose a Representative Plaintiff's Payment of up to two thousand five hundred dollars (\$2,500.00). The Settlement Administrator will pay the Representative Plaintiff Payments approved by the Superior Court out of the Total Settlement Amount. If the Superior Court approves a Representative Plaintiff's Payment of less than two thousand five hundred dollars (\$2,500.00), the remainder will be retained in the Net Settlement Amount. Tax deductions and withholdings will not be taken from the Representative Plaintiff's Payment, and instead a Form 1099 will be issued to Plaintiff with respect to this payment.
- H. **Settlement Share to PAGA Settlement Group Members.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will allocate Settlement Shares from the Net Settlement Amount to the PAGA Settlement Group Members in proportion to the number of weeks worked for Defendant during the Covered Period. A Form 1099 will be issued to each Settlement Group Member for his/her Settlement Share because the Action sought civil penalties.
- I. **Appointment of Settlement Administrator.** The Parties have agreed to propose Phoenix Class Settlement Administrator as an acceptable Settlement Administrator to resolve disputes in connection with the calculation of Settlement Shares in accordance with the Settlement; distribute Settlement Shares and other payments due under the Settlement; and otherwise administer the Settlement. The Settlement Administrator's duties will include preparing, printing, and mailing the Notice Packet to the PAGA Settlement Group Members; conducting a National Change of Address search and using Accurint and other reasonable and cost-effective skip trace methods to locate any PAGA Settlement Group Member whose Notice Packet was returned by the U.S. Postal Service as non-deliverable, and re-mailing the Notice Packet to the PAGA Settlement Group Member's new address; issuing the checks to effectuate the payments due under the Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the final authority to resolve all disputes concerning the calculation of a PAGA Settlement Group Member's Settlement Share, subject to the dollar limitations set forth in this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Notice Packet, will be paid out of the Total Settlement Amount.

J. Procedure for Approving Settlement.

1. Motion for an Order Approving the Settlement.

a. The Parties will cooperate in seeking approval of the Settlement, including Plaintiff filing a Motion for an Order Approving the Settlement Agreement (the “Motion”).

b. Pursuant to PAGA, on the date the Parties file the Motion, Plaintiff will submit to the LWDA the PAGA Notice substantially evidenced by **Exhibit B** to this Agreement, enclosing this Agreement. The Parties intend and believe that providing notice of this Settlement to the LWDA pursuant to the procedures described in this section complies with the requirements of PAGA.

c. At the hearing on the Motion, the Parties will jointly appear, support the granting of the motion, and submit an order granting the motion in the form evidenced by **Exhibit A** to this Agreement.

d. Should the Court decline to approve all material aspects of the Settlement, or order material changes to the Settlement to which the Parties do not agree, the Parties will meet and confer to address the Court’s concerns and determine whether resolution of the Action can be obtained in a manner consistent with the Court’s concerns. If no agreement can be reached, the Settlement will be null and void and the Parties will have no further obligations under it. However, an award by the Court of a lesser amount than sought for the Representative Plaintiff’s Payment and/or Counsel Fees and Expenses Payment will not be considered a material change to the Settlement.

2. No Right to Opt Out or Object. The Parties agree there is no statutory right for any PAGA Settlement Group Member to object, opt out or otherwise exclude himself or herself from the Settlement. The Parties further agree there is no right or opportunity for any PAGA Settlement Group Member to appeal the approval of the Settlement by the Court. The Parties further agree that an Aggrieved Employee’s recovery under this Settlement does not act to preclude claims not encompassed within the release of claims in Section III.K.1.

3. Notice to PAGA Settlement Group Members. After the Court enters its order granting the Motion, every PAGA Settlement Group Member will be provided with the Notice and a check for their Settlement Share.

a. Within twenty-one (21) days after the Court Order is signed, approving the Settlement, Defendant will provide to the Settlement Administrator the names, last known addresses and telephone numbers, Social Security numbers, and Covered Pay Periods of all PAGA Settlement Group Members. The Settlement Administrator shall keep this information

confidential and not disclose it to Plaintiff's Counsel or any third parties. If any or all of the PAGA Settlement Group Members' data are unavailable to Defendant, Defendant will use best efforts to deduce or reconstruct its data prior to when it must be submitted to the Settlement Administrator.

b. Within ten business (10) days after receiving the PAGA Settlement Group Members' data from Defendant, the Settlement Administrator will send a Notice and a check for their Settlement Share to each PAGA Settlement Group Member. The Settlement Administrator will mail this information to all identified PAGA Settlement Group Members, using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement. In the event of returned or non-deliverable notices, the Settlement Administrator will make reasonable efforts to locate PAGA Settlement Group Members and re-send the notices.

c. If a Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days from receipt of the returned packet, search for a more current address for the PAGA Settlement Group Member using Accurint and other reasonable and cost-effective skip trace methods, and re-mail the Notice Packet to the PAGA Settlement Group Member. The Settlement Administrator will use the PAGA Settlement Group Members' data and otherwise work with Defendant to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, as agreed to with Plaintiff's Counsel and according to the following deadlines, to trace the mailing address of any PAGA Settlement Group Member for whom a Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps will include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to PAGA Settlement Group Members for whom new addresses are found.

4. **Submission of Judgment.** Plaintiff shall submit a copy of the Judgment in this Action and a copy of any other order providing for or denying an award of civil penalties within ten (10) days after entry of the Judgment and/or order, in compliance with Section 2699(1)(3) of the California Labor Code. The Judgment will be made available to the LWDA and Aggrieved Employees through the Settlement Administrator's website for a period of one (1) year following entry of judgment.
5. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the material terms of this Agreement, Plaintiff, Defendant, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for

new trial, and any extraordinary writ, and the Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. This paragraph does not preclude Plaintiff or Plaintiff's Counsel from appealing from a refusal by the Court to award the Plaintiff's Counsel attorneys' fees and/or costs sought by them. If an appeal is taken, the time for consummating the Settlement (including making payments under the Settlement) will be suspended until such time as their appeal is finally resolved and the Judgment becomes Final, as defined in this Agreement.

6. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal or a petition for *certiorari* or review, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material change to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then either Plaintiff or Defendant will have the right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing court, and the Court not later than 30 days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Representative Plaintiff's Payment and/or Plaintiff's attorneys' fees and/or costs will not constitute a vacating, reversal, or material modification of the Judgment within the meaning of this paragraph, although Plaintiff or Plaintiff's Counsel have the right to appeal from any refusal by the Court to award the Plaintiff's Counsel attorneys' fees and/or costs sought by them.
7. **Timing of Settlement Payments.** Within ten (10) business days after the Court Order is signed approving the Settlement, the Settlement Administrator will provide Defendant with wire transfer information. Within ten (10) business days after the Settlement Administrator provides Defendant with wire transfer information, Defendant will transfer the Total Settlement Amount to the Settlement Administrator via wire transfer. Within five (5) business days thereafter, the Settlement Administrator will make the following payments from the Total Settlement Amount: the LWDA Payment paid to the LWDA; the Representative Plaintiff's Payment to Plaintiff; Plaintiff's Counsel Fees and Expenses Payment paid to Plaintiff's Counsel; and the Settlement Administrator's fees and expenses.
8. **Uncashed Settlement Share Checks.** A PAGA Settlement Group Member must receive or cash his or her Settlement Share payment or check within 180 calendar days after it is mailed to him or her. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the PAGA Settlement Group Member at his or her correct address. If any PAGA Settlement Group Member's Settlement Share check is not cashed within 120 days after its last mailing

to the PAGA Settlement Group Member, the Settlement Administrator will send the PAGA Settlement Group Member a letter or postcard informing him or her that unless the check is cashed in the next 60 days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If a PAGA Settlement Group Member fails to cash the check for his or her Settlement Share within 180 days after it is mailed to him or her, the funds shall be distributed by the Settlement Administrator to the State Controller's Unclaimed Property Fund in the Settlement Group Member's name.

K. Release and Waiver of Claims.

1. **PAGA Settlement Group Members.** As of the date the Settlement becomes Final, Plaintiff, acting on behalf of the State of California, and all PAGA Settlement Group Members release Defendant and the Released Parties from any and all claims based on the Private Attorneys General Act (2004), as pleaded in Plaintiff's Complaint or that could have been pleaded on the facts as alleged in the Complaint and Plaintiff's notice letter to LWDA, arising during the Covered Period, including but not limited to claims under Labor Code sections 201-204, 226, 226.7, 510, 512, 1174, 1194, 1197, 2698, 2699.3, and 2699.5, the Industrial Welfare Commission Wage Orders, and any resulting claim for attorneys' fees and costs (the "Released Claims").
2. **Waiver of Rights under California Civil Code Section 1542.** The PAGA Settlement Group Members' Released Claims include all such respective claims under PAGA only, whether known or unknown by the releasing party. Therefore, with respect only to those respective Released Claims, Plaintiff and the PAGA Settlement Group Members expressly waive and relinquish the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

With respect to the PAGA Settlement Group Members' Released Claims, the scope of the waiver of rights and benefits under section 1542 of the California Civil Code is in no way intended by the Parties to extend to any claims beyond the Released Claims; rather, this waiver is intended to apply only to the Released Claims.

- L. **No Effect on Other Benefits.** The payment to PAGA Settlement Group Members will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiff or the PAGA Settlement Group

Members, and they will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.

M. **Confidentiality Preceding Approval.** Prior to filing of the Motion for Settlement Approval, Plaintiff will not issue any press or other media releases or have any communication with the press or media or anyone other than financial advisors, retained experts, the LWDA and vendors related to settlement administration, regarding the Settlement. If, before the filing of the Motion for Settlement Approval, Plaintiff or her attorneys disclose to any unauthorized party (a) that a settlement has been reached or (b) any of the terms of the Settlement except as required by law or to effect the Settlement, Defendant may rescind the Settlement, rendering it null and void. Plaintiff further agrees that she will instruct her attorneys not to disclose the terms of this Agreement other than as necessary in connection with the motion to approve the Settlement. This section does not bar Plaintiff's counsel from carrying out their duties as counsel to Representative Plaintiff for the LWDA.

N. **Miscellaneous Terms.**

1. **No Admission of Liability.**

- a. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, or has any liability to anyone under the claims asserted in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant, or an admission by Plaintiff that any of her claims were non-meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).
- b. Whether or not the Judgment becomes Final, nothing in the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, or any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except

for purposes of effectuating the Settlement pursuant to this Agreement.

- c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings to enforce any or all terms of this Agreement, or in defense of any claims released or barred by this Agreement.

2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
3. **Attorney Authorization.** Plaintiff's Counsel and Defendant's Counsel each warrant and represent that they are authorized by their respective clients to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court or mediator, and in all cases all such documents, supplemental provisions and assistance of the court will be consistent with this Agreement. No attorney for any party is a party to this agreement and will not be liable for any party's breach of any of the terms of this agreement.
4. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
5. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
6. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
7. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed

against any Party on the basis that the Party was the drafter or participated in the drafting.

8. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
9. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
10. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiff and the PAGA Settlement Group Members:

Kevin Mahoney
John A. Young
Mahoney Law Group, APC
249 East Ocean Boulevard, Suite 814
Telephone: (562) 590-5550
Facsimile: (562) 590-8400
kmahoney@mahoney-law.net
jyoung@mahoney-law.net

To Defendant:

Kenneth Nabity
William Abramovitz
Coblentz Patch Duffy & Bass LLP
One Montgomery Street, Suite 3000
San Francisco, California 94104
(415) 391-4800 – Telephone
(415) 989-1663 – Facsimile
Ef-kpn@cpdb.com
Ef-wia@cpdb.com

11. **Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile and electronic signatures will be accepted if the original signatures. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES

The Parties hereby execute this Agreement.

Dated: August 10, 2022

ALEXIA RAZO-ORREGO



Dated: August 10, 2022

POPPY BANK

By:


NAME: Andrew D. Fuller

TITLE: CFO

EXHIBIT A

[[PROPOSED] ORDER GRANTING APPROVAL OF SETTLEMENT]

Kevin Mahoney (SBN: 235367)
kmahoney@mahoney-law.net
John A. Young (SBN: 299809)
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Long Beach, CA 90802
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Fax: (562) 590-8400

Attorneys for Plaintiff, ALEXIA RAZO-ORREGO, as representative of the State of California and the Labor and Workforce Development Agency (“LWDA”), and on behalf of herself and other current and former employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
SONOMA COUNTY

ALEXIA RAZO-ORREGO,

Plaintiff,

v.

POPPY BANK; and DOES 1 through 50,
inclusive,

Defendants.

Case No. SCV-268515

**[PROPOSED] ORDER APPROVING PAGA
SETTLEMENT AND ENTERING FINAL
JUDGMENT**

Assigned for all purposes to:
Hon. Patrick Broderick, Courtroom: 16

Date: September 6, 2022
Time: 3:00 pm
Courtroom: 16

Complaint Filed: June 3, 2021
Trial Date: None Yet Set

On September 6, 2022, a hearing was held on the motion of Plaintiff Alexia Razo-Orrego (“Plaintiff”) motion for approval of a settlement agreement pursuant to California’s Private Attorney General Act (“PAGA”) (the “Settlement”) entered into between Plaintiff and Defendant Poppy Bank (“Defendant”). The Court having considered all papers filed and proceedings herein and otherwise being fully informed, and having made this Judgment which constitutes a final adjudication of this matter on the merits, and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. All terms used for purposes of this Order and Judgment, not otherwise defined, shall have the same meaning as given in the PAGA Settlement Agreement (“Settlement”) executed between the Parties.

2. Pursuant to the Labor Code Private Attorneys General Act (“PAGA”), Cal. Lab. Code §§ 2699(1)(2), (1)(4), the Labor Workforce and Development Agency (“LWDA”) has been given notice of the Settlement. Pursuant to PAGA, Plaintiff submitted to the LWDA a notice of the Settlement enclosing a copy of the Settlement. The Court finds and determines that Plaintiff’s notice of the Settlement complied with the statutory requirements of PAGA.

3. The Court confirms approval of the Settlement as to the following group of individuals, collectively referred to as the “PAGA Settlement Group Members”:

The one hundred forty-three (143) current and former non-exempt employees of Defendant in California who worked at any time during the period from March 26, 2020 to January 21, 2022.

4. This Court has jurisdiction over the subject matter of this litigation, over all PAGA Settlement Group Members, and over those persons and entities undertaking affirmative obligations under the Settlement.

5. The Court finds that the Settlement is, in all respects, fair, reasonable, and adequate. Accordingly, the Court hereby finally and unconditionally approves the Settlement.

6. The Court approves the Notice to PAGA Settlement Group Members, Exhibit B to the Settlement Agreement, which provides instructions for PAGA Settlement Group Members to dispute and/or correct their Settlement Share before payments are made.

1 7. The Court finds that each PAGA Settlement Group Member, in accordance with the
2 Settlement, releases the following “Released Claims” against the Released Parties.

3 Any and all any and all claims based on the Private Attorneys General Act
4 (2004), as pleaded in Plaintiff’s Complaint or that could have been pleaded
5 on the facts as alleged in the Complaint and Plaintiff’s notice letter to
6 LWDA, arising during the Covered Period, including but not limited to
7 claims under Labor Code sections 201-204, 226, 226.7, 510, 512, 1174, 1194, 1197,
8 2802, 2698, 2699.3, and 2699.5, the Industrial Welfare Commission Wage Orders,
9 and any resulting claim for attorneys’ fees and costs.

10 8. The Court finds that the Total Settlement Amount (\$227,500.00), Net Settlement
11 Amount, and the methodology used to calculate and pay each Settlement Share, in accordance with
12 the Settlement, are fair and reasonable.

13 9. The Court authorizes the Settlement Administrator to calculate and pay the
14 Settlement Shares, in accordance with the terms of the Settlement.

15 10. The Court awards the Settlement Administrator in this Action its fees and costs of
16 Three Thousand Five Hundred Dollars (\$3,500.00), in accordance with the terms of the Settlement
17 Agreement.

18 11. The Court awards to Representative Plaintiff payment of not more than Two
19 Thousand Five Hundred Dollars (\$2,500.00) shall be paid to Plaintiff as a PAGA Representative
20 Enhancement award.

21 12. The Court awards to Plaintiff’s Counsel in this Action its fees of seventy-five
22 thousand eight hundred thirty-three dollars and thirty-three cents (\$75,833.33) and actual costs of
23 [TO BE FINALIZED UPON FILING] eight thousand seventy-seven dollars and sixty-two cents
24 (\$8,077.62) in accordance with the terms of the Settlement Agreement.

25 13. The Court approves the allocations and payment of two hundred twenty-seven
26 thousand five hundred dollars (\$227,500.00) as for the compromise of claims brought under PAGA,
27 to be paid in accordance with the terms of the Settlement. Under the terms of the Settlement,
28 seventy-five percent (75%) of the Net Settlement Amount will be paid to the State of California
Labor Workforce Development Agency (“LWDA Payment”); the remaining amount of the Net

1 Settlement Amount shall be distributed to the PAGA Settlement Group Members in accordance
2 with the terms of the Settlement.

3 14. Checks for the Settlement Shares sent to PAGA Settlement Group Members shall
4 be valid for one hundred eighty (180) days after issuance. Funds remaining from any checks for
5 Settlement Shares uncashed after one hundred eighty (180) days will be disbursed to the California
6 State Controllers' Office Unclaimed Property Fund in the name of the individual PAGA Settlement
7 Group Member for his or her benefit.

8 15. The Court retains exclusive and continuing jurisdiction over this Action for purposes
9 of supervising, administering, implementing, interpreting, and enforcing this Order and Judgment,
10 as well as the Settlement.

11 16. Nothing in this Order and Judgment or the Settlement shall be construed as an
12 admission or concession by any party. The Settlement and this resulting Order and Judgment simply
13 represent a compromise of disputed allegations.

14 17. Plaintiff is directed to submit a copy of this order to the LWDA within ten (10) days
15 of the date of this Order.

16 18. Within two hundred seventy days of the date of this Order, the Parties are directed
17 to file a joint status report regarding the status of the distribution of settlement proceeds. Upon
18 satisfaction that the appropriate payments have been made, the Court will then close this case.

19 **IT IS SO ORDERED AND ADJUDGED.**

20
21
22 DATED: _____

23 Hon. Patrick Broderick
24 Sonoma Superior Court Judge
25
26
27
28

EXHIBIT B

[NOTICE OF APPROVAL OF SETTLEMENT]

NOTICE OF SETTLEMENT

To: *To current and former non-exempt employees of Poppy Bank in California at any time during the period from March 26, 2020 to January 21, 2022.*

PLEASE READ THIS NOTICE CAREFULLY

ACCORDING TO COMPANY RECORDS, YOU QUALIFY TO RECEIVE MONEY IN CONNECTION WITH A LEGAL SETTLEMENT. YOU DO NOT NEED TO DO ANYTHING; YOU WILL RECEIVE YOUR SHARE OF THE SETTLEMENT, WHICH IS ENCLOSED.

WHAT IS THIS NOTICE ABOUT?

A settlement (the “Settlement”) has been reached between Plaintiff Alexia Razo-Orrego (“Plaintiff”) acting on behalf of the State of California, and Defendant Poppy Bank (“Defendant”), in the action pending in the Sonoma County Superior Court brought on behalf of the following individuals (the “PAGA Settlement Group Members”):

Current and former non-exempt employees of Defendant Poppy Bank in California at any time during the period from March 26, 2020 to January 21, 2022.

The Court has approved the Settlement. You have received this notice because Defendant’s records indicate that you are a PAGA Settlement Group Member. This notice is designed to inform you of the settlement and to provide you with your Settlement Share.

WHAT IS THIS LAWSUIT ABOUT?

On June 3, 2021, Plaintiff brought an action entitled “*Alexia Razo-Orrego, as an individual and on behalf of all similarly situated employees v. Poppy Bank, and DOES 1 through 50, inclusive,*” designated as Case No. SCV-268515. The action is pending in the Superior Court of California for the County of Sonoma (the “Court”).

In the Action, Plaintiff sought penalties pursuant to the California Private Attorneys General Act (“PAGA”), based upon allegations that Defendant failed to all pay wages, including minimum and overtime wages, failed to authorize and permit timely uninterrupted meal and rest periods, failed to pay all wages due upon termination of employment, and failed to provide accurate itemized wage statements reflecting all wages earned at the appropriate rates, during the period of March 26, 2020 through the date of final judgement, in violation Labor Code section 2699, *et seq.* claiming violations of specific sections of the Labor Code including 201-203, 226, 226.3, 226.7, 510, 1174, 1174.5, 1182.12, 1194, 1197, 2698, 2699.3, 2699.5, of the California Labor Code and all Applicable Wage Orders. Plaintiff sued for civil penalties under the California Labor Code PAGA, Cal. Lab. Code § 2698 *et seq.* Under PAGA, any recovery of civil penalties is shared between the California Labor and Workforce Development Agency (“LWDA”), which gets 75% of the penalties recovered, and the allegedly aggrieved employees, who get 25% of the penalties recovered.

Defendant denies and continue to deny all of Plaintiff’s material allegations. Specifically, Defendant contends that they complied with the requirements of the Labor Code and that civil penalties are not recoverable. No court has ruled that Defendant engaged in wrongdoing.

After good-faith negotiations in which both sides recognized the substantial risk of an uncertain outcome, Plaintiff and Defendant have agreed to settle the Action pursuant to the terms and conditions of the Settlement.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that Plaintiff's claims in the Action have merit or that Defendant has any liability to Plaintiff or the group of individuals she seeks to represent on that claim. On the contrary, Defendant denies any and all such liability.

WHO IS INCLUDED IN THE SETTLEMENT?

You are included in the Settlement Group if you fall within the following definition:

Current and former non-exempt employees of Defendant in California at any time during the period from March 26, 2020 to January 21, 2022.

You are receiving this notice because Defendant's records indicate that you are part of the Settlement Group.

WHAT WILL I RECEIVE FROM THE SETTLEMENT?

1. **Settlement Shares.** Pursuant to PAGA, 75% of the Net Settlement Amount will go to the LWDA. The remaining 25% of the Net Settlement Amount will be distributed to PAGA Settlement Group Members in proportion to the number of weeks that they were employed by Defendant during the covered period. The Net Settlement Amount is estimated to be [FILL IN BY ADMINISTRATOR] will be distributed to PAGA Settlement Group Members.
2. **Payment of Settlement Shares. Your Settlement Share is enclosed.** Your estimated Settlement Share is _____. Checks for Settlement Shares must be cashed within 180 days after they are issued, or else the funds they represent will go to the California State Controllers' Office Unclaimed Property Fund in your name and held for your benefit.
3. **Settlement Group Member Release.** The Settlement approved by the Court includes a release by Plaintiff acting on behalf of the State of California, and PAGA Settlement Group Members of any and all claims based on the Private Attorneys General Act (2004), as pleaded in Plaintiff's Complaint or that could have been pleaded on the facts as alleged in the Complaint and Plaintiff's notice letter to LWDA, arising during the Covered Period, including but not limited to claims under Labor Code sections 201-204, 226, 226.7, 510, 512, 1174, 1194, 1197, 2698, 2699.3, and 2699.5, the Industrial Welfare Commission Wage Orders, and any resulting claim for attorneys' fees and costs (the "Released Claims").

WHAT ARE MY RIGHTS AS A SETTLEMENT GROUP MEMBER?

Participating in Settlement. You are a part of the Settlement Group, and therefore, you are bound by the terms of the Settlement and the final judgment entered by the Court and, upon approval of the Settlement you will have been deemed to have released the PAGA claims as asserted in the Action against Defendant and the other released Parties described above. As a member of the PAGA Settlement Group, you will not be responsible for the payment of attorneys' fees or reimbursement of litigation expenses.

Current employees of Defendant will not be retaliated against for cashing their checks.

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 Settlement Agreement, which will be on file with the Clerk of the Court. The pleadings and other records in this litigation including the Settlement Agreement, may be examined at the Office of the Clerk of the Court, Superior Court of California for Sonoma County, 3055 Cleveland Ave., Santa Rosa, CA, during the Clerk's normal business hours, also available online, <http://sonoma.courts.ca.gov/divisions/records>; or you may contact the Settlement Administrator, Phoenix Settlement Administrators, at P.O. Box 7280, Orange, CA 92863, (800) 523-5773.

**PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION
REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.**