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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

ELSA GARCIA, an individual, MARLON
AYALA, an individual, both for the real
party in interest, the State of California,

Plaintiffs,

vs.

CITIBANK, NA; and DOES 1 through 50,

Defendants.

Case No. 37-2022-00005196-CU-OE-CTL

Hon. Keri Katz
Dept. C-74

**LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT
AGREEMENT AND RELEASE**

1 *[continued from previous page]*
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Attorneys for Plaintiffs
ELSA GARCIA
MARLON AYALA

1 This Labor Code Private Attorneys General Act (“PAGA”) Settlement Agreement and
2 Release (“Agreement”) is made by and between Plaintiffs Elsa Garcia and Marlon Ayala
3 (“Plaintiffs”), on behalf of themselves and as the authorized proxies and agents for the State of
4 California, and Defendant Citibank, N.A. (“Citibank” or “Defendant”) (collectively, the
5 “Parties”).

6 **1. THE CONDITIONAL NATURE OF THIS AGREEMENT**

7 1.1. This Agreement and all associated exhibit(s) or attachment(s) are made for the
8 purpose of settling the PAGA representative claims, as described herein. This Agreement and the
9 settlement it evidences are made in compromise of disputed claims. Because this action has been
10 settled on a PAGA non-individual representative basis, the “superior court shall review and
11 approve any settlement of any civil action filed pursuant to [Labor Code §§ 2698 *et seq.*]” Cal.
12 Lab. Code § 2699(l)(2). Accordingly, the Parties enter into this Agreement and associated
13 settlement on a conditional basis. If the Court does not enter the Approval Order and Judgment
14 and/or the Effective Date does not occur, this Agreement shall be deemed null and void *ab initio*,
15 it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose
16 whatsoever, and the Agreement’s negotiation shall remain subject to the provisions of California
17 Evidence Code section 1152 and any analogous rules of evidence that apply.

18 1.2. Citibank denies all the allegations asserted in the Complaint and in Plaintiffs’
19 letters to the California Labor and Workforce Development Agency (“LWDA”) dated December
20 1, 2021, and it also denies any claims for relief, including claims for civil penalties, attorneys’
21 fees, and costs of suit. Citibank has agreed to resolve this action through this Agreement, but to
22 the extent this Agreement is not approved or the Effective Date does not occur, Citibank does not
23 waive, but rather expressly reserves, all rights to challenge all such claims and allegations in this
24 action upon all procedural and factual grounds, as well as to assert any and all other potential
25 defenses or privileges. Plaintiffs and Plaintiffs’ Counsel agree that Citibank retains and reserves
26 these rights, and agree not to argue or present any argument, and hereby waive any argument, that
27 based on this Agreement, Citibank cannot assert any and all potential defenses and privileges if
28 this action were to proceed.

1 **2. DEFINITIONS**

2 The following terms, when used in this Agreement, shall have the following meanings:

3 2.1. “Action” means the above-captioned action entitled *Elsa Garcia, an individual,*
4 *Marlon Ayala, an individual, both for the real party in interest, the State of California v.*
5 *Citibank, NA*, San Diego County Superior Court Case No. 37-2022-00005196-CU-OE-CTL (filed
6 February 9, 2022).

7 2.2. “Approval Date” means the date that the Superior Court enters the Approval
8 Order.

9 2.3. “Approval Order” means the Superior Court’s Order approving this Labor Code
10 Private Attorneys General Act Settlement Agreement and Release.

11 2.4. “Citibank’s Counsel” means Morgan, Lewis & Bockius LLP.

12 2.5. “Complaint” means the Complaint filed on February 9, 2022.

13 2.6. “Court” or “Superior Court” means the San Diego County Superior Court or any
14 other court in California to which the Parties request approval of this PAGA settlement.

15 2.7. “Covered PAGA Pay Periods” means pay periods from December 1, 2020 to
16 December 31, 2022 in which a PAGA Member (as defined below) worked for Citibank as a non-
17 exempt employee in California, and earned non-discretionary incentive compensation, such as
18 referral, sales and client excellence-based incentives or awards (for which non-exempt employees
19 in California no longer were eligible as of January 1, 2021) or weekend shift premiums.

20 2.8. “Database” means information in electronic form provided by Citibank to the
21 Settlement Administrator (as defined below) that for each PAGA Member (as defined below)
22 includes his or her name, last-known address, social security number, pay periods with earned
23 non-discretionary incentive compensation, and the total number of Covered PAGA Pay Periods
24 worked by each PAGA Member from December 1, 2020 through December 31, 2022.

25 2.9. “Effective Date” means the latest of: (i) the Approval Date if no objection is made
26 or filed to the settlement; (ii) if an objection is made or filed and the Approval Date occurs, but no
27 appeal is filed, the expiration of the deadline for any appeals; and (iii) if an objection is made or
28

1 filed and the Approval Date occurs, and an appeal is filed, the date that an appeal is resolved
2 resulting in a final court order approving this settlement.

3 2.10. "Funding Date" means fourteen (14) calendar days after Citibank's Counsel's
4 receipt of the Approval Order, except that Citibank will have no obligation to fund the settlement
5 if the Effective Date has not occurred.

6 2.11. "Judgment" means the judgment to be executed and entered by the Court pursuant
7 to this Agreement.

8 2.12. "Maximum PAGA Gross Settlement Amount" is the sum of Four Hundred
9 Thousand Dollars and Zero Cents (\$400,000.00), which represents the maximum amount payable
10 by Citibank pursuant to this settlement, and which includes PAGA penalties in the amount
11 representing all PAGA Members' 25% share of penalties ("PAGA Settlement Payments" as
12 defined below) and the LWDA's 75% share of penalties, Plaintiffs' Counsel's attorneys' fees (not
13 to exceed 33 1/3 percent of the Maximum PAGA Gross Settlement Amount) and costs, and
14 Settlement Administration Costs (as defined below).

15 2.13. "Net Settlement Amount" means the portion of the Maximum PAGA Gross
16 Settlement Amount (after excluding Plaintiffs' Counsel's attorneys' fees and costs and Settlement
17 Administrator Costs) that represents the amounts payable to the LWDA and the PAGA Members
18 in this settlement for PAGA civil penalties.

19 2.14. "PAGA" means the California Labor Code Private Attorneys General Act of 2004
20 (Cal. Lab. Code §§ 2698 *et seq.*)

21 2.15. "PAGA Members" means individuals Citibank employed as non-exempt
22 employees in California and who earned non-discretionary incentive compensation, such as
23 referral, sales and client excellence-based incentives or awards and/or weekend shift premiums
24 between December 1, 2020 and December 31, 2022.

25 2.16. "PAGA Release Period" means the period from December 1, 2020 through
26 December 31, 2022.

27 2.17. "PAGA Representatives" means Plaintiffs Elsa Garcia and Marlon Ayala. The
28 PAGA Representatives separately are entering into individual settlements with Citibank for

1 \$12,000 each in exchange for general releases of any and all of their claims against Citibank
2 (except for their claims in this Action as released in section 2.20, below).

3 2.18. "PAGA Settlement Payment" means the portion of the Maximum PAGA Gross
4 Settlement Amount (after excluding Plaintiffs' Counsel's attorneys' fees and costs, Settlement
5 Administration Costs, and the LWDA's 75% share of PAGA civil penalties) that represents the
6 PAGA Members' 25% share of the amount payable in this settlement for PAGA civil penalties.

7 2.19. "Plaintiffs' Counsel" means Mashiri Law Firm, APC and The Jami Law Firm P.C.

8 2.20. "Released Claims" means any and all claims, obligations, demands, rights, causes
9 of action, and liabilities against Releasees under PAGA that have been asserted in the Complaint
10 and/or in the letters sent on Plaintiffs' behalf to the LWDA dated December 1, 2021, based on the
11 facts, claims and/or allegations pled or asserted therein. Released Claims include, but are not
12 limited to, claims for failure to pay sick time at the correct rate of pay, failure to pay overtime at
13 the correct rate of pay, failure to pay meal period premiums and rest period premiums at the
14 regular rate of pay, failure to issue accurate itemized wage statements, failure to accrue or pay for
15 the correct amount of vacation hours, and includes all such claims from December 1, 2020
16 through December 31, 2022, as well as all associated claims for penalties, attorneys' fees, and
17 costs and interest. Plaintiffs release these claims in their representative capacities as proxies for
18 the LWDA and as private attorney general "aggrieved employees" acting on behalf of themselves
19 and the PAGA Members.

20 2.21. "Releasees" means Defendant Citibank, N.A., and its parents, subsidiaries,
21 affiliates, owners, predecessors, successors, and associated organizations, past and present, and
22 each of their respective trustees, directors, officers, agents, joint employers, attorneys, managing
23 agents, employees, contractors, insurers, benefit plans, representatives, assigns, all persons acting
24 by, through, under, or in concert with any of them, and/or all persons acting on behalf of them.

25 2.22. "Settlement Administration Costs" means the amount to be paid to the Settlement
26 Administrator for the cost of administering this settlement, which is currently estimated to be
27 approximately \$11,950.00.

28 2.23. "Settlement Administrator" shall be Phoenix Settlement Administrators.

1 **3. RECITALS**

2 3.1. Citibank employed Plaintiff Elsa Garcia as a Teller and Plaintiff Marlon Ayala as a
3 Personal Banker in Los Angeles, California.

4 3.2. On December 1, 2021, Plaintiffs gave written notice to the LWDA of the
5 provisions of the Labor Code that Citibank allegedly violated (the “LWDA Letters”). The
6 LWDA Letters included allegations that Citibank failed to provide Plaintiffs and other putative
7 aggrieved employees with the appropriate rate of pay when paying for sick leave as required by
8 Labor Code Section 246, that Citibank failed to pay Plaintiffs and other putative aggrieved
9 employees all wages and entitlements due under Labor Code Section 510 by failing to
10 compensate them at the appropriate regular rate of pay for overtime hours worked, that Citibank
11 failed to pay Plaintiffs and other putative aggrieved employees at the regular rate of pay for meal
12 period premiums and rest period premiums, that Citibank failed to provide Plaintiffs and other
13 putative aggrieved employees with the appropriate accrual of vacation hours due under Labor
14 Code Section 227.3, and that Citibank failed to provide Plaintiffs and other putative aggrieved
15 employees with accurate wage statements as required by Labor Code Section 226. The LWDA
16 did not respond to the LWDA Letters and did not notify Plaintiffs or Citibank that it intended to
17 investigate Plaintiffs’ allegations.

18 3.3. On February 9, 2022, Plaintiffs filed a putative representative action complaint
19 (the “Complaint,” as defined in section 2.5, above) against Citibank for recovery of civil penalties
20 under PAGA for Citibank’s purported violation of Labor Code Section 246 for the alleged failure
21 to pay the correct hourly rate for statutory sick leave. Compl., ¶¶ 21-35.

22 3.4. Citibank had denied and continues to deny all of the allegations in the Complaint
23 and in the LWDA Letters, and specifically denies that it has violated any section of the Labor
24 Code or committed any misconduct, statutory, or regulatory violation, wrongdoing, or any other
25 actionable conduct of any kind. Citibank further denies that this action may be maintained as a
26 representative action on behalf of any employees of Citibank.

27 3.5. The Parties understand, acknowledge, and agree that this Agreement constitutes a
28 compromise of the Released Claims and that it is the Parties’ desire and intention to reach a final

1 and complete resolution of the Released Claims. The Parties further acknowledge that this
2 Agreement is a compromise of disputed claims and that nothing in this Agreement shall be
3 construed as an admission by Citibank of liability.

4 3.6. The Parties believe and agree that this Agreement provides for a fair, adequate,
5 and reasonable resolution of the Released Claims, given the strengths and weaknesses of
6 Plaintiffs' claims, Citibank's defenses to any liability at all, and the risk that the Court would
7 significantly reduce any penalties that could be awarded under Labor Code section 2699(e)(2).
8 The Parties have arrived at this settlement after extensive, arm's-length negotiations, that took
9 into account all relevant factors, present and potential.

10 3.7. Under California law, the State of California may assess and collect civil penalties
11 from employers for violations of certain provisions of the Labor Code. *See* Cal. Lab. Code §§
12 2698 *et seq.* Under PAGA, however, if an "aggrieved employee" "give[s] written notice by
13 online filing with the Labor and Workforce Development Agency and by certified mail to the
14 employer of the specific provisions of [the Labor Code] alleged to have been violated," and the
15 State thereafter decides not to investigate, the employee may, "as an alternative" to enforcement
16 by the State, act as a proxy or agent of the state's labor law enforcement agencies and bring a
17 civil action under PAGA to recover civil penalties "on behalf of himself or herself and other
18 current or former employees." Cal. Lab. Code §§ 2699(a), 2699.3(a)(1)(A). "[C]ivil penalties
19 recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and
20 Workforce Development Agency . . . and 25 percent to the aggrieved employees." Cal. Lab.
21 Code § 2699(i).

22 **4. OPERATIVE TERMS OF THE PAGA SETTLEMENT**

23 The Parties to the Action agree as follows:

24 4.1. Maximum PAGA Gross Settlement Amount. Citibank shall pay a Maximum
25 PAGA Gross Settlement Amount of Four Hundred Thousand Dollars and Zero Cents
26 (\$400,000.00) to resolve the Released Claims. Under no circumstances shall Citibank be
27 obligated to pay any amount in excess of the Maximum PAGA Gross Settlement Amount.
28

1 4.2. Settlement Administrator.

2 4.2.1. The Settlement Administrator shall be Phoenix Settlement Administrators
3 and the Settlement Administration Costs are estimated to be approximately \$11,950.00. The
4 Settlement Administration Costs shall include: all costs of administering the Settlement,
5 including, but not limited to, all tax document preparation (if any), custodial fees, and accounting
6 fees incurred by the Settlement Administrator; all costs and fees associated with preparing,
7 issuing and mailing any and all communications to PAGA Members; all costs and fees associated
8 with issuing the PAGA Settlement Payments and the payment to the LWDA; and all costs and
9 fees associated with issuing IRS Form 1099s (to the extent any are required by applicable law)
10 relating to payments made under the settlement; all costs and fees associated with preparing any
11 tax returns and any other filings required by any governmental taxing authority or agency (to the
12 extent any are required by applicable law); all costs and fees associated with preparing any other
13 notices, reports, or filings to be prepared in the course of administering the settlement, and any
14 other costs and fees incurred and/or charged by the Settlement Administrator in connection with
15 the execution of its duties under this Agreement.

16 4.2.2. The Settlement Administrator's actions shall be governed by the terms of
17 this Agreement, any Orders from the Court, and any agreement by counsel of record regarding
18 communications with the Settlement Administrator.

19 4.2.3. In the event that either Citibank's Counsel or Plaintiffs' Counsel takes the
20 position that the Settlement Administrator is not acting in accordance with the terms of the
21 Agreement, such party shall meet and confer first with opposing counsel and/or, if necessary,
22 with the Settlement Administrator or the Court to attempt to resolve the issue.

23 4.3. Calculation of Individual PAGA Settlement Payments.

24 4.3.1. Each PAGA Member, including Plaintiffs, will be entitled to receive an
25 "Individual PAGA Settlement Payment," which will be calculated as follows:

26 a. Based on its business records, Citibank will calculate, and provide
27 to the Settlement Administrator, the number of Covered PAGA Pay Periods in which each PAGA
28 Member worked.

1 b. The aggregate total number of Covered PAGA Pay Periods Worked
2 by PAGA Members will be deemed the “Total Pay Periods.”

3 c. The respective share of the PAGA Settlement Payment for each
4 PAGA Member will be calculated by dividing their Covered PAGA Pay Periods by the Total Pay
5 Periods. These calculations will result in each PAGA Member’s “Pay Period Percentage.”

6 d. Each PAGA Member will be paid from the PAGA Settlement
7 Payment allocated to the PAGA Members based on their own Pay Period Percentage according to
8 the following formula: *PAGA Settlement Payment x individual PAGA Member’s Pay Period*
9 *Percentage = Individual PAGA Settlement Payment.*

10 4.3.2. Because the Individual PAGA Settlement Payment is a payment in compromise
11 and settlement of a claim for alleged civil penalties, the Individual PAGA Settlement Payment
12 will be treated as non-wage income with no tax withholdings to be made, and will be reported, if
13 required by applicable tax laws, by the Settlement Administrator on IRS Form 1099s to the
14 respective PAGA Member and applicable governmental authorities. The Settlement
15 Administrator will issue an IRS Form 1099 to Plaintiffs’ Counsel and applicable governmental
16 authorities for the payment of attorneys’ fees and costs in the amount approved by the Court.
17 Plaintiffs and Plaintiffs’ Counsel each agree to hold Citibank and the Releasees harmless from
18 and against any damage or penalty incurred by Citibank as a result of any taxing authority
19 assessing any tax or penalty upon Citibank as a consequence of any tax being due and unpaid on
20 each of their portions of the Maximum PAGA Gross Settlement Amount.

21 4.4. Releases

22 4.4.1. Upon the Effective Date, the State of California, the PAGA
23 Representatives Elsa Garcia and Marlon Ayala, and each PAGA Member shall be deemed to have
24 fully, finally, and forever released the Releasees from the Released Claims for and during the
25 PAGA Release Period.

1 4.5. Settlement Payment Procedures.

2 4.5.1. No later than seven (7) calendar days after the Effective Date, the
3 Settlement Administrator shall send to Citibank's counsel electronic wiring instructions for
4 Citibank to fund the Maximum PAGA Gross Settlement Amount.

5 4.5.2. No later than fourteen (14) calendar days after Citibank's Counsel's receipt
6 of the Approval Order, provided that the Effective Date has occurred, Citibank will send the
7 Database to the Settlement Administrator. The Settlement Administrator shall treat the
8 information in the Database as confidential at all times and shall use the information solely to
9 manage the notice and payment process described herein, shall not disclose the information to
10 anyone (including Plaintiffs' counsel), except to applicable taxing authorities if required, or
11 pursuant to express written authorization of Citibank, the individual in question, or by order of the
12 Court.

13 4.5.3. No later than twenty-eight (28) calendar days after Citibank's Counsel
14 receives the Approval Order, provided that the Effective Date has occurred, Citibank will wire to
15 the Settlement Administrator a payment in the amount of Four Hundred Thousand Dollars and
16 Zero Cents (\$400,000.00) to fund the Maximum PAGA Gross Settlement Amount. Citibank shall
17 make its best efforts to wire the payment to the Settlement Administrator in less than twenty-eight
18 (28) calendar days.

19 4.5.4. Because this is a PAGA settlement and not a class action settlement, and
20 because there is no claims procedure and no ability to "opt out," there will be no prior notice to
21 the PAGA Members advising them of the PAGA settlement or any procedure by which the
22 PAGA Members must submit claims in order to receive a settlement payment. Within thirty (30)
23 calendar days following the Settlement Administrator's receipt of the wired settlement funds from
24 Citibank, the Settlement Administrator shall mail a Notice (substantially in the form attached
25 hereto as Exhibit A) and a settlement check to each PAGA Member in the amount of their
26 respective Individual PAGA Settlement Payment.

27 4.5.5. Prior to mailing the Notice and settlement check, the Settlement
28 Administrator shall check the addresses provided in the Database using the National Change of

1 Address database and shall update any addresses accordingly. Should any of the Notices be
2 returned as undeliverable, the Settlement Administrator will conduct a search for a more current
3 address (by skip trace or other reasonable method) and re-mail the Notice and settlement check to
4 the more current address, if any.

5 4.5.6. Expiration of Settlement Checks. Individual PAGA Settlement Payment
6 checks issued to PAGA Members pursuant to this Agreement will expire 120 calendar days from
7 the date they are issued by the Settlement Administrator. After the 120-day period, the
8 Settlement Administrator shall distribute any unclaimed funds to the State of California
9 Unclaimed Wages Fund pursuant to the then-applicable instructions of the California State
10 Controller.

11 4.6. Attorneys' Fees and Costs. The Settlement Administrator shall pay to Plaintiffs'
12 Counsel from the Maximum PAGA Gross Settlement Amount the amount of attorneys' fees (not
13 to exceed 33 1/3 percent of the Maximum PAGA Gross Settlement Amount) and costs awarded
14 by the Court. Citibank will not oppose Plaintiffs' application for attorneys' fees up to these
15 amounts so long as Plaintiffs and Plaintiffs' Counsel are not in breach of this Agreement. The
16 settlement is not conditioned on the Court's approval of Plaintiffs' Counsel's petition for fees and
17 costs or the amount of any service awards. Any amounts of requested fees or costs not awarded
18 shall become part of the Net Settlement Amount and will not affect approval of the settlement.
19 Plaintiffs and Plaintiffs' Counsel retain their right to appeal any such reduction. The Settlement
20 Administrator will issue an IRS Form 1099 to Plaintiffs' Counsel as required by IRS regulations.
21 The Settlement Administrator shall pay the amount awarded by the Court to Plaintiffs' Counsel
22 no later than thirty calendar (30) days following the Funding Date. This payment shall satisfy any
23 claims for attorneys' fees and costs that Plaintiffs' Counsel may assert in connection with this
24 litigation and settlement. This payment therefore shall cover all past and future fees and costs
25 incurred to prosecute, settle, and administer this action, including obtaining approval of the
26 settlement and securing dismissals required by the settlement. Plaintiffs and Plaintiffs' Counsel
27 represent that they are not aware of and have no knowledge of any liens filed or placed on this
28 Action by any person.

1 4.7. Qualified Settlement Fund. The Settlement Administrator shall establish a
2 settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under
3 Section 468(B) of the Internal Revenue Code of 1986, as amended, and U.S. Treasury Regulation
4 Section 468B-1.

5 4.8. Impact of Non-Approval by Court. Should the Court not approve the settlement,
6 the Parties shall meet and confer to make reasonable efforts to address any issues the Court raised
7 in order to obtain the Court’s approval, except that Citibank will not be required under any
8 circumstances to increase the Maximum PAGA Gross Settlement Amount. If the Parties cannot
9 obtain the Court’s approval, or if the Effective Date does not occur then the Parties shall be
10 restored to their litigation positions as of October 26, 2022, and the MOU and this Agreement
11 shall be deemed null and void, except the Confidentiality Provision and No Admission of
12 Liability shall remain valid.

13 4.9. Motion for Approval & Proposed Judgment. Plaintiffs will file a Motion for
14 Approval of the PAGA settlement (“Motion”). Plaintiffs’ Counsel will prepare the Motion for
15 Approval of this Agreement and will provide Citibank’s Counsel with at least ten (10) calendar
16 days to review and provide feedback on the Motion before the Motion is filed. The Motion will
17 be subject to Citibank’s review and approval. The Motion will include a proposed approval
18 order, judgment, and dismissal of the Action with prejudice consistent with the terms of this
19 Settlement. Neither Plaintiffs nor Plaintiffs’ Counsel can rescind or back out of the Agreement if
20 the Court does not approve the Motion without prejudice; to the contrary, this Agreement shall
21 remain in effect if the Court denies the Motion without prejudice. The Parties further agree to
22 take all necessary steps to seek approval of the settlement if the Court denies approval without
23 prejudice.

24 No Right to Object or Opt Out. Because this Settlement is not a class action settlement,
25 but rather a PAGA settlement involving claims on behalf of the State of California, no person can
26 (a) object to the settlement after the Court’s Approval Order is made, or (b) opt out from being
27 covered by the Released Claims at any time before or after the Approval Order is made.
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1 4.10. Escalator Clause. If the total number of PAGA Members increases during the
2 PAGA Release Period by more than 10% of the 3,020 PAGA Members estimated as of October
3 26, 2022, then Citibank will have the option to either: (i) increase the PAGA Gross Settlement
4 Amount in proportion to any such change in excess of the 10% increase, or (ii) change the end
5 date of the PAGA Release Period to an earlier date so that the number of PAGA Members does
6 not exceeds 3,322.

7 4.11. Right to Withdraw From This Agreement. Citibank may withdraw from this
8 Agreement if: (a) the settlement is construed in such a fashion that Citibank is required to pay
9 more than the Parties agreed upon in this Agreement and/or in the Memorandum of
10 Understanding (“MOU”); (b) the Court does not order the release of claims of the PAGA
11 Members agreed to by the Parties, or otherwise makes an order inconsistent with any of the
12 material terms of this Agreement and/or the MOU; or (c) Plaintiff Elsa Garcia, Plaintiff Marlon
13 Ayala, or Plaintiffs’ counsel breaches the MOU. If the Court denies approval of the PAGA
14 settlement, the Parties will work diligently and in good faith to obtain approval of the settlement
15 consistent with the MOU and/or this Agreement. If Citibank withdraws from this Agreement, it
16 will pay any administration costs incurred.

17 4.12. Confidentiality. Plaintiffs and Plaintiffs’ Counsel agree not to disclose the terms
18 of this Agreement except in court filings, legally required submissions or submissions to the
19 LWDA and/or other appropriate governmental entity approved in advance by Citibank’s counsel,
20 or if required by local process, except that Plaintiffs’ Counsel may include publicly available
21 information about the settlement in any description of their experience or the like to describe their
22 experience to a court. Plaintiffs and Plaintiffs’ Counsel shall not issue a press release, hold a
23 press conference, publish information about the settlement on any website, or otherwise publicize
24 the settlement. Plaintiffs and Plaintiffs’ Counsel agree not to respond to any press inquiries
25 except to refer reporters to the filings with the Court. Plaintiffs and Plaintiffs’ counsel
26 affirmatively represent that they have not provided any information to the press or third-parties
27 (other than to PAGA Members in response to any inquiries) or otherwise discussed or publicized
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1 or caused to be publicized anything about this Action or the Settlement prior to signing this
2 Agreement.

3 4.13. Miscellaneous Provisions.

4 4.13.1. No Admission of Liability. Neither the acceptance nor the performance by
5 Citibank of the terms of this Agreement, nor any of the related negotiations or proceedings, is or
6 shall be claimed to be, construed as, or deemed to be, an admission by Citibank of the truth of any
7 of the allegations in the Complaint or in the LWDA Letters, the appropriateness of the PAGA
8 representative claim or action, the appropriateness of representative action treatment or
9 manageability, or the validity of any of the claims that Plaintiffs, any PAGA Member, and/or the
10 State of California could have asserted. This Agreement does not reflect or suggest any liability
11 or wrongdoing on the part of Citibank. Citibank specifically disclaims any liability, culpability,
12 negligence, or wrongdoing. The Parties have entered into this Agreement with the intention to
13 avoid further disputes and litigation with the attendant inconvenience, expenses, and
14 contingencies. This Agreement, and any communications, papers, or orders related to the
15 settlement, may not be cited to, used, or admitted as evidence of liability or that representative
16 action treatment is appropriate. There has been no determination by any court as to the merits of
17 the claims asserted by Plaintiffs against Citibank in the Complaint or in the LWDA Letters or as
18 to whether a representative action is appropriate.

19 4.13.2. No Waiver of Arbitration. The Parties agree that Citibank and Releasees
20 do not waive any rights regarding Citibank's Employment Arbitration policy or any arbitration
21 agreements with any PAGA Members with respect to any claims not released by this Agreement.
22 Nothing in this Agreement shall be cited to as, construed to be, admissible as, or considered any
23 form of waiver of any alternative dispute resolution agreements, provisions, or policies, by
24 Citibank or Releasees. Citibank and Releasees also do not waive their right to enforce class,
25 collective and individual and non-individual representative action waivers in any such alternative
26 dispute resolution agreements, or other agreements.

27 4.13.3. LWDA Notice. The Parties agree to work cooperatively to comply with
28 the notice requirements to the LWDA pursuant to Labor Code sections 2699(1)(2) and 2699(1)(3).

1 Plaintiffs' Counsel will send a copy of this Agreement and the Motion to the LWDA no later than
2 the same date they file these documents with the Court.

3 4.13.4. The Parties agree to cooperate fully with each other to accomplish and
4 implement this Agreement's terms. Such cooperation shall include, but not be limited to,
5 execution of such other documents and the taking of such other action as may reasonably be
6 necessary to fulfill this Agreement's terms. The Parties to this Settlement shall exercise
7 reasonable efforts, including all efforts contemplated by this Agreement and any other efforts that
8 may become necessary by Court order, or otherwise, to effectuate this Agreement and the terms
9 set forth herein.

10 4.13.5. Enforcement And the Court's Continuing Jurisdiction. Pursuant to
11 California Code of Civil Procedure section 664.6, the Court shall retain continuing jurisdiction
12 over this Action and over all Parties, to the fullest extent necessary to enforce and effectuate the
13 terms and intent of the Settlement and this Agreement.

14 4.13.6. Neither Plaintiffs' Counsel nor any other attorneys acting for, formerly
15 acting for, or purporting to act for, Plaintiffs, may recover or seek to recover any amounts for
16 fees, costs, or disbursements from Citibank or the Maximum PAGA Gross Settlement Amount
17 except as expressly provided herein.

18 4.13.7. Plaintiffs represent and warrant that they have the right and exclusive
19 authority to sign this Agreement and that they have carefully read and understand the full contents
20 of this Agreement and are voluntarily entering into this Agreement after having received legal
21 advice from Plaintiffs' Counsel with respect to the advisability of making the Settlement provided
22 for herein and the advisability of signing this Agreement.

23 4.13.8. Plaintiffs represent and warrant that they have not assigned or transferred
24 or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest
25 therein, which is or may be subject to this Agreement.

26 4.13.9. Plaintiffs' Counsel represents that they do not currently represent any
27 current or former employee of Citibank (other than the PAGA Representatives) who is intending
28 to bring claims against Citibank or Releasees.

1 4.13.10. This Agreement sets forth the entire agreement between the Parties
2 and fully supersedes any and all prior and/or supplemental understandings, whether written or
3 oral, between the Parties concerning the subject matter of this Agreement. Any modification to
4 this Agreement must be in writing and signed by Plaintiffs or Plaintiffs' Counsel, on the one
5 hand, and by an authorized officer of Citibank or by Citibank's Counsel, on the other hand. This
6 Agreement may not be changed, altered, or modified, except in writing signed by the Parties or
7 their counsel and approved by the Court.

8 4.13.11. This Agreement shall be binding upon and inure to the benefit of
9 the Parties, and to their respective heirs, trustees, executors, administrators, successors, and
10 assigns.

11 4.13.12. This Agreement shall become effective upon its execution by all of
12 the undersigned and may be executed in counterparts which shall have the same force and effect
13 as if all signatories had signed the same instrument.

14 4.13.13. Paragraph titles or captions contained in the Agreement are inserted
15 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the
16 scope of this Agreement, or any provision thereof.

17 4.13.14. This Agreement shall be construed and interpreted as if the Parties
18 jointly prepared all of its language. No language in this Agreement shall be construed against a
19 Party on the ground that such Party drafted or proposed that language.

20 4.13.15. Except for the purposes of effectuating and enforcing the terms of
21 this Agreement, which include barring claims that are released pursuant to this Agreement,
22 neither this Agreement nor any of its terms nor the settlement itself shall be: (a) construed as,
23 offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose
24 adverse to Citibank and/or any of the Releasees, including but not limited to, evidence of a
25 presumption, concession, indication, or admission by any of the Releasees of any liability, fault,
26 wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence
27 against Citibank and/or any of the Releasees in any other civil, criminal, or administrative action
28 or proceeding.

1 4.13.16. The Parties' rights and obligations under this Agreement shall be
2 construed and enforced in accordance with, and governed by, the laws of the State of California.
3 California law shall govern this Agreement's interpretation even if a choice of law analysis under
4 state or federal law would dictate that another forum's law be applied.

5 IN WITNESS WHEREOF, this PAGA Settlement Agreement is executed by the Parties
6 and their duly authorized attorneys, as of the day and year set forth below.
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Dated: Jan 4, 2023

PLAINTIFF ELSA GARCIA

By 
Plaintiff Elsa Garcia

Dated: Jan 4, 2023

PLAINTIFF MARLON AYALA

By 
Plaintiff Marlon Ayala

Dated: Jan 17, 2023

CITIBANK, N.A.

By 
Name: MELINDA MERCAUSO CHYCHLYK
Title: Managing Director
Head of US Branch Network
THE JAMI LAW FIRM P.C.

Dated: Jan 4, 2023

By 
Tamim Jami
Attorneys for Plaintiffs Elsa Garcia and
Marlon Ayala

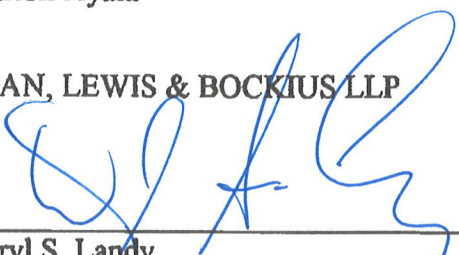
Dated: _____

MASHIRI LAW FIRM, APC

By _____
Alex Asil Mashiri
Attorneys for Plaintiffs Elsa Garcia and
Marlon Ayala

Dated: Jan. 17, 2023

MORGAN, LEWIS & BOCKIUS LLP

By 
Daryl S. Landy
Joseph A. Govea
Attorneys for Defendant Citibank, N.A.

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Dated: _____

PLAINTIFF ELSA GARCIA

By _____
Plaintiff Elsa Garcia

Dated: _____

PLAINTIFF MARLON AYALA

By _____
Plaintiff Marlon Ayala

Dated: _____

CITIBANK, N.A.

By _____
Name:
Title:

Dated: _____

THE JAMI LAW FIRM P.C.

By _____
Tamim Jami
Attorneys for Plaintiffs Elsa Garcia and
Marlon Ayala

Dated: January 4, 2023

MASHIRI LAW FIRM, APC

By  _____
Alex Asil Mashiri
Attorneys for Plaintiffs Elsa Garcia and
Marlon Ayala

Dated: _____

MORGAN, LEWIS & BOCKIUS LLP

By _____
Daryl S. Landy
Joseph A. Govea
Attorneys for Defendant Citibank, N.A.

1 **Exhibit A**

2 <<DATE>>

3
4 <<FIRST_NAME>> <<LAST_NAME>>

5 <<ADDRESS 1>>

6 <<ADDRESS 2>>

7 **Re: Settlement Payment from *Elsa Garcia, et al. v. Citibank, N.A. Lawsuit***

8 Dear <<FIRST_NAME>> <<LAST_NAME>>:

9 Enclosed is your proportional share of penalties from the settlement of the lawsuit entitled
10 *Elsa Garcia, an individual, Marlon Ayala, an individual, both for the real party in interest, the*
11 *State of California v. Citibank, NA*, San Diego County Superior Court Case No. 37-2022-
12 00005196-CU-OE-CTL, and of claims alleged to the California Labor and Workforce
13 Development Agency (“LWDA”) in letters dated December 1, 2021. The lawsuit was filed
14 against Citibank pursuant to the California Labor Code Private Attorneys General Act of 2004,
15 Cal. Lab. Code § 2698 *et seq.* (called “PAGA”). The lawsuit was brought on behalf of the State
16 of California and all similarly situated “aggrieved employees” of Citibank for civil penalties. The
17 settlement includes all current and former non-exempt employees who worked for Citibank, N.A.
18 in California any time between December 1, 2020 and December 31, 2022 and earned non-
19 discretionary incentive compensation (such as referral, sales and client excellence-based
20 incentives or awards, and/or weekend shift premiums) during that time period worked in
21 California. You have been identified as a current or former Citibank employee to whom this
22 settlement applies and who is included in this settlement. Enclosed is a check made out to you.
23 The check represents your proportional share of PAGA penalties from the settlement of this
24 matter (\$_____).

25 Citibank denies that it has done anything wrong or that it owes any penalties. The parties
26 agreed to resolve the case, and as part of that settlement, Citibank agreed to pay a certain amount
27 of money categorized as PAGA penalties. Under the PAGA statute, the penalties get divided
28 between the State and the employees. As a result of this settlement, the State of California’s and
your ability to seek penalties recoverable under the PAGA for the claims that were asserted in the
lawsuit and/or in the letters to the LWDA have been released.

If you have any questions, you can contact the settlement administrator (whose contact
information is at the top of this letter).

Sincerely,

[Administrator]

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