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Attorneys for Plaintiff RAGINI MAL,
individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

RAGINI MAL, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

BANK OF THE WEST and DOES 1-50,
inclusive,

Defendant

Case No. 30-2022-01251706-CU-OE-CXC
Case No. 30-2022-01262144-CU-OE-CXC

ASSIGNED FOR ALL PURPOSES TO:
Honorable Melissa R. McCormick, Dept. 104

**DECLARATION OF JAMES HAWKINS IN
SUPPORT OF MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: December 19, 2024
Time: 2:00 PM
Dept.: CX104

Reservation number: 74357095

DECLARATION OF JAMES HAWKINS

I, James Hawkins, declare as follows:

1. I am an individual over the age of 18. I am a partner at the law firm of James Hawkins, APLC. I am one of the attorneys of record for Plaintiff RAGINI MAL (hereinafter referred to as “Plaintiff” or “Class Representative”), who commenced this class and PAGA action on behalf of the Class Members and Aggrieved Employees. I submit this declaration in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, which Plaintiff filed concurrently herewith, along with the supporting Memorandum of Points and Authorities. I have personal knowledge of the facts set forth below, and if called to testify regarding them, I could and would do so competently.

2. Attached hereto as **Exhibit A** is a true and correct copy of the executed Amended Class and PAGA Action Settlement Agreement, (“Settlement Agreement”), which the Parties ask the Court to approve. The Settlement Agreement includes the Notice Of Class Action Settlement (“Class Notice”).

3. On March 23, 2022, Plaintiff Ragini Mal filed a class action lawsuit in Orange County Superior Court (Case No. 30-2022-01251706-CU-OE-CXC) on behalf of herself and a putative class of all persons who have been employed by Defendant as Non-Exempt Employees or equivalent positions, however titled, in the state of California within four (4) years from the filing of the Complaint in this action until its resolution (the “Class Complaint”). Plaintiff brings claims for failure to pay wages, failure to provide meal periods, failure to timely pay wages, failure to provide accurate itemized wage statements, failure to accurately record and pay sick leave, failure to pay vested vacation pay, failure to indemnify necessary business expenses, and an unfair competition claim.

4. On March 23, 2022, Named Plaintiff submitted a PAGA Notice to the LWDA.

5. On May 31, 2022, Plaintiff Ragini Mal filed a PAGA Representative Action complaint in Orange County Superior Court (Case No. 30-2022-01262144-CU-OE-CXC) on behalf of herself and all other aggrieved employees (the “PAGA Complaint”). Plaintiff asserts violations of California Labor Code sections 201-203, 510, 226.7, 226, 226.3, 227.3, 246, 512,

1 1174, 1174.5, 1175, 1194, 1197, 1197.1, 2802 and 2698 et seq. On August 1, 2024 the Parties
2 filed a joint stipulation requesting leave from the court to file a First Amended PAGA Complaint
3 to identify the population of Aggrieved Employees at issue as all current and former non-exempt
4 employees of Defendant who worked within the CESS Division of Defendant in California during
5 the liability period.

6 6. Plaintiff's class complaint initially defined the class as "All persons who have been
7 employed by Defendants as Non-Exempt Employees or equivalent positions, however titled, in the
8 state of California within four (4) years from the filing of the Complaint in this action until its
9 resolution". During the discovery stages of the action, the Parties met and conferred and agreed to
10 narrow the class scope to instead be defined as all current and former non-exempt employees of
11 Defendant who worked within the CESS division of Defendant in California during the Class
12 Period. On August 1, 2024, the Parties filed a joint stipulation requesting leave from the court to
13 file a First Amended Class Action Complaint in order to reflect the agreed upon revised scope of
14 the class definition.

15 7. On March 20, 2024, the Parties engaged in private mediation with a well-respected
16 wage and hour class action mediator, the Honorable Amy D. Hogue. The Parties have also
17 engaged in formal discovery. The Parties exchanged sufficient information to engage in good faith
18 negotiations, including, policies, time and pay records for a sample of approximately 60% of the
19 putative class, and data points (e.g., workweeks, pay period, class size) relating to the putative
20 class.

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

1 desirable and beneficial to settle the Lawsuit in the manner and upon the terms and conditions set
2 forth in this Agreement.

3 9. In short, Defendant provided discovery sufficient to enable the Plaintiff and Class
4 Counsel to rigorously evaluate the strengths and risks of the case and perform an analysis of the
5 potential damages arising from the claims made in this case. As a result of settlement efforts, the
6 Parties agreed to settle this matter for the Gross Settlement Amount of \$395,000.00 for
7 approximately 230 class members and the terms of which are fully memorialized in the Settlement
8 Agreement. At all times, the Parties' negotiations were adversarial and non-collusive.

9 10. The "Class Members" defined as all current and former non-exempt employees of
10 Defendant who worked within the CESS division of Defendant in California during the Class
11 Period. As of the date of mediation, March 20, 2024, it is estimated there are approximately 230
12 Settlement Class Members. Defendant represents there are approximately 230 Class Members as
13 of February 7, 2024.

14 11. Plaintiff's Counsel conducted a thorough investigation into the factual and legal
15 issues implicated by Plaintiff's claims and was able to objectively assess the settlement's
16 reasonableness. For example, prior to filing the action, Plaintiff contacted Plaintiff's Counsel to
17 discuss the factual bases for pursuing their actions against Defendant for Labor Code violations.
18 Plaintiff was intimately familiar with Defendant's labor policies and practices, and over the course
19 of multiple interviews, knowledgeably summarized those policies and practices to Plaintiff's
20 Counsel. During those conversations, Plaintiff's Counsel explained how the policies and practices
21 were instituted and provided valuable insight into how they gave rise to the alleged Labor Code
22 violations. Further, formal business records for Ms. Mal were requested and received and reviewed.
23 Based on these interviews with Plaintiff, and review of records, Plaintiff's Counsel determined that
24 there were legally sufficient grounds for pursuing the Actions against Defendant and in preparation
25 for drafting the complaints, Plaintiff's Counsel conducted their own independent preliminary
26 investigations into the factual bases for Plaintiff's claims, which entailed, *inter alia*, a careful
27 examination of Plaintiff's personnel files and associated records.

28 12. In summary, Plaintiff's Counsel performed a thorough investigation into the

1 claims at issue, which included: (1) determining Plaintiff's suitability as private attorneys general
2 and subsequent class representative through interviews, background investigations, and analyses of
3 their employment files and related records; (2) evaluating all of Plaintiff's potential representative
4 claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of
5 the positions, and the type of employer; (4) analyzing employees' time and wage records and driver
6 manifest; (5) reviewing Defendant's employment policies and practices; (6) researching settlements
7 in similar cases and the prior settlement in this case; (7) evaluating Plaintiff's claims and estimating
8 Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9)
9 participating in the mediation.

10 13. By engaging in such a thorough investigation and evaluation of Plaintiff's claims,
11 Plaintiff's Counsel can opine that the Settlement, for the consideration and on the terms set forth in
12 the Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Class
13 Members in light of all known facts and circumstances, including the risk of significant delay and
14 uncertainty associated with litigation, and various defenses asserted by Defendant.

15 14. Since the filing of the complaint, the Parties have exchanged extensive
16 discovery and engaged in numerous discussions regarding the factual and legal issues surrounding
17 this case. Throughout the litigation, Defendant produced thousands of pages of information and
18 thousands of lines of data in both electronic and pdf formats, including policies, handbooks,
19 relevant policies, and payroll and time records. Defendant also provided Plaintiff's personnel file,
20 and information regarding the number of employees holding these positions during the relevant
21 time period. Defendant also provided substantial information concerning the total number of
22 potential class members, the payroll data at issue, and the applicable hourly rates, workweeks and
23 pay periods, and other summary data related to the alleged class. The Parties have conducted
24 themselves in informed, good faith arms-length negotiations after conducting informal discovery
25 and exchanging extensive evidence and information about the claims and defenses of this lawsuit,
26 and engaging in pre-mediation discussions, telephone conferences, and correspondence all aimed
27 at settling their dispute.

28 15. As a result of the mediation, the Parties agreed to settle this matter for a Gross

1 Settlement Amount (“GSA”) of \$395,000.00. Plaintiff’s counsel balanced the terms of the
2 proposed Settlement against the risk of litigation and probable outcome at the class certification
3 stage, and if any Class were certified, at trial. Based on their own respective independent
4 investigations and evaluations, and after taking into account the sharply disputed factual and legal
5 issues involved in this matter, the risks attending further prosecution of the case, and the monetary
6 benefits received under the Settlement despite the questionable nature of the claims, Plaintiff’s
7 counsel is of the opinion that Settlement for the consideration and on the terms set forth in the
8 Settlement Agreement is fair, reasonable and adequate and is in the best interests of Plaintiff and
9 the Class. Counsel for the Parties investigated the applicable law as applied to the facts
10 discovered regarding the claims of Plaintiff, Defendant’s defenses thereto and the damages
11 claimed by Plaintiff on behalf of the Settlement Class.

12 16. I believe that the consideration and terms set forth in the Settlement Agreement are
13 fair, reasonable, and adequate and are in the best interests of the Settlement Classes in light of all
14 known facts and circumstances, including the various defenses asserted by Defendant, and
15 numerous potential appellate issues. In addition, the prospect of a potential adverse summary
16 judgment ruling, as well as the uncertainty of class certification, the difficulties of complex
17 litigation, the lengthy process of establishing specific damages and various possible delays and
18 appeals, were also carefully considered in agreeing to the proposed Settlement.

19 17. The GSA includes, without limitation, (1) attorneys’ fees in the amount of
20 \$138,250.00 (“Attorneys’ Fees and Litigation Expenses”) and reimbursement of reasonable
21 litigation costs and expenses in the amount of up to \$16,000.00 to Class Counsel; (2) Class
22 Representative’s incentive award to Plaintiff in the amount of up to \$10,000.00 (“Service
23 Enhancement Payment”); (3) fees and expenses of administration of the Settlement to the
24 Settlement Administrator in an amount not to exceed \$7,000.00 (“Claims Administration Costs”);
25 (4) \$40,000.00 (“PAGA Payment”) with twenty-five percent (25%) share of the PAGA Penalties
26 to be a part of the Net Settlement Sum that will be distributed to Class Members in the PAGA
27 Group in the amount of \$10,000.00; (5) the seventy-five percent (75%) share of PAGA Penalties
28 in the amount of \$30,000.00 to the California Labor and Workforce Development Agency

1 (“LWDA”); and the remainder to of the Net Settlement Amount to the Settlement Class Members.
2 **The Entire Total Settlement Amount will be paid to all Class Members who do not opt out of**
3 **the Settlement Class, and without the need to submit claims for payment.** After deductions,
4 the Net Settlement Amount (“NSA”) is estimated to be approximately **\$183,750.00**. The Class
5 Members are to be paid based from the NSA on a pro rata basis based upon the weeks each class
6 member worked in comparison to the total work weeks worked by all Class Members.

7 18. Fairness of the Settlement is demonstrated by the uncertainty and risks to Plaintiff
8 involved both in not prevailing on one or more of the causes of action or theories alleged in the
9 operative Complaints and in non-certification, and if successful, Defendant dispute the ability of
10 Plaintiff to certify a class in this case. Defendant also argued it maintained lawful written policies
11 that were provided to the class members and enforced those policies. Yet, despite the defenses
12 proffered by Defendant, the proposed Settlement commits Defendant to pay each Class Member a
13 portion of the NSA. The amount to be paid to the Classes is fair, adequate and reasonable given
14 the significant risk to Plaintiff and the Class in continuing with the litigation and not prevailing on
15 their claims at class certification or at trial or not being paid anything even if trial was successful.

16 19. The Parties investigated relevant law as applied to the facts of the case, potential
17 defenses, and damages claimed by Plaintiff on behalf of himself and the Class. Discovery largely
18 focused on Plaintiff’s allegations of Defendant’s: failure to pay minimum and overtime wages,
19 failure to provide meal periods, failure to pay all wages earned and owed upon separation from
20 Defendant’s employ, failure to pay wages timely during employment, failure to provide accurate
21 itemized wage statements, failure to reimburse necessary business expenses, failure to pay vested
22 vacation pay, failure to accurately pay and record sick pay, and unfair competition under Cal.
23 Bus. & Prof. Code ¶¶17200, et seq. Information and data exchanges included significant
24 sampling of Class Members’ dates of employment, hourly rates time records, and payroll records.
25 The parties conducted their own evaluations of the potential recoveries based on the claims
26 alleged in the Action and the defenses at play.

27 20. Although Plaintiff’s Counsel believe the class claims are strong, Plaintiff’s Counsel
28

1 also recognize that if the litigation had continued, they may well have encountered significant legal
2 and factual hurdles that could have prevented the Class from obtaining any recovery. To be sure, a
3 number of cases have found wage and hours actions to be especially amenable to class resolution.
4 However, some courts have gone the other way, finding that some of the very claims at issue here-
5 especially meal period and rest period violations-were not suitable for class adjudication because
6 they raised too many individualized issues. *See Duran v. US. Bank National Association*, 59 Cal.
7 4th 1 , 31 (2014) (reversing a verdict from a class trial); *Ali v. US.A. Cab Ltd.*, 1 76 Cal. App. 4th
8 1333, 1341 (2009) (affirming denial of certification because employees' declarations attesting to
9 having taken meal and rest periods demonstrated that individualized inquiries were required to show
10 harm); *Campbell v. Best Buy Stores, L.P.* , 2013 U.S. Dist. LEXIS 137792, at *30- 41 (C.D. Cal.
11 Sept. 20, 2013) (following *Brinker* and denying certification of proposed off-the-clock and rest and
12 meal break classes due to lack of uniform policy); *Jimenez v. Allstate Ins. Co.*, 2012 U.S. Dist.
13 LEXIS 65328 (C.D. Cal. Apr. 18, 2012) (denying motion to certify meal and rest period classes
14 based on employer's practice of understaffing and overworking employees); *Gonzalez v. Officemax*
15 *NA.*, 2012 U.S. Dist. LEXIS 163853 (C.D. Cal. Nov. 5, 2012) (same); *Brown v. Fed. Express Corp.*,
16 249 F.R.D.580, 587-88 (C.D. Cal. 2008) (denying certification of driver meal and rest period claims
17 based on the predominance of individual issues); *Kenny v. Supercuts, Inc.*, 252 F.R.D. 64 I, 645
18 (N.D. Cal. 2008) (denying certification on meal periods claim); *Blackwell v. Skywest Airlines, Inc.*
19 , 245 F.R.D. 453, 467- 68 (S.D. Cal. 2007) (declining to certify class action because individual
20 issues predominated when different employee stations provided different practices with respect to
21 meal periods).

22 21. Some courts have denied certification even when an employer's policies are unlawful
23 on their face. For instance, in *Ordonez v. Radio Shack, Inc.*, 20 1 3 U.S. Dist. LEXIS 7868, *35-4 1
24 (C.D. Cal. Jan. 17, 201 3), the court denied certification even though the plaintiff submitted evidence
25 of a facially unlawful policy regarding rest breaks. The *Ordonez* court concluded that the
26 predominance and superiority elements were not met based on the employer's presentation of
27 anecdotal evidence of lawful compliance notwithstanding the unlawful policy. *Id.* at *38-40. And it
28 should be underscored that that claims which are amendable to certification can be disposed of by

1 motion for summary judgment. *See Loudv. Eden Med. Ctr.*, 2013 U.S. Dist. LEXIS 122873, **36-
2 53 (N.D. Cal. Aug. 28, 2013) (granting summary judgment on wage statement claim because
3 plaintiff could not show injury due to defects and that incorrect wage information is not willful).

4 22. As the above examples illustrate, the prospect of certifying a wage and hour action
5 is always uncertain, and the risk of being denied class certification militates in favor of settlement.
6 A denial of class certification effectively forecloses continued litigation, as neither the individual
7 nor his or her attorney will have any incentive to proceed with an individual case when such small
8 claims are at stake. *See In re Baycol Cases I & II*, 51 Cal. 4th 751, 758 (2011) (explaining that a
9 dismissal of class claims is effectively the "death knell" of the case, despite survival of individual
10 claims). In other words, for cases where individual damages are relatively small, denial of class
11 certification results in a near-complete loss for Plaintiff as well as no recovery for the employees,
12 who are shut out of the action. Thus, if the putative Class had not been certified, the value of
13 Plaintiff's case would have been reduced to a fraction of the value of this Settlement; indeed,
14 Defendant would likely have offered no money to settle the class-wide claims if certification had
15 been denied.

16 23. Finally, early resolutions save time and money that would otherwise go to litigation.
17 Parties' resources, as well as the Court's, will be further taxed by continued litigation. And if this
18 action had settled following additional litigation, the settlement amount would likely have taken into
19 account the additional costs incurred, and there may have been less available for Class Members.
20 Cost savings is one reason why California policy strongly favors early settlement. *See Nemy v.*
21 *Regents of University of California*, 3 Cal. 4th 273, 277 (1992) (explaining the high value placed on
22 settlements and observing that "[s]ettlement is perhaps most efficient the earlier the settlement
23 comes in the litigation continuum."). This concern also supports settlement.

24 24. Further, beyond the risk of an adverse ruling on the merits or certification, Class
25 Counsel considered the fact that continued litigation would likely take years and would be
26 extremely expensive given the breadth and complexity of the claims. In this case, post-trial and
27 appellate proceedings are likely to occur, which will surely drag the case far into the future even
28 with a positive trial result. When facing a distant and unsure resolution of the allegations in this

1 action, the swift, sure and substantial Settlement is all the more reasonable. Avoiding such costly
2 litigation in favor of more immediate benefits to the Class was a consideration favoring settlement.
3 Given these realities, it is highly likely that the future expense of this litigation, and its likely
4 duration if the settlement is not approved, would be significant and weigh heavily in favor of
5 approval of this settlement.

6 25. The GSA is well within the acceptable range of reasonableness for the claims
7 of the Settlement Class Members. After analysis and review of Defendant's time and pay record
8 production and other payroll data, Class counsel estimates the overall value of the class claims at
9 approximately **\$2,668,054** should Plaintiff prevail at the class certification stage and at trial and
10 survive any appeals and win on all claims and be awarded maximum damages for call class
11 members and certain assumptions and extrapolations were confirmed with further discovery. This
12 amount was reduced by a reasonable 50% to account for the risks of continued litigation and not
13 prevailing on one or more claims and the Court not awarding penalties based upon Defendant's
14 good faith arguments.

15 26. During the negotiations Defendant estimated there are approximately 230
16 employees who worked approximately 34,974 Workweeks during the Class Period and
17 approximately 7,080 Pay Periods during the PAGA Period. These numbers will slightly increase
18 due to additional time to the end of the Class Period in September 28, 2024. The value of the
19 failure to pay wages was valued at approximately **\$440,672** calculated as follows: 0.35 hours per
20 workweek x \$36 weighted average OT rate x 34,974 workweeks. Defendant also potentially owe
21 class members **\$652,007 in waiting time penalties** (for a total of 114 termed employees). The
22 meal period claim was valued at approximately **\$167,875** based upon approximately a 20%
23 violation rate. The rest break claim was given little to no value based on apparent complaint
24 policies. The expense reimbursement claim was valued at **\$437,500** and calculated at \$50 during
25 approximately 8,750 possible months during the class period. The value of the LC 226 claim was
26 valued at **\$616,000.00** for approximately 154 employees in the wage statement period. Defendant
27 also potentially owe class members **\$354,000 in PAGA penalties** (7,080 pay periods x reasonable
28 \$50 penalty). As a result, the GSA of \$395,000.00 represents a reasonable recovery and

1 approximately 14%-30% of the overall potential value. This recovery could easily be much higher
2 if at trial PAGA penalties were reduced or damages for certain pay periods or workweeks could
3 not be proven for certain individuals. As a result, the proposed GSA is within the “ballpark of
4 reasonableness” and should be approved. Counsel for Plaintiff believe that this is a fair and
5 reasonable Settlement in light of the complexities of the case, the state of the law and uncertainties
6 of class certification and litigation, the policies and practices Defendant has had in place or
7 implemented during the purported liability period, and the benefit to be recovered for the Class.
8 Given the risks inherent in litigation, this settlement is fair, adequate, and reasonable and is in the
9 best interests of the Settlement Class, and should be preliminarily approved.

10 27. Based on the estimated Net Settlement Amount of \$183,750.00 provides on
11 average each Settlement Class Member with approximately **\$792.00** per Class Member. The
12 highest amount a Settlement Class Member will receive is approximately **\$1,500** based upon
13 \$5.25 per workweek multiplied by approximately 35,000 workweeks during the Class Period.
14 The lowest payment is estimated to be approximately **\$5.25** for someone who worked only one
15 workweek. To the extent any amount for Attorneys’ Fees, Costs, Claims Administration Costs or
16 Incentives are not awarded, the difference in those amounts will be added to the NSA. This is a
17 guaranteed amount of money paid to Settlement Class Members now, rather than the continued
18 risk of further litigation and receiving no money sometime in the far future and after trial and
19 appeals.

20 28. The PAGA members who worked during the PAGA period will be paid a PAGA
21 Payment based upon a pro rata share of the number of pay periods each PAGA member worked
22 compared to the total pay periods worked by all PAGA group members during the PAGA period
23 through the earlier date of either 120 days after full execution of this settlement agreement or the
24 date the Court enters the Preliminary Approval Order. As a result, there are approximately 154
25 PAGA members who will receive on average approximately \$64 per PAGA member.

26 29. The Class Representative has provided extensive supporting documents and
27 assisted Class Counsel in developing information necessary to litigate and settle this case.
28 Plaintiff also conducted record review and consultation with counsel in preparation for mediation,

1 and to assist in evaluating and proving the claims. The settlement provides for a Payment to be
2 paid to the Class Representative in the amount of \$10,000.00 subject to Court approval. The
3 purpose is to compensate the Class Representatives an additional incentive payment, taking into
4 consideration the risks, time, effort and expenses incurred in coming forward to provide invaluable
5 information and negotiate and litigate this matter on behalf of all Settlement Class Members who
6 otherwise, would probably not file their own individual claims to recover what may be relatively
7 low damages. Further, the Payment of \$10,000.00 as an Service Enhancement Payment to the
8 Class Representative is a very fair and justified as part of the Settlement based on the risks
9 Plaintiff has taken and benefits conferred upon the Settlement Class.

10 30. Class certification, as requested by the Parties for the purposes of the settlement
11 only, should be granted because Plaintiff allege that the proposed Settlement Class Members'
12 claims all stem from the same alleged conduct, i.e., that Defendant violated California law because
13 their: failure to pay minimum and overtime wages, failure to provide meal periods, failure to pay
14 all wages earned and owed upon separation from Defendant's employ, failure to pay wages timely
15 during employment, failure to provide accurate itemized wage statements, failure to reimburse
16 necessary business expenses, failure to pay vested vacation pay, and failure to accurately record
17 and pay sick pay. Under these specific circumstances, the commonality requirement for class
18 certification is satisfied. The typicality requirement for certification is also met as it is alleged
19 that the Class Representatives and the proposed Settlement Class were subjected to similar
20 violations based upon similar conduct, policies and practices of the Defendant regardless of their
21 duties.

22 31. The adequacy requirement for certification is also met. The Class Representative
23 and Class Counsel have prosecuted this action vigorously on behalf of the Settlement Class. The
24 Class Representative will receive a reasonable award for the time and effort spent assisting Class
25 counsel with factual issues surrounding the case. Other than this specific payment to the Class
26 Representative, all of the Settlement Class Members will receive a proportionate share of the
27 NSA, as detailed above provided they do not exclude themselves. Further, all PAGA Members
28 during the PAGA Period will receive their pro rata share of PAGA Penalties. As a result, there is

1 no conflict of interest between the Class Representative and the Settlement Class Members.
2 Further, the NSA will be fairly distributed among Participating Class Members, and no
3 “settlement allocation” questions will be raised.

4 32. Common questions of law and fact predominate over individual questions and
5 class-wide treatment of this dispute is superior to individual litigation. Plaintiff alleges that the
6 proposed Settlement Classes in this case are sufficiently cohesive, since all Settlement Class
7 Members share a common nucleus of facts and potential legal remedies, and since all of the
8 Settlement Class Members and the Class Representative seek compensation for unpaid wages and
9 other civil and statutory penalties from Defendant for the allegations described in the Complaints.
10 Common questions about compensation or lack thereof for work performed by Settlement Class
11 Members and the Settlement Class Members’ potential legal remedies are identical. The
12 alternative method of resolution is individual claims for relatively small amounts of damages, but
13 individual cases would be uneconomical for potential Plaintiff because the cost of litigation dwarfs
14 potential recovery. Therefore, a class action is the preferred method of resolution.

15 33. The class notice plan here calls for the Settlement APEX Class Administration, to
16 mail a Notice of Class Action settlement to all known and reasonably ascertainable Settlement
17 Class Members based on Defendant’s records. Further, the Settlement Administrator will conduct
18 a skip-trace and use all reasonable efforts to locate Settlement Class Members and will re-mail all
19 returned envelopes with forwarding addresses. The notice is consistent with the class certification
20 notices approved by numerous state and federal courts, and is the best notice practicable under
21 circumstances of this case. The proposed Settlement Class Members are ascertainable because all
22 of the Settlement Class Members have worked for Defendant during the Class Periods and can be
23 identified through Defendant’s records.

24 34. The Notice also fulfills the neutrality requirement. It summarizes the proceedings
25 to date and the terms and conditions of the Settlement in an informative and coherent manner, and
26 is accurate, objective, and understandable to Settlement Class Members, as is required under
27 prevailing precedent. The Notice clearly states the Settlement does not constitute an admission of
28 liability by Defendant and recognizes the Court has not ruled on the merits. It also states the final

1 settlement approval decision has yet to be made. The Notice also clearly instructs the Settlement
2 Class Members on how to object or exclude themselves from the Settlement. Therefore,
3 Settlement Class Members will have the option to participate or exclude themselves simply by
4 mailing a request to exclude themselves. The Settlement Class consists of non-exempt employees
5 who speak English. Thus, the Notice of Class Action is drafted in a manner that is likely to be
6 readily understood by the Settlement Class. Accordingly, the Notice complies with the standards
7 of fairness, completeness and neutrality required of a Notice of Class Action Settlement. The
8 Notice therefore is neutral, objective and understandable.

9 35. I have a great deal of experience in wage and hour class action litigation. I have
10 obtained certification of several classes, I have been approved as class counsel in many other
11 wage/hour class actions, and I am currently litigating numerous others. Although not an all
12 inclusive list, over the years I have prosecuted the following class action matters as lead and/or co-
13 lead counsel, all of which implicated similar law and facts to those associated with this action:

14 a. *Aguilar v. 7-Eleven, Inc., et. al.*, Orange County Superior Court- Case No.: 30-
15 2009-00268714-CU-OE-CXC. Certified Wage and Hour Class action seeking premium
16 wages for meal period and rest periods and resultant penalties. Class Notice pending.

17 b. *Carey, et. al. v. Arthur J. Gallagher, et. al.*, USDC, SOUTHERN DISTRICT- Case
18 No.: 09-cv-0168. Wage and Hour Class action seeking past wages of overtime for mis-
19 classification of insurance claims adjusters employed by Gallagher Bassett, a third
20 party administrator (TPA) in the State of California. Certification granted. Plaintiff's
21 counsel co-lead counsel. Case settled, Final Approval granted, no objections and funds
22 fully distributed.

23 c. *Dao v. 3M Company, et al.* USDC, CENTRAL DISTRICT, Case No. CV-08-
24 04554. Wage and Hour Class Action case seeking past wages for "off the clock",
25 overtime and meal and rest break violations for production workers in the State of
26 California. Plaintiff's Counsel appointed as Lead Counsel. Case settled, Final
27 Approval granted, no objections and funds fully distributed.

28 d. *Ortiz v. Kmart*, USDC, CENTRAL DISTRICT, Case No. SACV 06-638 ODW.

1 Wage and Hour Class Action case seeking past wages for meal and rest period
2 violations for retail employees in the State of California. Plaintiff's counsel appointed
3 co-lead counsel. Case settled, Final Approval granted, no objections and funds fully
4 distributed.

5 e. *Morgan v. Aramark Campus, LLC*, USDC, CENTRAL DISTRICT, Case No.
6 SACV08-00412. Wage and Hour Class Action case seeking past wages for meal and
7 rest period violations for retail employees in the State of California. Plaintiff's
8 Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no
9 objections and funds fully distributed.

10 f. *West v Iron Mountain Information Management, Inc, et. al.*; Los Angeles County
11 Superior Court, Case No. BC393709. Wage and Hour Class Action seeking past
12 wages for overtime, meal and rest break violations for driver employees in the State of
13 California. Settlement for "binding arbitration." Arbitration Award for Plaintiff Class.
14 Arbitration Award confirmed. Plaintiff's counsel, lead trial counsel and class counsel.

15 g. *Gonzalez v. Superior Industries Inter, Inc., et al.*, Los Angeles County Superior
16 Court, Case No. BC 357912. Wage and Hour Class Action seeking past wages for
17 overtime, meal and rest breaks violations for production employees in the State of
18 California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval
19 granted, no objections and funds fully distributed.

20 h. *Acosta v. Fleetwood Travel Trailers of California, Inc., et al.*, Riverside County
21 Superior Court, Case No. RIC 440630. Wage and Hour Class Action seeking past
22 wages for overtime, meal and rest break violations for production employees in the
23 State of California. Plaintiff's counsel appointed as co-lead counsel. Case settled,
24 Final Approval granted, no objections and funds fully distributed.

25 i. *Walker v. Sharkeez, et al.*, Orange County Superior Court, Case No. 05CC00293.
26 Wage and Hour Class Action seeking past wages for unlawful deductions, meal and
27 rest break violations for restaurant employees in the State of California. Plaintiff's
28 counsel appointed as lead counsel. Case settled, Final Approval granted and funds

1 fully distributed.

2 j. *Padron v. Universal Protection Service, et al*, Orange County Superior Court, Case
3 No. 05CC00013. Wage and Hour Class Action seeking past wages for overtime, meal
4 and rest break violations for security officers in the State of California. Plaintiff's
5 counsel appointed as co-lead counsel. Case settled, Final Approval granted, no
6 objections and funds fully distributed.

7 k. *Martinez v. Securitas Security Services USA, et al.*, Santa Clara Superior Court,
8 Case No. 105-CV047499, et al. J.C.C.P. No. 4460. Wage and Hour Class Action
9 seeking past wages for meal and rest break violations for security officers employed by
10 Defendant in the State of California. Plaintiff's counsel and co-counsel. Case settled,
11 Final Approval granted and funds fully distributed.

12 l. *Velasquez-Lopez v. Hotel Cleaning Services, Inc. et al.*, Riverside Superior Court,
13 Case No. RIC 420909. Wage and Hour Class Action seeking past wages for overtime,
14 meal and rest break violations for housekeepers employed by Defendant in the State of
15 California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval
16 granted, no objections and funds fully distributed.

17 m. *Ruiz, et al. v. Unisource Worldwide, Inc., et al.*, USDC, CENTRAL DISTRICT,
18 Case No. CV09-05848. Wage and Hour Class Action seeking past wages for meal and
19 rest period violations for non-exempt employees employed by Defendant in the state of
20 California. Case settled. Awaiting Preliminary Approval hearing. Plaintiff has
21 petitioned the Court for Lead Counsel.

22 n. *Herrador v. Culligan International Company, et al.*, USDC, CENTRAL
23 DISTRICT, Case No. SACV 08-680. Wage and Hour Class Action seeking past wages
24 for field and branch employees of Defendant in the State of California. Plaintiff's
25 counsel appointed as lead counsel. Case settled and awaiting Final Approval.

26 o. *Defries v. Domain Restaurants, et al.*, Orange County Superior Court, Case No.
27 05CC00128. Wage and Hour Class Action seeking past wages for restaurant
28 employees of Defendant in the State of California. Plaintiff's counsel appointed as

1 lead counsel. Case settled, Final Approval granted, no objections and funds fully
2 distributed.

3 p. *Denton v. BLB Enterprises, Inc., et al.*, Orange County Superior Court, Case No.
4 07CC01292. Wage and Hour Class Action seeking unpaid overtime, meal and rest
5 break violations for security guards employed by Defendant in the State of California.
6 Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval granted, no
7 objections and funds fully distributed.

8 q. *Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.*, Los Angeles Superior
9 Court, Case No. BC411477. Wage and Hour Class Action seeking unpaid meal and
10 rest break violations for production employees employed by Defendant in the State of
11 California. Plaintiff counsel appointed as lead counsel. Case settled, Final Approval
12 granted, no objections and funds fully distributed.

13 r. *McMurray v. Dave and Busters, Inc., et al.*, Orange County Superior Court, Case
14 No. 06CC00099. Wage and Hour Class Action seeking past wages for meal and rest
15 break violations for restaurant employees employed by Defendant in the State of
16 California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final
17 Approval granted, no objections and funds fully distributed.

18 s. *Osuna v. DFG Restaurants, Inc., et al.*, Los Angeles Superior Court, Case No. BC
19 330145. Wage and Hour Class Action seeking past wages of overtime for mis-
20 classification of managers employed by Defendant, DBA Carl's Jrs. in the State of
21 California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final
22 Approval granted, no objections and funds fully distributed.

23 t. *Burns v. Gymboree Operations, Inc., et al.*, San Francisco Superior Court, Case No.
24 CGC-07-461612. Wage and Hour Class Action seeking past wages for meal and rest
25 break violations for retail employees employed by Defendant in the State of California.
26 Plaintiff's counsel appointed lead counsel. Case settled, Final Approval granted, no
27 objections and funds fully distributed.

28 u. *Willems v. Diedrich Coffee, Inc., et al.*, Orange County Superior Court, Case No.

07CC00015. Wage and Hour Class Action seeking past wages of overtime for misclassification of managers employed by Defendant in the State of California. Plaintiff's counsel appointed lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

v. *Davila, et al. v. Beckman Coulter, Inc., et al.*, Orange County Superior Court, Case No. 07CC01347. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for production workers employed by Defendant in the State of California. Plaintiff's counsel appointed lead counsel. Case settled; final approval granted; no objections and funds fully distributed.

w. *Perez v. Naked Juice Company of Glendora, Inc.*, Los Angeles Superior Court, Case No. BC387088. Wage and Hour Class Action seeking past wages for overtime, meal and rest period violations for production employees employed by Defendant in the State of California. Plaintiff counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

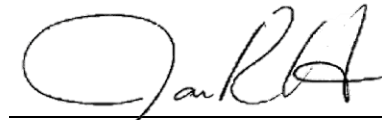
36. Here, the Parties' agreement to pay Class Counsel Fees of 33 1/3% of the GSA is reasonable. My firm and I have been the only counsel to represent Plaintiff and the Settlement Class in this matter, and we have borne the entire risk and cost of this litigation on a pure contingency fee basis. The legal issues raised drew significantly upon my experience and the extensive review and analysis of documents and information by me and others at my firm. In a complex action such as this, the proposed attorneys' fees are, at the very least, on the low side of the market rate for contingency fees.

37. At this juncture, with the addition of more hours due to the administration of the Settlement by Class Counsel, administration of the Settlement, and preparation for final approval, counsel for plaintiff will provide a detailed analysis of its time in advance of the final approval hearing. Plaintiff's counsel will file a motion for attorneys' fees and costs to be heard concurrently with the motion for final approval in accordance with the terms of the settlement agreement.

38. Despite the complexity of the case, Class Counsel has, through the investment of

1 substantial effort and the resources of my law firm been able to secure an outstanding settlement
2 on behalf of the Settlement Class. Plaintiff would have faced substantial legal and factual
3 obstacles in demonstrating that class certification was appropriate. Plaintiff would also have been
4 required to establish a significant amount of witness testimony, pattern and practice evidence,
5 statistical evidence, sampling evidence, expert testimony, and other evidence in order to present
6 their case both at the class certification stage and trial. Defendant vigorously contested liability,
7 the amount of claimed damages, and the propriety of class certification, and would have continued
8 to do so through trial. Accordingly, I believe the Settlement to be fair, reasonable, and adequate
9 and in the best interests of the Settlement Class. The fairness and adequacy of the Settlement is
10 confirmed by all known facts and circumstances, including the risk of significant delay and
11 uncertainty associated with litigation, the various defenses asserted by Defendant, and numerous
12 potential appellate issues.

13 I declare under penalty of perjury that the foregoing is true and correct. Executed on
14 August 8, 2024 at Irvine, California.

15 
16 _____
17 James R. Hawkins
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EXHIBIT A

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 interest to BANK OF THE WEST)

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Attorneys for Plaintiff RAGINI MAL,
 individually and on behalf of all others
 similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF ORANGE

RAGINI MAL, individually and on behalf of
 all others similarly situated,

Plaintiffs,

v.

BANK OF THE WEST and DOES 1-50,
 inclusive,

Defendants.

Case No. 30-2022-01251706-CU-OE-CXC

Case No. 30-2022-01262144-CU-OE-CXC

CLASS ACTION

*[Assigned for All Purposes Hon. Peter
 Wilson, Dept. 102]*

**AMENDED CLASS AND PAGA
 ACTION SETTLEMENT
 AGREEMENT**

Action Filed: March 23, 2022

This Amended Class Action Settlement and Release Agreement (“Settlement” or “Agreement”) is entered into between Plaintiff Ragini Mal (“Plaintiff”), individually and in her capacity as the representative of Settlement Class Members as defined herein, on the one hand, and Defendant BMO Harris Bank, N.A. (as successor in interest to Bank of the West) (“Defendant”), on the other hand, subject to the terms and conditions hereof and the approval of the Court. Plaintiff and Defendant are referenced collectively herein as “the Parties.”¹

This Settlement is made in compromise of disputed claims as set forth in the class action lawsuit captioned *Mal v. Bank of the West*, which is now pending in the Superior Court of California, County of Orange as Case No. 30-2022-01251706-CU-OE-CXC (“Class Action”) and the PAGA representative action captioned *Mal v. Bank of the West*, which is pending in the Superior Court of California, County of Orange as Case No. 30-2022-01262144-CU-OE-CXC (“PAGA Action”). These lawsuits will be referred to herein as “the Lawsuit.” This Agreement is made for the sole purpose of settling the Lawsuit on a class-wide basis. The Settling Parties (as defined in Section 2 of this Agreement) enter into this Agreement on a conditional basis.

Furthermore, in the event that the Court does not enter the Final Approval Order, or a Judgment is not entered in the Lawsuit, or the conditions precedent are not met for any reason, this Settlement shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the negotiations, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code sections 1119 and 1152 and any other analogous rules of evidence that might apply. Notwithstanding this provision, the Parties hereby stipulate that the terms of Section 15.12 shall survive and be admissible in evidence even if the Settlement does not become final.

Defendant denies all claims as to liability, damages, penalties, interest, fees, restitution,

AMENDED CLASS ACTION SETTLEMENT AND AGREEMENT

1 injunctive relief, and all other forms of relief as well as the class allegations asserted in the
2 Lawsuit. Defendant has agreed to resolve the Lawsuit through this Settlement, but to the extent
3 this Settlement is deemed void, Defendant does not waive, but rather expressly reserves, all
4 rights to challenge all such claims and allegations in the Lawsuit upon all procedural and factual
5 grounds, including without limitation the ability to challenge class, collective, and representative
6 action treatment on any grounds, as well as asserting any and all other potential defenses or
7 privileges. The Class Representative and Class Counsel agree that Defendant retains and reserves
8 these rights.

9 **II. PARTIES TO AGREEMENT**

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

16 **III. DEFINITIONS**

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

18 3.1 “Aggrieved Employees” means all current and former non-exempt employees of
19 Defendant who worked within the CESS Division of Defendant in California between August 11,
20 2021 through the earlier of either 120 from the execution of this Agreement or the date of
21 preliminary approval of the Settlement (the “PAGA Period”).

22 3.2 “Attorneys’ Fees” means the fees for work performed by Class Counsel and
23 approved for reimbursement by the Court as set forth in Section 8.2 of this Agreement.

24 3.3 “Settlement Administrator” or “Administrator” means Apex Class Action
25 Administrator who the Parties have selected to administer this Settlement. The Parties may jointly
26 select a different Settlement Administrator, subject to the approval of the Court.

27 3.4 “Claims Administration Costs” mean the fees and expenses reasonably and
28 necessarily incurred by the Settlement Administrator as a result of performing the settlement

administration procedures and functions expressly required in this Settlement and shall include all costs of administering the Settlement, including but not limited to: formatting, printing and mailing the Notice Packet, including filling in individuating information about the amount each Settlement Class Member is estimated to receive; performing a National Change of Address database search of Class Member addresses to update prior to the initial mailing of the Notice Packet; skip-tracing of bad addresses upon the return of undelivered Notice Packets; establishing a toll-free phone number and post office box for receipt of Class Member communications; establishing a website where Class Members may view and download the operative complaint, this Settlement Agreement, the Settlement Notice, approval motions/briefing, as well as any Orders or Tentative Rulings issued by the Court; calculating, processing, reviewing, and issuing Class Settlement Payments to participating Class Members and others as ordered by the Court; reviewing and resolving Class Members' disputed claims regarding payments under this Agreement; calculating tax withholdings and payroll taxes, making related payment to federal and state tax authorities, and issuing tax forms relating to payments made under the Settlement; establishing a QSF or other appropriate vehicle for receipt of the Gross Settlement Amount and disbursement of payments provided by this Agreement and ordered by the Court; preparing any tax returns and any other filings required by any governmental taxing authority or agency; and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement, which shall not exceed \$7,000 U.S. Dollars and No Cents.

3.5 "Class Counsel" means:

James R. Hawkins, Esq. (#192925)
 Gregory Mauro, Esq. (#222239)
 Michael Calvo, Esq. (#314986)
 Lauren Falk, Esq. (#316893)
 Ava Issary, Esq. (#342252)
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Email: Ava@jameshawkinsaplc.com

3.6 “Class Period” means the period from March 23, 2018 through the earlier of either 120 days from the execution of this Agreement or the date of preliminary approval of this Settlement.

3.7 “Class Representative” means Plaintiff Ragini Mal.

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

3.9 “Court” means the Superior Court for the State of California, County of Orange.

3.10 “Day” means calendar day, unless expressly stated otherwise.

3.11 “Defendant’s Counsel” means:

Andrew R. Livingston (SBN 148646)
Kayla D. Grundy (SBN 300513)
ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Building
405 Howard Street
San Francisco, California 94105-2669
Telephone: 415-773-5700
Facsimile: 415-773-5759

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

3.13 “Employer Payroll Tax Liability” means payroll taxes paid by the employer (FICA, FUTA, Medicare, and California payroll and withholding taxes).

3.14 “Final Approval Order” means an Order Granting Final Approval of Settlement of the Lawsuit.

3.15 “Gross Settlement Amount,” “Settlement Fund,” and “Gross Settlement Fund” is

1 the sum of Three Hundred Ninety Five Thousand U.S. Dollars (\$395,000.00), which shall cover
2 payment of all claims on behalf of the Settlement Class and Aggrieved Employees, Claims
3 Administration Costs, Attorneys' Fees, Litigation Expenses, the PAGA Penalty Payment, the
4 Service Enhancement Payment to the Class Representative, but not the Employer Payroll Tax
5 Liability. The Gross Settlement Amount, together with the separately paid Employer Payroll Tax
6 Liability, is the maximum amount Defendant may be required to pay under this Settlement.

7 3.16 "Judgment" means a judgment entered by the Court following entry of the Final
8 Approval Order.

9 3.17 "Last Known Address" means the most recently recorded mailing address for a
10 Class Member as such information is contained in the personnel records maintained by
11 Defendant.

12 3.18 "Lawsuit" means the lawsuits captioned *Mal v. Bank of the West*, Case No. 30-
13 2022-01251706-CU-OE-CXC and Case No. 30-2022-01262144-CU-OE-CXC, which are
14 pending in the Superior Court of California, County of Orange.

15 3.19 "Litigation Expenses" means the expenses and costs of litigation incurred by Class
16 Counsel as detailed in their billing statement and approved for reimbursement by the Court as set
17 forth in Section 8.2 of this Agreement.

18 3.20 "LWDA" means the California Labor and Workforce Development Agency.

19 3.21 "Net Settlement Amount" means the Gross Settlement Amount less Class
20 Counsel's Attorneys' Fees, Litigation Expenses, Claims Administration Costs, the PAGA Penalty
21 Payment, and the Service Enhancement Payment to the Class Representative. To the extent the
22 Court does not approve the full requested amount of Attorneys' Fees, Litigation Expenses, Claims
23 Administration Costs, or the Service Enhancement Payment, the Net Settlement Amount will
24 increase accordingly.

25 3.22 "Notice Packet" refers collectively to the documents mailed to the Class Members
26 pursuant to the terms of this Settlement and includes the following: (1) Notice (**Exhibit A**); (2)
27 Request for Exclusion Form (**Exhibit B**); (3) a Change of Address Form (**Exhibit C**), and (4) a
28 pre-printed return envelope addressed to the Settlement Administrator.

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

3.24 “Notice Period” means a period of forty-five (45) calendar days from the date the Settlement Administrator first mails the Notice Packet to Class Members. If the 45th day falls on a Sunday or holiday, the Notice Period shall end on the next business day that is not a Sunday or holiday.

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

3.26 “PAGA Penalty Payment” means amount to be paid to settle any and all PAGA Released Claims for which penalties under California’s Private Attorneys General Act (“PAGA”), California Labor Code sections 2698 *et seq.*, may be sought or are otherwise available, as set forth in Section 8.4 of this Agreement.

3.27 “PAGA Period” means period from August 11, 2021 through the earlier of either 120 days from execution of this Agreement or the date of preliminary approval of the Settlement.

3.28 “PAGA Work Weeks” means the total number of weeks worked by an Aggrieved Employee during the PAGA Period. As of the date of mediation, March 20, 2024, there are approximately 7,100 PAGA Pay Periods.

3.29 “Parties” means the Plaintiff/Class Representative and BMO Harris Bank, N.A.

3.30 “QSF” shall mean the Qualified Settlement Fund established by the Settlement Administrator for the benefit of the Class Members and from which the Class Settlement Payments and, if applicable, employee-side payroll taxes shall be paid.

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

3.32 “Released Claims” shall have the meaning set forth in Section 11 of this Agreement.

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

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

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

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

3.37 “Settlement Class Members” means all current and former non-exempt employees of Defendant who worked within the CESS division of Defendant in California during the Class Period. As of the date of mediation, March 20, 2024, it is estimated there are approximately 230 Settlement Class Members.

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

3.39 “Work Weeks” means the total number of weeks worked by a Class Member during the Class Period.

IV. PROCEDURAL BACKGROUND

On March 23, 2022, Plaintiff Ragini Mal filed a class action lawsuit in Orange County Superior Court (Case No. 30-2022-01251706-CU-OE-CXC) on behalf of herself and a putative class of *all persons who have been employed by Defendants as Non-Exempt Employees or equivalent positions, however titled, in the state of California within four (4) years from the filing*

1 *of the Complaint in this action until its resolution* (the “Class Complaint”). Plaintiff brings
2 claims for failure to pay wages, failure to provide meal periods, failure to timely pay wages,
3 failure to provide accurate itemized wage statements, failure to accurately record and pay sick
4 leave, failure to pay vested vacation pay, failure to indemnify necessary business expenses, and
5 an unfair competition claim. Plaintiff seeks damages on behalf of herself and a class including
6 unpaid wages, statutory penalties, interest, and attorney’s fees and costs.

7 On May 31, 2022, Plaintiff Ragini Mal filed a PAGA Representative Action complaint in
8 Orange County Superior Court (Case No. 30-2022-01262144-CU-OE-CXC) on behalf of herself
9 and all other aggrieved employees (the “PAGA Complaint”). Plaintiff asserts violations of
10 California Labor Code sections 201-203, 510, 226.7, 226, 226.7, 227.3, 246, 512, 1174, 1174.5,
11 1175, 1194, 1197, 1197.1, and 2802. Plaintiff seeks penalties, interest, attorneys’ fees and costs.

12 On September 14, 2022, in response to Defendant’s filing of a Notice of Related Cases
13 concerning the Class Complaint and the PAGA Complaint, the Court reassigned the PAGA
14 Complaint to Judge Peter Wilson who was already presiding over the Class Complaint. Though
15 not formally consolidated, the Lawsuits have preceded in parallel since that time.

16 The Parties have engaged in formal discovery. Plaintiff served written document requests
17 on November 11, 2022. Defendant served objections and responses on March 7, 2023. Defendant
18 served written document requests on October 12, 2022. Plaintiff served objections and responses
19 on January 3, 2023. Following a meet and confer process, Plaintiff then served amended
20 objections and responses on March 9, 2023. Plaintiff served form and special interrogatories on
21 November 11, 2022 and March 14, 2023. Defendant served objections and responses on March
22 7, 2023 and on May 22, 2023. Documents and information were exchanged in response to the
23 formal discovery.

24 In December 2023 and January 2024, the Parties met and conferred about an early private
25 mediation to resolve Plaintiff’s claims. The Parties ultimately agreed in January 2023 to mediation
26 with the Honorable Amy D. Hogue on March 20, 2024. The Parties exchanged sufficient
27 information to engage in good faith negotiations, including, policies, time and pay records for a
28 sample of approximately 60% of the putative class, and data points (e.g., workweeks, pay period,

1 class size) relating to the putative class. The Parties engaged in arm's length negotiation including,
2 but not limited to, a full day mediation session on March 20, 2024, facilitated by Judge Hogue,
3 who has extensive experience in labor and employment litigation, including in particular wage
4 and hour litigation. Towards the end of the day-long mediation, the Parties agreed to a
5 memorandum of understanding of the key terms of the Settlement, which was memorialized on
6 the same day and signed by all parties on March 21, 2024.

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

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

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

23 The Parties agree there is a bona fide dispute as to whether wages and/or penalties are
24 owed to Plaintiff and the Class Members and neither this Agreement, nor the Settlement-related
25 documents, nor the Settlement itself shall be construed as an admission of either fact or law on
26 any issue by any Party.

27 **VI. CLAIMS OF THE CLASS REPRESENTATIVE AND BENEFITS OF**
28 **SETTLEMENT**

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

14 **VII. CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT**

15 7.1 The Parties enter into this Agreement and the Settlement on a conditional basis.
16 This Agreement and Settlement will become final and effective only upon the occurrence of all of
17 the following events:

- 18 7.1.1 The Court enters an order granting conditional certification of the proposed
19 settlement class;
20 7.1.2 The Court enters an order granting preliminary approval of the Settlement;
21 7.1.3 The Court enters a Final Approval Order; and
22 7.1.4 The Effective Date occurs, and any challenge to the Settlement, whether by
23 objection or appeal, is resolved in favor of enforcement of the Settlement.

24 7.2 Unless the Court orders otherwise or agreed in writing by the Parties, this
25 Agreement shall be deemed null and void *ab initio* upon the failure of any of these four
26 conditions to occur.

27 **VIII. SETTLEMENT CONSIDERATION—NO CLAIM FORM REQUIRED;**
28 **DEDUCTIONS FROM THE GROSS SETTLEMENT AMOUNT; CALCULATION**
OF CLASS SETTLEMENT PAYMENTS FROM THE NET SETTLEMENT

AMOUNT

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

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

8.2 **Attorneys' Fees and Litigation Expenses:** Class Counsel will submit an application for: (a) an award of One Hundred Thirty Eight Thousand Two Hundred Fifty U.S. Dollars and No Cents (\$138,250.00) or no more than 35% of the Gross Settlement Amount; and (b) an award of Class Counsel's actual Litigation Expenses to date plus any expenses incurred between the date this Settlement Agreement is executed and the date of final approval, estimated not to exceed \$16,000 (as documented on an itemized cost sheet with appropriate support), both of which would be paid out of the Gross Settlement Amount. The amounts set forth in this section will constitute complete consideration for all work performed and expenses incurred to date and for all work to be performed and expenses to be incurred through the completion of the Lawsuit, its settlement, and the effort to secure final Judgment by Class Counsel.

8.2.1 In the event that the Court (or any appellate court) awards less than the amount requested for Attorneys' Fees or Litigation Expenses, only the awarded amounts shall be paid and shall constitute satisfaction of those obligations and full payment thereunder, and any remaining or unawarded portion of the requested Attorneys' Fees or Litigation Expenses shall be made a part of the Net Settlement Amount for distribution to Settlement Class Members. To the extent the Court does not approve any or all of the amount of Attorneys' Fees or Litigation Expenses, the Settlement shall remain binding except as otherwise provided, and this will not be a justification for Plaintiff to withdraw from the Settlement.

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

8.3 **Claims Administration Costs:** From the Gross Settlement Amount, Claims Administration Costs shall be paid in an amount not to exceed \$7,000, subject to approval from the Court.

8.4 **Payment of the PAGA Penalties:** From the Gross Settlement Amount, Defendant will pay \$40,000 Dollars for settlement of any and all Released Claims for which penalties under PAGA, Labor Code section 2698 *et seq.*, may be sought or are otherwise available, as the PAGA Penalty Payment. Pursuant to the express requirements of Labor Code section 2699(i), the PAGA Penalty Payment shall be allocated as follows: \$30,000 (75%) to the LWDA for the enforcement of labor laws and education of employers, and \$10,000 (25%) to the Aggrieved Employees as a part of the Net Settlement Amount. The PAGA Penalty Payments to Settlement Class Members are not wages and will be reported on an IRS Form 1099. Each Aggrieved Employee shall receive a pro-rata portion of the PAGA Payment based on the number of eligible pay periods worked by each Aggrieved Employee. Each Aggrieved Employee's portion of the PAGA Penalty Payment shall be determined by multiplying the 25 percent of the PAGA Penalty Payment allocated to Aggrieved Employees by the ratio of (a) the number of Eligible Pay Periods worked by that employee to (b) the total number of eligible pay periods worked by all Aggrieved Employees. All Aggrieved Employees shall automatically receive their portion of the PAGA Penalties consistent with this section regardless of their decision to opt-out of the Class Settlement.

8.5 **Service Enhancement Payment to the Class Representative:** From the Gross

1 Settlement Amount, Plaintiff intends to request approval for, subject to Court approval, a Service
2 Enhancement Payment in the amount of \$10,000. The amount paid to Plaintiff is in consideration
3 for her efforts in connection with this Lawsuit. The Class Representative is not providing a
4 general release and the Service Enhancement Award is not tethered in any way to any general
5 releases. The Plaintiff shall be issued an Internal Revenue Service Form 1099 for any Service
6 Enhancement Payment. The Plaintiff hereby acknowledges that she has obtained no tax advice
7 from Defendant and that neither Defendant nor its attorneys have made any representation
8 concerning the tax consequences, if any, of the Service Enhancement Payment. The Class
9 Representative agrees that she is solely responsible for the tax consequences of the Service
10 Enhancement Payment.

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

19 8.5.2 The Service Enhancement Payment, if approved by the Court, is in addition
20 to Plaintiff's Class Settlement Payment as described in Section 8.7 below.

21 8.6 **Employer Payroll Tax Liability:** The Employer Payroll Tax Liability on the
22 portions of all Class Settlement Payments allocated to wages in the form of back pay (as
23 described in Section 8.8 of this Agreement) shall be paid separately by Defendant in addition to
24 the Gross Settlement Fund.

25 8.7 **Payment to Settlement Class Members:** The Net Settlement Amount (as defined
26 in Section 3.21, after payment of all enumerated amounts from the Gross Settlement Amount)
27 shall be used to make the Class Settlement Payments described below.

28 8.7.1 Each Class Settlement Payment shall be calculated by dividing the

1 Net Settlement Amount by the total number of Work Weeks worked by Settlement Class
2 Members then multiplying that amount by the number of Work Weeks the individual Settlement
3 Class Member worked as a non-exempt hourly employee for Defendant in California during the
4 Class Period.

5 8.8 **Taxes:** For the purpose of calculating applicable taxes for the Settlement
6 Payments to Settlement Class Members (including any payments to the Class Representative
7 exclusive of any Service Enhancement Payment), the Parties agree that one-half (1/2) of each Class
8 Settlement Payment constitutes wages in the form of back pay (and each Settlement Class Member
9 will be issued an Internal Revenue Service Form W-2 for such payment to him or her), and one-
10 half (1/2) of each Class Settlement Payment constitutes interest, penalties, liquidated damages
11 and other non-wage payments (and each Settlement Class Member will be issued an Internal
12 Revenue Service Form 1099 for such payment to him or her). Defendant shall not be responsible
13 for payroll tax payments on any portion of the Gross Settlement Amount that is attributable to
14 Attorneys' Fees, Litigation Expenses, PAGA Penalty Payments, penalties, or interest. The Parties
15 further understand that Plaintiff, any Settlement Class Member who receives any Class Settlement
16 Payment pursuant to this Agreement, and any aggrieved employee who receives any PAGA
17 Penalty Payment shall be solely responsible for any and all tax obligations associated with such
18 receipt.

19 8.9 Defendant will not use the Class Settlement Payments or PAGA Penalty Payment
20 to calculate any additional benefits including without limitation vacation, holiday pay, pension, or
21 401(k) plan contributions. Defendant contends that neither the Class Settlement Payments nor any
22 aggrieved employee portion of the PAGA Penalty Payment represent any modification of
23 previously credited hours of service or other eligibility criteria under any employee pension or
24 employee welfare benefit plan sponsored by Defendant. Nor does Defendant consider the Class
25 Settlement Payments or PAGA Penalty Payment "compensation" for purposes of determining
26 eligibility for, or benefit accrual within, an employee pension benefit plan, an employee welfare
27 benefit plan, or other plan sponsored by Defendant or its predecessors, subsidiaries, or successors.

28 **IX. NOTICE PROCEDURE**

1 9.1 **Selection and Compensation of Settlement Administrator:** The Parties agree to
2 jointly utilize a third-party Settlement Administrator to give notice of and communicate with
3 Settlement Class Members regarding the Settlement and to establish a website where Settlement
4 Class Members may view and download the operative complaint, this Settlement Agreement, the
5 Settlement Notice, approval motions/briefing, as well as any Orders or Tentative Rulings issued
6 by the Court that relate to the Settlement. A Notice of Final Judgment will be posted on the
7 Settlement Administrator's website if the Court approves the settlement at the Fairness Hearing.
8 The Parties have initially selected Apex Class Action Administrators, LLC to administer the
9 Settlement, but may jointly select a different Settlement Administrator subject to the approval of
10 the Court. If the actual cost of claims administration is less than the amount approved by the
11 Court, the remaining amount shall be added to the Net Settlement Amount and distributed as set
12 forth in Section 8.7 of this Agreement. All costs associated with claims administration as
13 approved by the Court shall come out of the Gross Settlement Amount. The Settlement
14 Administrator's actions shall be governed by the terms of this Agreement.

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

1 Agreement. The aforementioned taxes, fees, expenses, and costs shall be treated as and included in
2 the costs of administering the QSF and as Claims Administration Costs. The Parties and the
3 Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement
4 Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1(j)(2)(i), and such election
5 statement shall be attached to the appropriate returns as required by 26 C.F.R. § 1.468B-
6 1(j)(2)(ii). The Parties agree to cooperate with the Settlement Administrator and one another to
7 the extent reasonably necessary to carry out the provisions of this section of the Agreement.

8 9.3 **Settlement Administration:** Defendant will provide for each Settlement Class
9 Member and Aggrieved Employee the following information drawn from records of Defendant:
10 1) name; 2) Social Security number; 3) last known residential address; 4) last known telephone
11 numbers; and 5) number of Work Weeks for which the Class Member would be entitled to
12 recover as set forth in Section 8.7 (“Class Data”) to the Settlement Administrator. Defendant will
13 provide the Class Data to the Settlement Administrator no later than thirty (30) days (or, if that
14 date falls on a weekend or holiday, the next business day thereafter) after the date the Court enters
15 an order granting preliminary approval of the Settlement. Class Data shall be used by the
16 Settlement Administrator solely for the purpose of notifying the Class Members of the
17 Settlement. The Settlement Administrator shall run the Class Data list through the National
18 Change of Address database and will use the most recent address for each Class Member when
19 mailing the Class Notice.

20 9.4 **Notice to Class Members:** As soon as practicable after receiving the Class Data,
21 but no later than ten (10) business days after its receipt, the Settlement Administrator shall send the
22 Notice Packet to the Class Members via United States First Class Mail. The Notice shall specify
23 the Court-approved Notice Response Deadline by which Settlement Class Members must submit
24 any dispute regarding the payment amount, Requests for Exclusion, objections to the Settlement, or
25 Change of Address requests. Notice will be provided in English-only which is sufficient because
26 all eligible Settlement Class Members and/or Aggrieved Employees worked in roles where
27 proficiency in English was a job requirement. The costs of mailing this Notice Packet will be
28 considered part of the Claims Administration Costs to be paid from the Gross Settlement Amount.

1 Except as specifically set forth in Subsections 9.4.1 through 9.4.3 below, the Notice Packet shall be
2 deemed received by the Class Member to whom it was sent.

3 9.4.1 In the event that subsequent to the first mailing of a Notice Packet and prior
4 to the Notice Response Deadline, that Notice Packet is returned to the Settlement Administrator by
5 the United States Postal Service with a forwarding address for the recipient, the Settlement
6 Administrator shall re-mail the Notice Packet to that address within five (5) business days. The
7 Notice Packet will be deemed mailed as of the date of re-mailing, the forwarding address shall be
8 deemed the Updated Address for that Class Member, and any responses from the Class Member
9 (*i.e.*, a dispute regarding calculation of Work Weeks, a Request for Exclusion, or an objection) are
10 due to the Settlement Administrator by the Notice Response Deadline or within twenty-one (21)
11 days from the date of re-mailing, whichever is later.

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

23 9.4.3 In the event that subsequent to the first mailing of a Notice Packet, the
24 Notice Packet is returned to the Settlement Administrator by the United States Postal Service but
25 no Updated Address is obtained for that Class Member using either method specified above, the
26 Notice Packet shall be re-mailed to the Last Known Address within five (5) business days of
27 receiving such information, the Notice Packet will be deemed mailed as of that date of re-mailing,
28 and the Class Member shall have until the Notice Response Deadline or within twenty-one (21)

1 days from the date of re-mailing to submit a response, whichever is later. In either event, the
2 Notice Packet shall be deemed received when it is mailed for the second time under this
3 paragraph.

4 9.4.4 In the event that any Notice Packet is returned to the Settlement
5 Administrator as undeliverable is associated with a Settlement Class Member who is currently
6 employed by Defendant, counsel for Defendant will make prompt efforts to obtain a current
7 mailing address and provide such updated address to the Settlement Administrator for remailing
8 of the Notice Packet.

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

25 9.6 **Requests for Exclusion:** Settlement Class Members who wish to be excluded
26 from the Settlement must submit a written Request for Exclusion to the Settlement Administrator
27 by the Notice Response Deadline (as evidenced by the date of the postmark of the submission).
28 The Request for Exclusion must be submitted on the form attached as **Exhibit B** hereto and signed

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

16 Any valid Request for Exclusion will be effective only as to the Class Settlement. Any
17 Settlement Class Member who is an Aggrieved Employee will be bound by the release of PAGA
18 claims and will receive their share of the PAGA Penalty Payment regardless of submitting a
19 Request for Exclusion.

20 9.7 **No Request for Exclusion by Class Representative:** The Class Representative
21 shall not request exclusion from the Settlement. The Class Representative agrees that by signing
22 this Agreement she is accepting the terms of this Settlement.

23 9.8 **Objections to Settlement:** Settlement Class Members who do not request
24 exclusion from the Settlement Class may object to the Agreement by submitting copies of their
25 written objections to the Settlement Administrator (as evidenced by the date of the postmark of the
26 submission) by the Notice Response Deadline. This Notice Response Deadline applies to any
27 objections notwithstanding any argument regarding alleged non-receipt of the Notice Packet.
28 Written objections should be signed by the Settlement Class Member or their counsel and should:

(1) state the objecting Settlement Class Member's name, address, telephone number, or the equivalent information of their counsel if they are represented by an attorney, and the last four digits of the Settlement Class Member's Social Security number, (2) state the case name and number as follows: *Mal v. Bank of the West*, Case No. 30-2022-01251706-CU-OE-CXC, (3) state concisely each objection to the Settlement, (4) explain the basis for each such objection, and (5) be dated. If the Settlement Class Member intends to use any document(s) to support his or her objection, a copy of the document(s) should be included with the written objection at the time of submission. Submitting an objection to this Settlement does not affect the Settlement Class Members' right to obtain the benefits of this Settlement. The Settlement Administrator shall forward a copy of any written objections and/or supporting documentation that it receives to both Class Counsel and Counsel for Defendant within two (2) business days of receipt.

9.9 Settlement Class Members may also appear at the final approval hearing regardless of whether they have submitted written objections. Anyone wishing to appear at the final approval hearing to object to the Settlement can, but is not required to, indicate this in his or her written objections.

9.10 Any Settlement Class Member who fails to serve timely written objections in the manner set forth herein may still appear at the final approval hearing to state their objections. Settlement Class Members who timely and validly request exclusion from the Settlement shall have no right to object and shall be foreclosed from making any objection to the Settlement.

X. PAYMENT OF CLAIMS

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

1 10.2 **Distribution of Class Settlement Payments.** After the Court grants final
2 approval of the Settlement, and the Effective Date has passed, the Settlement Administrator shall
3 prepare a final list of all Settlement Class Members, excluding those who timely and validly
4 opted out of the Class. For each Settlement Class Member on this list, the Settlement
5 Administrator will calculate the amounts due to each Settlement Class Member using the
6 methodology set forth in Section 8.7 of this Agreement (excluding any individuals who
7 effectively and timely requested exclusion from the Settlement) and provide that calculation to
8 Class Counsel and Defendant's Counsel within five (5) days after the Effective Date.

9 10.3 No later than fifteen (15) business days after the Effective Date has passed,
10 Defendant shall pay to the Settlement Administrator the Gross Settlement Amount of \$395,000.00
11 along with the Employer Payroll Tax Liability as calculated by the Settlement Administrator.
12 Defendant will wire the funds requested by the Settlement Administrator into the QSF set up and
13 controlled by the Settlement Administrator.

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

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

1 pursuant to this Agreement.

2 10.6 Not later than seventy-five (75) calendar days following the Effective Date (or, if
3 that date falls on a weekend or holiday, the next business day thereafter), the Settlement
4 Administrator shall provide Class Counsel and Defendant's Counsel with a declaration under oath
5 to verify the mailing of Class Settlement Payment checks and the other distributions from the
6 Gross Settlement Amount. Any checks issued to Settlement Class Members shall remain
7 negotiable for a period of one hundred eighty (180) calendar days from the date of mailing of the
8 Class Settlement Payment checks. Uncashed checks will be voided and, within two hundred (200)
9 calendar days from the date of mailing of the Class Settlement Payment checks, the funds
10 associated with such voided checks will be transmitted by the Settlement Administrator to the
11 Controller of the State of California to be held in that Settlement Class Member's name pursuant
12 to the Unclaimed Property Law. No later than two hundred ten (210) calendar days from the date
13 of mailing of the Class Settlement Payment checks (or, if that date falls on a weekend or holiday,
14 the next business day thereafter), the Settlement Administrator shall provide Class Counsel and
15 Defendant's Counsel with a declaration as to the total amount of any uncashed settlement checks.

16 10.7 Defendant understands its legal obligation not to retaliate against the Settlement
17 Class Members for their participation and/or election to participate in the benefits to be afforded
18 any of them by the Class Settlement Payments and/or the Lawsuit.

19 **XI. RELEASED CLAIMS**

20 11.1 Settlement Class Member Released Claims. Upon the funding of the Gross
21 Settlement Amount by Defendant (i.e., 75 days following the Effective Date), each of the
22 Settlement Class Members who have not opted out of the settlement, on behalf of themselves and
23 each of their heirs, representatives, successors, assigns, and attorneys, shall be deemed to have,
24 and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and
25 discharged the Released Parties from the following claims through and including the dates of the
26 Class Period: the claims alleged or could have reasonably been alleged based on the facts alleged
27 in Plaintiff's First Amended Class Complaint, including all claims for any violation of California
28 Labor Code sections 203, 226, 226.7, 227.3, 246, 510, 512, 1194, 2802, and Business and

1 Professions Code sections 17200 *et seq.*, including claims for damages, penalties, interest,
2 liquidated damages, attorneys' fees, costs, injunctive relief, declaratory relief, or accounting
3 reasonably related to the allegations in the Complaint, (collectively, the "Settlement Class
4 Release"). The Settlement Class Release and the PAGA Release (defined in section 11.2 below)
5 shall be collectively referred to as the "Released Claims." "Released Claims" do not include claims
6 for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
7 unemployment insurance, disability, social security, workers' compensation, or claims based on
8 facts occurring outside the Class Period.

9 11.1.1 All Settlement Class Members shall be bound by the release described in
10 Section 11.1 and considered Participating Class Members in this Settlement ***unless*** they formally
11 request exclusion from this Settlement by submitting a valid and timely Request for Exclusion or
12 comparable documentation.

13 11.1.2 Consistent with the foregoing, Settlement Class Members may not sue or
14 otherwise make a claim against any of the Released Parties that is in any way related to, arises out
15 of, or is connected with any of the Released Claims set forth in this section.

16 11.2 **Aggrieved Employees' Released Claims.** Upon the funding of the Gross
17 Settlement Amount by Defendant following the Effective Date (i.e., 75 days following the
18 Effective Date), Aggrieved Employees shall release any and all Private Attorneys General Act
19 (PAGA) claims under Labor Code section 2698 *et. seq.* or causes of action for the claims alleged
20 in, or that may arise out of, the First Amended Complaint and/or Amended LWDA Letter (which
21 is attached hereto as **Exhibit D**), or that could have reasonably been alleged in the First Amended
22 Complaint and Amended LWDA Letter, including but not limited to: California Labor Code
23 sections 201, 202, 203, 226, 226.7, 227.3, 246, 510, 512, 1174, 1174.5, 1175, 1194, 1197, 1197.1,
24 2698, and 2802, civil penalties, attorneys fees or costs, and any other applicable relief under
25 PAGA that could have reasonably been alleged in the First Amended Complaint and/or LWDA
26 letter (the "PAGA Release"). It is understood and acknowledged that the PAGA Release is
27 binding upon Representative Plaintiff and all Aggrieved Employees during the PAGA Period
28 from August 11, 2021 through the earlier of either 120 days from execution of this Agreement or

1 the date of preliminary approval of the Settlement. Aggrieved Employees, including those Class
2 Members who have opted out of the Settlement, are not able to opt out of the PAGA Penalty
3 Payment, including the release of PAGA Claims, defined herein.

4 **11.3 Class Representative Released Claims:** Upon the funding of the Gross Settlement
5 Amount by Defendant following the Effective Date (i.e., 75 days following the Effective Date), the
6 Class Representative on behalf of herself and her heirs, representatives, successors, assigns, and
7 attorneys, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and
8 forever released, finally, and forever released, relinquished, and discharged the Released Parties
9 from the following claims, which pursuant to the Agreement are being released through and
10 including the dates of the Class Period: the claims alleged or could have reasonably been alleged
11 based on the facts alleged in Plaintiff's Class Complaint, including all claims for any violation of
12 California Labor Code sections 203, 226, 226.7, 227.3, 246, 510, 512, 1194, 2802, and Business
13 and Professions Code sections 17200 *et seq.*, including claims for damages, penalties, interest,
14 punitive damages, liquidated damages, attorneys' fees, costs, injunctive relief, declaratory relief, or
15 accounting reasonably related to the allegations in the Complaint (collectively, the "Class
16 Representative Released Claims"). For the avoidance of doubt, the released PAGA claims
17 include, but are not limited claims or causes of action for civil penalties, attorneys fees or costs,
18 and any other applicable relief under PAGA, or that could have reasonably been alleged in the
19 First Amended Complaint, including but not limited to Labor Code sections 201, 202, 203, 226,
20 226.7, 227.3, 246, 510, 512, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 2698, and 2802. The
21 Released Claims expressly exclude all unrelated claims including but not limited to claims for
22 retaliation, discrimination, unemployment insurance, disability, workers' compensation, and
23 claims outside the Class Period.

24 11.3.1 With regard to the Class Representative Released Claims, the Class
25 Representative does not provide a general release.

26 11.3.2 The Class Representative may hereafter discover facts in addition to or
27 different from those which they now know or believe to be true with respect to the subject matter of
28 the Class Representative Released Claims, but she shall be deemed to have, and by operation of the

Judgment shall have, fully, finally, and forever settled and released any and all Class Representative Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

XII. MOTIONS FOR COURT APPROVAL

12.1 **Motion for Preliminary Approval:** Class Counsel will file a motion for preliminary approval within 3 days following the execution of this Agreement. Class Counsel shall provide the motion to Defendant for review and comment at least one (1) business day before the filing of the motion. Class Counsel shall file, if required by the Court: (i) this Agreement and its Exhibits, (ii) a noticed motion seeking the Court's preliminary approval of this Settlement, (iii) a proposed order granting such preliminary approval and setting hearing for final approval, and (iv) any other document consistent with the Settlement and reasonably necessary to obtain the Court's preliminary approval of the Settlement.

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

Judgment entered by the Court.

XIII. RIGHT TO REVOKE

13.1 **Defendant's Right to Revoke:** Defendant has the right in its sole and exclusive discretion to terminate this Agreement and withdraw from the Settlement at any time prior to date the Court enters the Final Approval Order on this Settlement if: (a) the Settlement is construed in such a fashion that Defendant is required to pay more than the Gross Settlement Amount; or (b) the Court denies Plaintiff's motion for preliminary approval of the Settlement with prejudice; or (c) 5% or more of all Settlement Class Members timely and validly request exclusion from the Settlement. In the event that Defendant exercises its right to revoke, Defendant shall be responsible for all settlement administration costs incurred.

13.2 **Plaintiff's Right to Revoke:** During negotiations Defendant estimated that the settlement class consisted of approximately 223 employees who worked approximately 34,974 Workweeks. If the actual number of Workweeks or Settlement Class Members exceeds this estimate by twelve percent (12%) or more, then, Defendant, at its option, can increase the gross settlement fund by the same percentage in excess of 12% (i.e., an 13% increase shall require an additional 1% added to the gross settlement fund) or the Parties will agree to void the Agreement and/or agree to renegotiate the Gross Settlement Fund regarding those workweeks exceeding 12%.

13.3 **Termination of Settlement Agreement:** If the conditions of the Settlement set forth in this Agreement are not satisfied, or if Defendant or Plaintiff terminate and withdraw from the Agreement pursuant to Sections 13.1 or 13.2 above, or if the Court does not enter the Final Approval Order as provided for in this Agreement, or if appellate review is sought and on such review the Court's Final Approval Order is materially modified or reversed, or if one or more of the terms of the Settlement is not approved or the Settlement with respect to one or more such terms is materially modified or reversed, then this Settlement shall be canceled, terminated, and shall have no force or effect, and any class certified for settlement purposes will be vacated. In such an event, neither the Agreement, nor the settlement documents, nor the negotiations leading to the Settlement may be used as evidence for any purpose, and Defendant shall retain the right to

1 challenge all claims and allegations in the Lawsuit, to assert all applicable defenses, and to dispute
2 the propriety of class certification on all applicable grounds. If the Effective Date does not occur
3 (due to failure of the Court to grant final approval or otherwise), or if this Settlement is terminated,
4 revoked, or canceled pursuant to its terms, the Parties to this Settlement shall be deemed to have
5 reverted to their respective status as of the date immediately prior to the execution of this
6 Settlement. Notwithstanding this provision, the Parties hereby stipulate that the terms of Section
7 15.12 shall survive and be admissible in evidence even if the Settlement does not become final.

8 **XIV. COOPERATION**

9 14.1 The Parties shall cooperate fully with one another in seeking approval of the Court
10 of this Agreement and to use their respective best efforts to consummate the Settlement and cause
11 the Final Approval Order and Judgment to be entered and to become final. The Parties therefore
12 agree to cooperate in good faith to promptly prepare, execute and finalize all Settlement-related
13 documents, seek all necessary Court approvals, and do all other things necessary to consummate
14 the Settlement. The Parties also agree to mutually seek to stay any pending or subsequently filed
15 class action lawsuits that allege any of the Released Claims set forth in Section 11 of this
16 Agreement.

17 14.2 No Party to this Agreement shall seek to evade his, her, or its good faith
18 obligations to seek approval and implementation of this Settlement by virtue of any ruling, order,
19 governmental report, or other development, whether in the Lawsuit, in any other litigation, or
20 otherwise, that hereafter might occur and might be deemed to alter the relative strengths of the
21 Parties with respect to any claims or defenses or their relative bargaining power with respect to
22 negotiating.

23 14.3 The Parties and their respective counsel of record deem this Settlement to be fair
24 and reasonable and have arrived at this Settlement after arms-length negotiations taking into
25 account all relevant factors, present and potential.

26 14.4 The Class Representative and Class Counsel agree to waive appeals of an order
27 granting final approval of this Settlement or entering Judgment in the Lawsuit as to Defendant so
28 long as such order is consistent with the material terms of this Agreement, with the exception of

1 appeals concerning the Court's award of attorneys' fees or costs in this matter.

2 14.5 Other than as necessary to implement the Settlement, neither Plaintiff nor Class
3 Counsel shall initiate any publicity, disclosure or contact with the media, or respond to any
4 inquiry from the media, regarding the Settlement other than to confirm that this Action has
5 settled. Any confirmation of settlement shall remain confidential until Notice is mailed.

6 **XV. MISCELLANEOUS PROVISIONS**

7 15.1 All of the Parties have been represented by counsel throughout all negotiations that
8 preceded the execution of this Agreement, and this Agreement is made with the consent and
9 advice of counsel.

10 15.2 This Agreement may not be modified or amended, except in a writing that is
11 signed by the respective counsel of record for the Parties and approved by the Court.

12 15.3 This Agreement and its Exhibits attached hereto constitute the entire agreement
13 between the Parties concerning the subject matter hereof, and supersede and replace all prior
14 negotiations, understandings, memoranda of understanding and proposed agreements, written and
15 oral, relating thereto. No extrinsic oral or written representations or terms shall modify, vary, or
16 contradict the terms of the Agreement unless made in writing, signed by duly authorized
17 representatives of all Parties, and approved in writing by a final order of the Court. No waiver of
18 any term, provision, or condition of this Agreement, whether by conduct or otherwise, in any one
19 or more instance shall be deemed to be or construed as a further or continuing waiver of any such
20 term, provision or condition.

21 15.4 This Agreement shall be subject to, governed by, construed, enforced, and
22 administered in accordance with the laws of the State of California, without giving effect to the
23 principles of conflict of laws, both in its procedural and substantive aspects, and shall be subject to
24 the continuing jurisdiction of the Court. This Agreement shall be construed as a whole according to
25 its fair meaning and intent, and not strictly for or against any party, regardless of who drafted (or
26 was principally responsible for drafting) this Agreement or any specific term or condition thereof.
27 In any construction to be made of the Agreement, the Agreement shall not be construed against any
28 party and the canon of contract interpretation set forth in California Civil Code section 1654 shall

not be applied.

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

15.6 The Parties agree they can consult mediator Hon. Amy D. Hogue to advise on disputes that may arise in connection with interpreting the terms of the Settlement. However, Judge Hogue's opinions will be non-binding on the Parties and the Parties agree only the Court shall retain jurisdiction with respect to disputes that may arise in connection with interpreting the terms of the Agreement, and the implementation and enforcement of the terms of the Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the terms of the Agreement.

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

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

15.9 Each individual signing this Agreement warrants that he or she has the authority and is expressly authorized to enter into this Agreement on behalf of the party (or parties) for which that individual signs.

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

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

3 **APPROVED AND AGREED:**

4
5 Dated: 8/7/2024

DocuSigned by:
Ragini Mal
A9604B2E2E0A492
By: _____
Ragini Mal
Representative Plaintiff

6
7 Dated: _____

DEFENDANT BANK OF THE WEST

8
9 By: _____
Angela Perez, Executive Vice President,
10 Head of Employee Relations
Defendant BMO Harris Bank, N.A. (as successor
11 in interest to Bank of the West)

12 **APPROVED AS TO FORM:**

13
14 Dated: 08/07/2024

JAMES HAWKINS, APLC

15
16 By: _____
JAMES HAWKINS
17 GREG MAURO
AVA ISSARY
18 Attorneys for Plaintiff RAGINI MAL and the
Settlement Class

19
20 Dated: _____

ORRICK HERRINGTON & SUTCLIFFE LLP

21
22 By: _____
ANDREW R. LIVINGSTON
23 KAYLA D. GRUNDY
Attorneys for Defendant BMO Harris Bank, N.A.,
24 (as successor in interest to BANK OF THE
25 WEST)

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

3 **APPROVED AND AGREED:**

4
5 Dated: _____

By: _____
Ragini Mal
Representative Plaintiff

6
7 Dated: 8/8/2024

DEFENDANT BANK OF THE WEST

8
9 By: Angie Perez
Angela Perez, Executive Vice President,
Head of Employee Relations
Defendant BMO Harris Bank, N.A. (as successor
in interest to Bank of the West)

10
11
12 **APPROVED AS TO FORM:**

13
14 Dated: _____

JAMES HAWKINS, APLC

15
16 By: _____
JAMES HAWKINS
GREG MAURO
AVA ISSARY
Attorneys for Plaintiff RAGINI MAL and the
Settlement Class

17
18
19
20 Dated: 8/8/2024

ORRICK HERRINGTON & SUTCLIFFE LLP

21
22 By: Andrew Livingston
ANDREW R. LIVINGSTON
KAYLA D. GRUNDY
Attorneys for Defendant BMO Harris Bank, N.A.,
(as successor in interest to BANK OF THE
WEST)

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

NOTICE OF CLASS ACTION SETTLEMENT

PLEASE READ CAREFULLY AS
THIS NOTICE MAY AFFECT YOUR RIGHTS

RAGINI MAL, individually and on behalf of all others similarly situated, Plaintiff, v. BANK OF THE WEST and DOES 1-50, inclusive, Defendant	Case No. 30-2022-01251706-CU-OE-CXC Case No. 30-2022-01262144-CU-OE-CXC ASSIGNED FOR ALL PURPOSES TO: Honorable Melissa R. McCormick, Dept. CX104 NOTICE OF CLASS ACTION SETTLEMENT
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I. WHY DID I GET THIS NOTICE?

This notice explains that a settlement has been reached in the following case entitled: (1) *Ragini Mal v. Bank of the West*, Case No. 30-2022-01251706-CU-OE-CXC and (2) *Ragini Mal v. Bank of the West*, Case No. 30-2022-01262144-CU-OE-CXC (herein referred as “The Lawsuits”). You are receiving this notice because the records of BMO Harris Bank, N.A., as successor in interest to BANK OF THE WEST, (“Defendant”) indicate that you are a current or former non-exempt employee that falls within the following proposed “Class”, which is defined as:

All current and former non-exempt employees of Defendant who worked within the CESS division of Defendant in California during the Class Period [March 23, 2018 through the earlier of either 120 days from the execution of the Settlement Agreement or the date of preliminary approval of the Settlement.] (the “Class”).

This is **not** a notice of a lawsuit against you. **You are not being sued.** The Lawsuit was brought on behalf of all persons who are members of the Class (“Class Members”), for their benefit. Your participation, or non-participation, in the Settlement will not affect your employment with Defendant in any way whatsoever.

The Court has ordered that this notice be sent to you because Defendant’s records indicate that you are a Class Member. The purpose of this notice is to inform you of the proposed Settlement of the Lawsuits. The notice is also intended (i) to describe the Settlement, including how the Net Settlement Fund will be allocated and how the Settlement may affect you, and (ii) to advise you of your rights and options with respect to the Settlement.

II. WHAT IS THIS CLASS ACTION LAWSUIT ABOUT?

This Class and Representative Action Settlement Agreement and Release (“Settlement” or “Agreement”) encompasses the actions (1) *Ragini Mal v. Bank of the West*, Case No. 30-2022-01251706-CU-OE-CXC and (2) *Ragini Mal v. Bank of the West* Case No. 30-2022-01262144-CU-OE-CXC.

The Lawsuits alleged various wage and hour causes of action premised on alleged violations of the California Labor Code including the failure to: pay minimum wages, overtime wages, failure to provide meal periods, failure to timely pay wages, failure to pay wages during employment, failure to provide accurate wage statements, failure to reimburse business expenses incurred, failure to keep requisite payroll records, failure to accurately record and pay sick pay, failure to pay vested vacation pay, for unfair competition, and for civil penalties pursuant to the Private Attorney’s General Act.

Defendant maintains that they have complied with all applicable state and federal laws. Defendant denies any liability or wrongdoing of any kind associated with the claims asserted in the Lawsuits. Defendant agreed to the terms of the Settlement in order to avoid the time and expense associated with litigation.

For the purpose of avoiding the time and expense of further litigation, the ultimate outcome of which is uncertain, and to provide a fair and reasonable resolution of this legal dispute, Plaintiff and Defendant have negotiated a settlement whereby Defendant’s has agreed to pay Three Hundred and Ninety-Five Thousand Dollars (\$395,000.00) to resolve the Lawsuits, and Class Members will be eligible to receive a portion of this amount. This Settlement is **not** an admission by Defendant of any liability.

III. WHAT DOES THE PROPOSED SETTLEMENT OFFER?

Under the terms of the parties’ Settlement, the following will occur if the Settlement is given final approval by the Court:

A. Defendant will pay Three Hundred and Ninety-Five Thousand Dollars (\$395,000.00) to settle the claims of all Class Members who do not timely opt-out.

B. A Settlement Administrator has been appointed by the Court to administer the Settlement. The Settlement Administrator will pay from the Three Hundred and Ninety-Five Thousand Dollars (\$395,000.00), subject to court approval: (1) Plaintiff’s counsel’s attorneys’ fees of the litigation, up to the amount of \$138,250.00; (2) Plaintiff’s counsels’ litigation costs, up to the amount of \$16,000.00; (3) The expenses of administering the Settlement, estimated at approximately \$7,000.00; (4) a Service Enhancement Payment to Plaintiff in the amount of \$10,000.00; and (5) \$40,000.00 allocated to the settlement of Plaintiff’s claim for penalties under PAGA (“PAGA Payment”) that will be addressed separately. The remainder of the \$395,000.00, currently estimated to be at least \$183,750.00, will be available to be distributed to all Class Members; this amount is called the “Net Settlement Fund”.

C. From the Gross Settlement Amount, Defendant will pay \$40,000 Dollars for settlement of any and all Released Claims for which penalties under PAGA, Labor Code section 2698 et seq., may be sought or are otherwise available, as the PAGA Penalty Payment. Pursuant to the express requirements of Labor Code section 2699(i), the PAGA Penalty Payment shall be allocated as follows: \$30,000 (75%) to the LWDA for the

enforcement of labor laws and education of employers, and \$10,000 (25%) to the Aggrieved Employees as a part of the Net Settlement Amount. “Aggrieved Employees” means all current and former non-exempt employees of Defendant who worked within the CESS Division of Defendant in California between August 11, 2021 through the earlier of either 120 from the execution of the Settlement Agreement or the date of preliminary approval of the Settlement (the “PAGA Period”).

D. The Net Settlement Fund to be distributed to the Class Members will be divided as follows: Individual Settlement Payments will be paid from the Net Settlement Fund pursuant to the settlement formula. The Net Settlement Fund shall be divided among the Settlement Class Members on a pro-rata basis based on the following: (i) using the Class Information, the Settlement Administrator will compute the total number of workweeks of all Class Members collectively during the Class Period; this sum shall be known as the “Compensable Work Weeks”; (ii) the Settlement Administrator will divide the Net Settlement Fund by the Compensable Workweek total to determine the settlement value for each workweek (the “Workweek Value”); and (iii) the Settlement Administrator will multiply the number of workweeks of a Class Member during the Class Period by the Workweek Value to determine that Class Member’s Individual Settlement Payment.

Each Class Member’s workweeks shall be calculated by Defendant from its records. Settlement payments will be allocated one-half (1/2) wages and one-half (1/2) penalties and interest. Each recipient of any monies paid in accordance with this Settlement Agreement is responsible for any taxes associated with the monies received by each recipient.

E. If the Court grants final approval of the Settlement and you do not opt-out of the Settlement, then you will release Defendant and any parent, subsidiary, affiliate, predecessor or successor entity, and all agents, employees, contracting parties, joint employers, officers, directors and attorneys thereof, (collectively the “Released Parties”) from:

Any and all claims during the time period of March 23, 2018 through [REDACTED], alleged in either or both civil Complaints or those that could have been brought based on the claims asserted in the operative civil Complaints and/or the LWDA letter including the following: 1) failure to pay minimum and overtime wages, 2) failure to provide meal periods, 3) failure to pay all wages earned and owed upon separation from Defendant’s employ, 4) failure to pay wages timely during employment, 5) failure to provide accurate itemized wage statements, 6) failure to reimburse necessary business expenses, 7) failure to pay vested vacation pay, 8) failure to accurately record and pay sick leave, and 9) engaging in unfair business practices.

Aggrieved employees may not opt out of the PAGA Payment and will release any and all PAGA claims alleged in or that may arise out of the allegations made in the civil Complaints or Plaintiff’s LWDA letter including the following: 1) failure to pay minimum and overtime wages, 2) failure to provide meal periods, 3) failure to pay all wages earned and owed upon separation from Defendant’s employ, 4) failure to pay wages timely during employment, 5) failure to provide accurate itemized wage statements, 6) failure to reimburse necessary business expenses, 7) failure to pay vested vacation pay, and 8) failure to accurately record and pay sick leave.

IV. WHAT ARE MY OPTIONS?

A. You may accept your share of the \$395,000.00 settlement and be bound by the release of all claims described above and all other terms of the Settlement Agreement as approved by the Court. In order to receive your Individual Settlement Payment, you do not need to do anything.

Based on Defendant's internal records, which will be presumed to be correct unless evidence to the contrary is timely submitted to the Settlement Administrator:

Defendant's records reflect that you worked for Defendant in California for <<WorkWeeks>> weeks during the Class Period, and your estimated gross Individual Settlement Share is <<estAmount>>. This is an estimated number and may change based on the Settlement Administrator's final calculation of the Net Settlement Amount.

The Individual Settlement Payments will be paid by check after the Settlement is given final approval by the Court. Your check will be mailed to you by the Settlement Administrator. Your check will remain valid and negotiable for 180 days from the date on which it is mailed. If any Class Member's Individual Settlement Payment check is not cashed within 180 days after it is mailed, or an envelope mailed to a Class Member is returned and no forwarding address can be located, then any such amounts shall be transmitted to the State of California Unclaimed Property division.

B. You may opt out of the Settlement and choose not to participate in it, in which case you will not receive your Individual Settlement Payment and you will not be bound by the terms of the Settlement except that if you are also an Aggrieved Employee you will receive your portion of the PAGA Payment and release the PAGA claims described in the Settlement. In order to opt out, you must send a written request for exclusion by United States mail to the Settlement Administrator, **APEX Class Action Administrators, [insert address]**, by no later than **[date]** (45 calendar days after mailing of this notice, the "Response Deadline"). In order to be considered valid, your request for exclusion **must** be in writing and: (1) contain the name and address of the Class Member requesting exclusion; (2) contain a statement expressing that the Class Member elects to be excluded from the Settlement; (3) be signed by the Class Member; and (4) be postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address. If you elect to Opt-Out you will not be able to participate in the settlement, and will not receive a share of the settlement proceeds. You will receive your portion of the PAGA Payment, if applicable.

C. You may dispute the Calculations of Your Individual Settlement Payment. In order to dispute the amount of your Individual Settlement Payment, and the number of workweeks used to calculate the Individual Settlement Payment, you must send a written dispute by United States mail to the Settlement Administrator, **APEX Class Action Administrators, [insert address]**, by no later than **[date]** (45 calendar days after mailing of this notice). In order to be considered, your dispute **must** be (1) timely; and (2) accompanied by records or documentation supporting your position such as wage statements, W2 forms, time records, calendars, memoranda, emails, or any other type of documentation. In response to any timely dispute, the Settlement Administrator will use Defendant's records and any information you provide to resolve any dispute about your workweek data.

D. You may object to the Settlement. The procedures for objecting to the settlement are described below in Section VIII of this form.

VI. WHAT ARE THE PROCEDURES FOR PAYMENT?

A. The Settlement Administrator will calculate your Individual Settlement Payment based on your number of credited workweeks and will issue and mail you a check.

B. It is important for the Settlement Administrator and the parties to the Lawsuits to have your current address in order to be able to send you other mailings regarding the Lawsuits. You should contact the Settlement Administrator to report any change of your address after you receive this notice. Failure to report a change of address may result in you not receiving your Individual Settlement Amount.

VII. HEARING ON PROPOSED SETTLEMENT

A Final Fairness Hearing, at which the Court will decide whether or not the proposed settlement is fair, reasonable, and adequate, will be held on _____, at _____ a.m., in Department CX104 of the Orange County Superior Court, 751 W. Santa Ana, Santa Ana, California 92702. The Court may adjourn or continue the hearing without further notice to you.

You are not required to attend the hearing. Class Counsel will answer any questions the Court may have. However, you are welcome to attend the hearing at your own expense.

VIII. PROCEDURES FOR OBJECTING TO SETTLEMENT

A. You may object to the proposed Settlement as unfair, unreasonable, and/or inadequate or believe the Settlement should not be finally approved for any reason. You cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlement. You are not eligible to object to the Settlement if you choose to opt out.

B. Any objection to the Settlement must be in writing. All written objections and supporting papers must include the following: (i) the full name and signature of the objecting Class Member; (ii) be submitted to the Settlement Administrator; (iii) set forth, in clear and concise terms, a statement of the reasons why the objector believes that the Court should find that the proposed Settlement is not in the best interest of the Class and the reasons why the Settlement should not be approved, including the legal and factual arguments supporting the objection; (v) state whether the objecting Class Member is represented by counsel, and identify any such counsel; (vi) be filed or postmarked on or before [insert Objection Deadline] (45 days after mailing of this Notice). If you do decide to file your written objections and supporting papers in person, please visit the Court's website at <https://www.occourts.org/>, for the most current information about in-person access to the Court.

The Court retains final authority with respect to the consideration and admissibility of any objections. Counsel for the Parties shall file any response to any objections at least ten (10) court days before the date of the Final Fairness and Approval Hearing.

However, if you do not opt out of the Settlement you may appear at the final approval hearing and voice an objection, whether or not you submit a prior written objection.

C. If you do not object in this manner as described, you will have given up your right to object to the Settlement. If you file an objection, you do not have to come to the Court to talk about it. As long as you submit your written objection on time, the Court will consider it. You may also pay your own lawyer to appear in Court on your behalf.

D. If you do not make your objection in the manner provided for in this notice, you will be deemed to have waived such objection and shall forever be barred from making any objection to or appealing the fairness, reasonableness, or adequacy of the Settlement.

IX. EXAMINATION OF COURT PAPERS AND QUESTIONS

This notice summarizes the Settlement. For more detailed information you may review Plaintiff's Motion for Preliminary Approval of Class Action Settlement, and all other settlement related documents and motions, which are posted for your review at www.xxxx.com. Additionally, all papers filed in the Lawsuits, including Plaintiff's Motion for Preliminary Approval of Class Action Settlement and all settlement related documents and motions may be examined by accessing the Court docket, Case Number 30-2022-01251706-CU-OE-CXC, in this case through the Court's online services system, at <https://www.occourts.org/>. There may be a fee required to review the materials via the online court system. Additionally, all papers filed in the Lawsuits, including Plaintiff's Motion for Preliminary Approval of Class Action Settlement and all settlement related documents and motions are on file with the Clerk of the Court, Case Number 30-2022-01251706-CU-OE-CXC, which is located in the office of the Clerk of the Orange Superior Court, 751 W. Santa Ana, Santa Ana, California 92702 and is available for viewing during regular office hours (Mon.–Fri., 8:30 a.m.-12:30p.m., excluding holidays). However, please visit the Court's website at <https://www.occourts.org/> for the most current information about in-person access to the Court.

If you have any questions, you can call the Settlement Administrator at 1-[xxx-xxx-xxxx](tel:xxx-xxx-xxxx) or any of the attorneys representing the Class (see below for Class Counsel's phone number).

ATTORNEYS REPRESENTING THE CLASS

James Hawkins APLC
James R. Hawkins
Gregory Mauro
Lauren Falk
Ava Issary
9880 Research Drive, Suite 200
Irvine, California 92618
Tel: (949) 387-7200; Fax: (949) 387-6676

ATTORNEYS REPRESENTING DEFENDANT

ORRICK, HERRINGTON & SUTCLIFFE LLP

Andrew R. Livingston
Kayla D. Grundy
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
Telephone: +1-415-773-5700
Facsimile: +1-415-773-5759

**PLEASE DO NOT CALL OR OTHERWISE ATTEMPT TO CONTACT THE
COURT OR THE CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT**

EXHIBIT B

**ELECTION NOT TO PARTICIPATE IN (“OPT OUT” FROM) CLASS ACTION
SETTLEMENT**

Ragini Mal v. Bank of the West; Superior Court Of California, County Of Orange

Case No. 30-2022-01251706-CU-OE-CXC

Case No. 30-2022-01262144-CU-OE-CXC

ONLY SIGN AND MAIL THIS DOCUMENT IF YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT. IF YOU EXCLUDE YOURSELF, YOU WILL NOT RECEIVE AN INDIVIDUAL SETTLEMENT SHARE FROM THE CLASS SETTLEMENT.

This document must be postmarked no later than [REDACTED] and sent via U.S. Mail to

[ADMIN NAME] [ADDRESS] [REDACTED]

By signing and mailing this form to exclude yourself from the class portion of the settlement you are agreeing to and confirming the following:

It is my decision not to participate in the class settlement in ***Ragini Mal v. Bank of the West***. I understand that by excluding myself from the class settlement, I will not release the Released Claims and will not receive an Individual Settlement Share.

I confirm that I am and/or was employed by Bank of the West as an hourly paid non-exempt employee within the State of California who worked within the CESS division of Defendant during the time period from March 23, 2018 through November 15, 2024. I can confirm that I received and reviewed the Notice of Pendency of Class Action and Proposed Settlement in this action. I have decided to exclude myself from the class settlement, and I have decided not to participate in the class settlement.

[Please write legibly in print]

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Telephone Number: _____

Last Four Digits of Your Social Security Number: _____

Date: _____

(Signature)

EXHIBIT C

CHANGE OF ADDRESS FORM

Ragini Mal v. Bank of the West; Superior Court Of California, County Of Orange

Case No. 30-2022-01251706-CU-OE-CXC

Case No. 30-2022-01262144-CU-OE-CXC

I wish to change my name and/or mailing address and/or other contact information to the following:

Name: _____

Former Name (if applicable): _____

Street and Apt. No., if any: _____

City, State and Zip Code: _____

Telephone(s):

(Home): _____;(Cell): _____

Email: _____

I understand all future correspondence in this Lawsuit, including important notices or Settlement Payments, will be sent to the address shown above and not to the address previously used. I hereby

request and consent to the use of the address listed above for these purposes.

Submitted by:

DATED:

Print Name:

Signature:

PLEASE RETURN THIS FORM IN THE ENVELOPE PROVIDED

VIA UNITED STATES FIRST-CLASS MAIL TO:

Mal v. Bank of the West Settlement Administrator

[ADMIN NAME]

[ADDRESS]

CHANGE OF ADDRESS FORM

Questions? Please call toll-free: 1-xxx-xxx-xxxx

EXHIBIT D

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

August 7, 2024

Via LWDA Website

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

Bank of The West
Agent for Service of Process:
C T CORPORATION SYSTEM
330 N. Brand Blvd, Suite 700
Glendale, CA 91203
Receipt No.

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff RAGINI MAL, individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, BANK OF THE WEST, through its Agent for Service of Process.

Plaintiff hereby attaches a copy of the Proposed Amended PAGA Representative Action Complaint to be filed in the Orange County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed Amended PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

The proposed amended complaint seeks to include California Labor Code sections 201, 202, 203, 226, 226.7, 227.3, 246, 510, 512, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 2698, and 2802, civil penalties, attorneys fees or costs, and any other applicable relief under PAGA.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Gregory Mauro', with a stylized, cursive script.

Gregory Mauro

Enclosure: Proposed Amended PAGA Representative Action Complaint