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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

ANDREA SOSA, on behalf of herself and others similarly situated,

Plaintiff,

vs.

BANK OF AMERICA NATIONAL ASSOCIATION; and DOES 1 to 100, inclusive,

Defendants.

CASE NOS. 22STCV18958
22STCV33904

*[Assigned to the Hon. Stuart M. Rice]*

**STIPULATION FOR SETTLEMENT AND RELEASE OF CLASS AND REPRESENTATIVE ACTION CLAIMS**



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This Stipulation for Settlement and Release of Class and Representative Action Claims ("Settlement Agreement" or "Agreement") is entered into between Plaintiff Andrea Sosa ("Sosa," "Plaintiff," or "Class Representative"), on her own behalf and as proposed representative on behalf of the Settlement Class to be certified pursuant to this Settlement Agreement (as described in Paragraph 7, below), on the one hand, and Defendant Bank of America, N.A. ("Defendant"), on the other hand. For purposes of this Agreement, Plaintiff and Defendant are referred to individually as a "Party" and collectively as the "Parties."

This Agreement pertains to all claims that have been and/or are asserted, or reasonably could have been asserted, under the California Labor Code, California Industrial Welfare Commission Wage Orders, and/or other applicable laws based on the facts, theories, and/or statutory or other violations in any of the pleadings that have been filed in *Andrea Sosa v. Bank of America National Association*, 22STCV18958 (Superior Court of the State of California, County of Los Angeles) (the "*Sosa* Class Action") and *Andrea Sosa v. Bank of America National Association*, 22STCV33904 (Superior Court of the State of California, County of Los Angeles) ("the "*Sosa* PAGA Action") (collectively, the "Lawsuits"), including without limitation the Second Amended Complaint for Damages and Restitution attached hereto as Exhibit A that the Parties stipulated to the filing of pursuant to and solely for purposes of this Settlement Agreement, and the notices Plaintiff sent to the California Labor and Workforce Development Agency ("LWDA"). This Settlement Agreement is subject to the terms and conditions hereof and the approval of the Court.

## RECITALS

1. Sosa originally filed the *Sosa* Class Action on June 9, 2022.

2. On June 9, 2022, Sosa provided notice to the LWDA of her intent to pursue claims under the Private Attorneys General Act ("PAGA") on behalf of herself and other allegedly aggrieved employees for various alleged violations of the California Labor Code.

3. On October 19, 2022, Sosa filed the *Sosa* PAGA Action.

4. The Bank thereafter filed Notices of Related Cases in the *Sosa* Class Action and the *Sosa* PAGA Action, and the *Sosa* PAGA Action was related to and transferred to the complex court handling the *Sosa* Class Action. On May 3, 2023, Sosa filed a First Amended Complaint in the *Sosa*


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Class Action that incorporated her PAGA claims, and on May 9, 2023, Sosa requested that the later-filed *Sosa* PAGA Action be dismissed.

5. On March 21, 2024, the Parties participated in a mediation with Paul Grossman, an experienced mediator in class action litigation. After additional negotiation, the Parties later formalized this Settlement Agreement.

**TERMS OF THE SETTLEMENT**

6. Filing of Second Amended Complaint for Damages and Restitution: For the purposes of this Settlement Agreement only, the Parties stipulated to and Plaintiff filed the Second Amended Complaint for Damages and Restitution attached hereto as Exhibit A (the "Second Amended Complaint") in the State Court in the *Sosa* Class Action. Defendant is and shall be deemed to have generally denied the allegations of the Second Amended Complaint without the need to file and serve an Answer thereto. In the event the Court does not grant final approval of this Settlement Agreement and enter judgment accordingly, the Parties agree that the Second Amended Complaint will be deemed withdrawn *ab initio*.

7. Settlement Class: For the purposes of this Settlement Agreement only, the Settlement Class (each individually a "Settlement Class Member" and collectively "Settlement Class Members") consists of all current or former non-exempt employees who worked for Defendant in California from June 26, 2020, through July 15, 2024, but excluding: (1) anyone other than the Plaintiff who has filed their own separate class or PAGA action as a named plaintiff alleging the same or similar claims being released by the settlement prior to April 16, 2024; and (2) any current or former non-exempt employees who previously released all claims being released in the settlement of the Lawsuits.

8. Stipulation for Conditional Class Certification: The Parties stipulate and agree to the conditional certification of the Settlement Class for purposes of this Agreement only. Should, for whatever reason, the settlement set forth in this Settlement Agreement not become final, the Parties' stipulation to such class certification shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification would be appropriate in a non-settlement context. Defendant expressly reserves its rights and declares that,


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to the extent Plaintiff may otherwise be permitted to seek class certification in the Lawsuits or any other action or proceeding, or to pursue any representative claims under PAGA, it intends to oppose class certification and the pursuit of such claims vigorously should this settlement not become final and putative class action and/or representative claims are allowed to be pursued in the Lawsuits or any other action or proceeding.

9. Establishment of the Gross Settlement Fund: The agreed total settlement amount is Four Million Four Hundred Thousand Dollars and Zero Cents ($4,400,000.00) (the "Gross Settlement Fund" or "GSF"). This settlement is being made on a non-reversionary basis, such that Defendant will pay the entirety of the agreed upon total settlement amount.

10. The payment by Defendant of the GSF pursuant to this Settlement Agreement shall settle and forever resolve all of the Released Claims (as defined below), and will include: (a) all payments to Settlement Class Members; (b) employee-side payroll taxes and withholdings associated with the Individual Settlement Payments (as defined below); (c) all costs of administration of the settlement; (d) all attorneys' fees and costs as awarded by the Court; (e) any Enhancement Award (as defined below) to the Class Representative as awarded by the Court; and (f) the PAGA settlement payments to the LWDA and Aggrieved Employees (as defined below). No additional funding or payment by Defendant will be required under this Agreement, other than Defendant shall pay its share of applicable employer-side payroll taxes separate from the GSF. The payments made to Settlement Class Members shall not be construed as compensation for purposes of determining eligibility for any health and/or welfare benefits, unemployment compensation, or other compensation or benefits provided by Defendant. In addition, no individual receiving a payment based on this settlement shall be entitled to any additional or increased health, welfare, retirement, or other benefits because of their participation in the settlement under this Agreement.

11. Calculation of Net Settlement Fund: The Net Settlement Fund ("NSF") will constitute the total sum that will be distributed to the Settlement Class Members. The NSF is the GSF less the following: Settlement Administration Costs (as defined below); PAGA Amount (as defined below); Class Counsel's Court-approved attorneys' fees and costs and expenses; and any Court-approved Enhancement Award for the Class Representative. The remaining sum after all


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these deductions shall represent the NSF, which each Settlement Class Member will receive a share of after the Effective Date (as defined below). The share of the NSF that each Settlement Class Member will receive will be calculated as set forth in Paragraph 23 below and be inclusive of employee-side payroll taxes, which shall therefore be paid from the NSF.

12. Effective Date: This Agreement is contingent upon the Court entering a "Final Approval Order and Judgment" that grants final approval of the Settlement Agreement and enters judgment thereon in accordance with Paragraph 39. For purposes of this Settlement Agreement, "Effective Date" means: (i) If an appeal or other review is not sought from the Final Approval Order and Judgment, the sixty-fifth (65th) calendar day after entry of the judgment; or, (ii) If an appeal or other review is sought from the Final Approval Order and Judgment, the first Court day after the trial court's judgment is affirmed without material modification or the appeal or other review is dismissed or denied, and the judgment is no longer subject to judicial review or other challenge.

13. Mediation and Settlement Communications: The Settlement Agreement and all negotiations, statements, proceedings, and data relating thereto shall be deemed confidential mediation settlement communications and not subject to disclosure for any purpose in any proceeding, except only as required and to the extent necessary to obtain approval of, implement, and/or enforce this Settlement Agreement, including but not limited to any disclosures to the courts and/or counsel in overlapping actions.

14. PAGA Settlement: The amount of Two Hundred Twenty Thousand Dollars and Zero Cents ($220,000.00) of the GSF shall be allocated to penalties under PAGA ("PAGA Amount"), subject to the Court's final approval, of which 75% of that amount will be paid to the LWDA ("LWDA Payment") and the remaining 25% will be distributed to the Aggrieved Employees ("Employee Payment"). For purposes of this Settlement, "Aggrieved Employees" shall include all current and former non-exempt employees who worked for Defendant in California from June 9, 2021, through July 15, 2024 ("PAGA Period"), and whose PAGA claims being settled and released in this Settlement Agreement have not all been released previously as part of another court-approved PAGA settlement. Aggrieved Employees will be entitled to a share of the Employee Payment of the PAGA Amount ("Aggrieved Employee PAGA Payment") even if their individual claims have been



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fully or partially released, and even if they submit a valid Request for Exclusion (as defined below) from the Settlement Agreement.

15. Aggrieved Employees' Pay Periods: To determine each Aggrieved Employee's Employee Payment, Defendant shall provide for each Aggrieved Employee: the number of pay periods during which each Aggrieved Employee was employed (and not on a leave of absence or on vacation for the entire week) during the PAGA Period minus any pay periods for which the PAGA claims being settled and released in this Settlement Agreement have already been released ("Unreleased PAGA Pay Periods").

16. Calculation of Aggrieved Employee PAGA Payments: The Settlement Administrator shall calculate the Aggrieved Employee PAGA Payments from Defendant's records as reflected on the Class List (as defined below) as follows:

The Settlement Administrator shall calculate a pay period value by dividing the Employee Payment by the total number of Unreleased PAGA Pay Periods for all Aggrieved Employees ("PAGA Pay Period Value"). The Settlement Administrator shall then calculate each Aggrieved Employee's share of the Employee Payment by multiplying the Aggrieved Employee's Unreleased PAGA Pay Periods by the PAGA Pay Period Value.

17. Attorneys' Fees and Costs: "Class Counsel" or "Plaintiff's Counsel" means Lavi & Ebrahimian, LLP. Subject to approval of the Court, Plaintiff's Counsel shall be appointed as counsel for the Settlement Class, and may apply for an award of attorneys' fees and costs and expenses incurred in connection with the prosecution of the Lawsuits, and all of the work remaining to be performed by Class Counsel in documenting the settlement, securing Court approval of the settlement (including any related appellate work), carrying out their duties to see that the settlement is fairly administered and implemented, and obtaining dismissal with prejudice of the Second Amended Complaint and Lawsuits, in an amount of up to one-third of the GSF (One Million Four Hundred Sixty-Six Thousand Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents ($1,466,666.67)) of the GSF for attorneys' fees and in an amount of up to Thirty-Five Thousand Dollars and Zero Cents ($35,000.00) for reimbursement of reasonable costs and expenses. Amounts awarded by the Court for attorneys' fees and costs shall be paid from the GSF.


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18. Enhancement Award: Subject to approval by the Court, Plaintiff may apply to the Court for an enhancement award not to exceed Ten Thousand Dollars and Zero Cents ($10,000.00), in consideration for serving as the Class Representative ("Enhancement Award"). The Enhancement Award is in addition to the Individual Settlement Payment (as defined below) to which Plaintiff may be otherwise entitled along with all other Settlement Class Members.

19. In the event that a lesser sum is awarded for Class Counsel's attorneys' fees and costs referenced above in Paragraph 17, or for the Enhancement Award referenced above in Paragraph 18, the approval by the Court of any such lesser sum(s) shall not be grounds for Plaintiff and/or Class Counsel to terminate the settlement, but such an order shall be appealable by them. In the event that such an appeal is filed, administration of the settlement shall be stayed, only as to those amounts under appeal, pending resolution of the appeal. Any amount not awarded as fees and/or costs, or Enhancement Award, which is not challenged via appeal by Plaintiff and/or Class Counsel, shall be added to the NSF and distributed to the Settlement Class Members in accordance with the terms of this Settlement Agreement. If after the exhaustion of such appellate review, any additional amounts remain which are distributable to the Settlement Class Members, the cost of administration of such additional payments will be paid out of such additional amounts, and will not be chargeable to or payable by Defendant.

20. Settlement Administration Costs: Subject to Court approval, the Parties designate CPT Group, Inc. to administer the settlement in this action ("Settlement Administrator"), with a budget to administer the settlement for fees and costs of up to Forty Thousand Dollars and Zero Cents ($40,000.00) ("Settlement Administration Costs"). All Settlement Administration Costs shall be paid from the GSF and shall include all costs incurred by the Settlement Administrator in the administration of the settlement. The Settlement Administrator's duties of administration shall include, without limitation; receiving the Class List to be produced by Defendant, and reviewing it prior to the being mailed; printing and mailing the Court approved Notice of Class Action Settlement (the "Notice"); performing necessary additional skip traces on Notices and/or checks returned as undeliverable; establishing and maintaining a Qualified Settlement Fund ("QSF") and related bank account for receipt and disbursement of the GSF; calculating Settlement Class Members' shares of



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the NSF; calculating the Aggrieved Employee PAGA Payments and the LWDA Payment; preparing and mailing of settlement checks to Settlement Class Members (with appropriate payroll taxes withheld), Aggrieved Employees, and the LWDA; establishing a settlement website as described hereafter; responding to Settlement Class Member inquiries as appropriate; preparing any appropriate or required tax forms in connection with the settlement payments and remitting those forms and any required payments (including employer-side payroll taxes) to the appropriate governmental agencies; and generally performing all normal and customary duties associated with the administration of such settlements. The Settlement Administrator and Defendant shall cooperate and coordinate with each other with respect to the calculation, reporting, and payment of all payroll taxes and withholdings in accordance with all applicable laws and requirements of government taxing authorities. The Settlement Administrator will coordinate the calculations of the payroll taxes and deductions with Defendant to ensure that, to the extent such taxes and deductions are or could be deemed to have been made by the Settlement Administrator on behalf of Defendant by government taxing authorities, they are made in compliance with Defendant's respective tax withholding and remittance obligations for such payments.

21. Individual Settlement Payments: Settlement Class Members shall not be required to complete a claim form in order to receive their share of the NSF. Settlement Class Members shall receive a Notice informing them of the material terms of the settlement and providing them with an estimate of their individual share of the NSF ("Estimated Individual Settlement Payment"). Settlement Class Members who do not timely and properly elect to opt out of the Settlement Agreement ("Participating Class Members") shall share in the NSF. Participating Class Members will be mailed a check representing their share of the NSF under the settlement ("Final Individual Settlement Payment"). The Estimated Individual Settlement Payments and Final Individual Settlement Payments shall be calculated as provided in Paragraphs 22-23 below.

22. Settlement Class Members' Pay Periods: To determine each Settlement Class Member's Estimated and Final Individual Settlement Payments, Defendant shall provide:

a. The number of pay periods during which each Settlement Class Member was employed (and was not on a leave of absence or on vacation for the entire week) for the period of


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November 1, 2022, through July 15, 2024, minus any pay periods for which all claims being settled and released in this Settlement Agreement have already been released ("Period A Unreleased Individual Pay Periods"); and

b. The number of pay periods during which each Settlement Class Member was employed (and was not on a leave of absence or on vacation for the entire week) and received Occasional Illness pay for the period of June 26, 2020 through October 31, 2022 ("Period B Unreleased Individual Pay Periods").

23. Calculation of Individual Settlement Payments: The Settlement Administrator shall calculate the individual settlement payments from Defendant's records as reflected on the Class List (as defined below) as follows:

a. Estimated Individual Settlement Payments: Before sending the Notice referred to in Paragraph 20, the Settlement Administrator shall calculate each Settlement Class Member's Estimated Individual Settlement Payment as follows.

i. Assign each Settlement Class Member a total number of points by:

1. Multiplying his or her number of Period A Unreleased Individual Pay Periods as set forth in the list provided by Defendant by 5. This amount shall be referred to as the "Weighted Period A Points."

2. Add the Weighted Period A Points to his or her number of Period B Unreleased Individual Pay Periods on the list provided by Defendant. The sum of a Settlement Class Member's Weighted Period A Points and the number of Period B Unreleased Individual Pay Periods shall be referred to as the Settlement Class Member's "Individual Total Pay Period Points."

ii. Add the Individual Total Pay Period Points for every Settlement Class Member and divide the NSF by that sum to get the Class Pay Period Value.


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iii. Multiply each Settlement Class Member's Individual Total Pay Period Points as calculated in subsection a.i by the Class Pay Period Value calculated in subsection a.ii to get each Settlement Class Member's "Estimated Individual Settlement Payment."

b. Final Individual Settlement Payments: After Final Approval Order and Judgment of this Settlement Agreement is entered, the Settlement Administrator shall calculate each Participating Class Member's Final Individual Settlement Payment as follows.

i. Add the Individual Total Pay Period Points for each Participating Class Member and divide the NSF by that number to get a Final Class Pay Period Value.

ii. Multiply each Participating Class Member's Individual Total Pay Period Points as calculated in subsection a.i by the Final Class Pay Period Value calculated in subsection b.i to get each Participating Class Member's "Final Individual Settlement Payment."

24. Opt-Out Rights to Settlement: Each Settlement Class Member (other than Plaintiff who cannot opt out) has the right to opt-out of the Settlement Agreement and the Notice mailed to them will advise them of this right. Any Settlement Class Member who wishes to opt-out from the Settlement Agreement must submit, via first class mail, any such opt-out election notice in writing to the Settlement Administrator postmarked no later than forty-five (45) calendar days from the date of mailing of the Notice to the Settlement Class Members ("Request for Exclusion"). If the Notice is returned as undeliverable and then remailed to a corrected/forwarding address of a Settlement Class Member with fewer than fifteen (15) calendar days left in the original notice period, then the deadline for that Settlement Class Member to opt-out will be extended to fifteen (15) calendar days from the date of remailing of the Notice. Any opt-out submission must include: (1) language indicating an objective intent not to participate in the class settlement, such as "I elect to opt-out of the *Andrea Sosa v. Bank of America, N.A.* class action settlement. I understand that by doing so, I will not participate in the settlement, and will not receive any money from it. However, I will still receive my Aggrieved Employee PAGA Payment, if any, and will still be bound to the PAGA



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release.”; and (2) the Settlement Class Member’s full name, address, telephone number, and last four digits of his/her Social Security Number; and (3) the Settlement Class Member’s signature. The Notice shall include the specific address for Settlement Class Members to use if mailing an opt-out letter. In the event that five percent (5%) or more of the Settlement Class Members submit elections to opt-out of the settlement, Defendant will have the right to rescind and terminate the settlement without prejudice to its pre-settlement positions and defenses in the Lawsuits. If Defendant exercises this option, it will pay any Settlement Administrator costs incurred as of the date it rescinded and terminated the Settlement. Should the 5% threshold for opt-outs be exceeded, the Settlement Administrator shall notify counsel for all Parties via email immediately.

25. Objection Rights to Settlement: Each Settlement Class Member who does not opt-out (other than Plaintiff who cannot object) has the right to object to all or any part of the Settlement Agreement and the Notice mailed to them will advise them of this right. Any Settlement Class Member who is capable of objecting and wishes to object may do so in writing should send to the Settlement Administrator, postmarked no later than forty-five (45) calendar days from the date of mailing of the Notice, a written statement including: (i) the Settlement Class Member’s full name, address, telephone number, and last four digits of his/her Social Security Number; (ii) a statement of the legal and/or factual grounds for the objection; (iii) if represented by counsel, a statement indicating that they are represented by counsel and identifying any such counsel; and (iv) the Settlement Class Member’s signature. If the Notice is returned as undeliverable and then remailed to a corrected/forwarding address of a Settlement Class Member with fewer than fifteen (15) calendar days left in the original notice period, then the deadline to object will be extended to fifteen (15) calendar days from the date of remailing of the Notice. The Settlement Administrator shall send any objections it receives to Defendant’s counsel and Class Counsel within three (3) business days of receipt. Any Settlement Class Member who is capable of objecting may do so orally by appearing at the Final Fairness Hearing. The Court retains final authority with respect to the consideration and admissibility of any Settlement Class Member’s objection. Counsel for the Parties shall file any response to the objections submitted by objecting Settlement Class Members at least ten (10) court days before the date of the Final Fairness and Approval Hearing.



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26. Challenges to Calculations: A Settlement Class Member who does not opt-out may dispute the amount of his or her Individual Settlement Payment, and the number of pay periods used to calculate the Individual Settlement Payment and the Notice mailed to them will advise them of this right. To do so, he or she should send to the Settlement Administrator, postmarked no later than forty-five (45) calendar days from the date of mailing of the Notice, a written statement including: (1) the nature of the dispute and providing any records or documentation supporting the Settlement Class Member's position; (2) the Settlement Class Member's full name, address, telephone number, and last four digits of his/her Social Security Number; and (3) the Settlement Class Member's signature. If the Notice is returned as undeliverable and then remailed to a corrected/forwarding address of a Settlement Class Member with fewer than fifteen (15) calendar days left in the original notice period, then the deadline to submit a dispute will be extended to fifteen (15) calendar days from the date of remailing of the Notice. In response to any timely dispute, the Settlement Administrator shall examine the records provided by Defendant and the Settlement Class Member. Unless the Settlement Class Member can establish a different number of unreleased pay periods based on documentary evidence, the total number of pay periods established by Defendant's records will control. Class Counsel and Defendant's counsel will then make a good faith effort to resolve the dispute informally. If counsel for the Parties cannot agree, the dispute shall be resolved by the Settlement Administrator, who shall examine the records provided by the Defendant and the Settlement Class Member, and shall be the final arbiter of disputes relating to a Settlement Class Member's pay periods for purposes of settlement administration. The Settlement Administrator's determination regarding any such dispute shall be final for purposes of administering the settlement, but subject to final review, determination, and approval by the Court.

27. Funding of Settlement: Within fifteen (15) business days following the occurrence of the Effective Date of the settlement as defined above, Defendant shall transfer the full amount of the GSF to the QSF account established by the Settlement Administrator. No funds will be payable by Defendant prior to that time. However, at Defendant's option, in its sole and absolute discretion and without any obligation to do so, Defendant may transfer the GSF amount to a QSF account established by the Settlement Administrator, even if approval of the settlement has not yet been



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granted by the Court, to be held until occurrence of the Effective Date. If Defendant elects to exercise this option and Final Approval Order and Judgment is not entered by the Court or the Effective Date is delayed by an appeal, then the GSF amount shall be returned to Defendant upon its demand for the same. The Settlement Administrator shall distribute the funds for purposes of this settlement in accordance with the terms of this Settlement Agreement and as ordered by the Court, but in no event shall the funds be distributed before the Effective Date, which is a condition precedent to Defendant being required to make any payment.

28. Payment Procedures: Within ten (10) calendar days after the occurrence of both (a) the Effective Date and (b) Defendant's deposit of the GSF funds into the QSF account created by the Settlement Administrator, the Settlement Administrator shall pay the Final Individual Settlement Payments to all Participating Class Members, Aggrieved Employee PAGA Payments, Court-approved attorneys' fees and costs to Class Counsel, the Enhancement Award to the Class Representative, LWDA Payment, and Settlement Administration Costs to the Settlement Administrator. The Settlement Administrator shall withhold taxes from the Final Individual Settlement Payments to all Participating Class Members, in accordance with this Settlement Agreement and as ordered by the Court, and timely remit those amounts to the appropriate taxing authorities.

29. Tax Treatment of Settlement Payments:

a. Final Individual Settlement Payments will be allocated 15% for unpaid wages and 85% for civil or statutory penalties, non-wage damages, and pre-judgment interest. The Aggrieved Employee PAGA Payments will be treated as civil and/or statutory penalties.

b. Each recipient of any monies received as a result of this Settlement Agreement, including but not limited to the Participating Class Members, is responsible for any taxes associated with the monies received with the exception of the employee-side payroll taxes which shall be paid from the NSF and employer-side payroll taxes which shall be paid by Defendant separately.



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c. If required by federal, state or local law or regulation, the Settlement Administrator will prepare and provide Participating Class Members appropriate IRS Form W-2s and IRS Form 1099s.

d. The Parties acknowledge and agree that neither Defendant nor its attorneys have made any representations regarding the tax consequences of the settlement payments made under this Settlement Agreement. The Parties further agree that Defendant shall have no legal obligation to pay, on behalf of Settlement Class Members, any taxes, deficiencies, levies, assessments, fines, penalties, interest or costs, which may be required to be paid with respect to the settlement payments other than as provided for in this Agreement.

30. Tax Treatment of Class Representative Enhancement Award: The Settlement Administrator will prepare and have delivered to Plaintiff an IRS Form 1099 for the Enhancement Award. Plaintiff will be responsible for correctly characterizing this additional payment for tax purposes and for payment of any taxes related to her Enhancement Award.

31. Undistributed Funds: In the event that any checks mailed to a Participating Class Member or Aggrieved Employee remains uncashed after the expiration of one hundred and eighty (180) days, or an envelope mailed to a Participating Class Member is returned and no forwarding address can be located for the Participating Class Member after reasonable efforts have been made, then any such funds shall be transmitted by the Settlement Administrator pursuant to governing California law to the State of California Unclaimed Property Fund, to be held there in the name of and for the benefit of such class members under California's escheatment laws.

## NOTICE TO THE CLASS

32. Compilation of Class List: Within thirty (30) calendar days after preliminary approval of this Settlement Agreement by the Court, Defendant will provide a "Class List" to the Settlement Administrator. The Class List shall include the following most up to date information about each Settlement Class Member and Aggrieved Employee that exists in Defendant's HRIS system of record in an electronic format: (1) full name, Social Security Number, and most current home or mailing address and personal phone number as reflected in Defendant's personnel records; (2) employee identification number; (3) the number of Period A Unreleased Individual Pay Periods;


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(4) the number of Period B Unreleased Individual Pay Periods; and (5) the number of Unreleased PAGA Pay Periods. For purposes of this Settlement Agreement, Defendant will calculate the number of pay periods by dividing the total number of workweeks by two.

The Parties agree that the Class List provided to the Settlement Administrator shall be designated as Confidential under the Stipulation and Protective Order entered by the Court on September 26, 2023. The Settlement Administrator shall be required to sign and provide to Defendant the Acknowledgment of being bound by the Protective Order. The Settlement Administrator may not share the Class List or the contents thereof with anyone and shall use the Class List and the contents thereof only for purposes of administering the settlement as provided for in this Agreement. Within five (5) calendar days of calculating the Individual Settlement Payment and Aggrieved Employee PAGA Payment for each person on the Class List, the Settlement Administrator will provide to counsel for Plaintiff and counsel for Defendant a list that includes only the following: (a) employee identification number as provided by Defendant to the Settlement Administrator; (b) class member identification number as assigned by the Settlement Administrator; and (c) for each individual his or her (i) Unreleased Individual Pay Periods, (ii) Estimated Individual Settlement Payment, (iii) Unreleased PAGA Pay Periods, and (iv) Aggrieved Employee PAGA Payment. Counsel for Plaintiff shall use the information from the Class List provided by the Settlement Administrator only for purposes of administering the settlement as provided for in this Agreement.

The Settlement Administrator will check and, if necessary, update all Settlement Class Member addresses against the U.S. Postal Service's National Change of Address Database prior to the mailing of the Notice. In response to any dispute raised by a putative Settlement Class Member about their omission from the Class List, the Settlement Administrator shall examine the records provided by Defendant and any documents provided by the putative Settlement Class Member to determine whether the putative Settlement Class Member should be included in the Settlement Class. Unless the putative Settlement Class Member can establish that they should have been included in the Settlement Class based on documentary evidence, Defendant's records will control. Class Counsel and Defendant's Counsel will then make a good faith effort to resolve the dispute



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informally. If counsel for the Parties cannot agree, the dispute shall be resolved by the Settlement Administrator, who shall examine the records provided by Defendant and the putative Settlement Class Member, and the Settlement Administrator shall be the final arbiter of disputes relating to a putative Settlement Class Member's omission from the Class List for purposes of settlement administration. The Settlement Administrator's determination regarding any such dispute shall be final for purposes of administering the Settlement, subject to final review, determination and approval by the Court.

33. Dissemination of Notice of Class Action Settlement: Within ten (10) calendar days of its receipt of the Class List, the Settlement Administrator will send the Settlement Class Members, by first-class mail, at their most current address of record or such other address as located by the Settlement Administrator, the court-approved Notice of Class Action Settlement in the form attached hereto as Exhibit B.

## RELEASE BY THE CLASS

34. Upon the occurrence of the Effective Date, each Participating Class Member (which includes Plaintiff) will release Bank of America, N.A., and any of its affiliates, parents (including Bank of America Corporation), subsidiaries, predecessors, or successors, and each of their employees, agents, shareholders, officers, directors, attorneys, insurers, and any person or entity that could be jointly liable with Bank of America Corporation and Bank of America, N.A. for the claims being released by this Settlement Agreement (individually a "Released Party" and collectively the "Released Parties") from any and all actions, causes of action, suits, liabilities, claims, and demands whatsoever (including without limitation under theories of successor liability, joint employer liability, agency and/or conspiracy), whether known or unknown, which the Participating Class Member has or had against the Released Parties, or any of them, that are, were, or reasonably could have been asserted based on the facts, theories, and/or statutory or other violations alleged in the Second Amended Complaint, all other pleadings filed in the Lawsuits, and the notices sent to the LWDA pursuant to PAGA by or on behalf of the Plaintiff, and claims under the California Unfair Competition Law predicated on the foregoing, including any related statutory damages, liquidated damages, penalties (including but not limited to penalties under PAGA), interest, and/or attorneys'



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fees and costs, under any federal, state, local or administrative law, constitution, charter, law, rule, regulation or ordinance (including but not limited to the California Labor Code, any California Industrial Welfare Commission Wage Orders, and the California Unfair Competition Law) through July 15, 2024 (the "Released Claims"). For avoidance of doubt, the Released Claims shall include, but not be limited to, any claims for: unpaid and/or underpaid wages of any type, failure to pay wages for all hours worked, failure to pay overtime, failure to provide or pay (or properly pay) for missed or non-compliant meal breaks, failure to authorize and permit or pay (or properly pay) for missed or non-compliant rest breaks, failure to pay wages at the regular rate of pay including but not limited to overtime, sick leave, and meal and rest break premiums, failure to indemnify employees for business expenses / employment-related losses / expenditures, failure to furnish accurate itemized wage statements, and failure to timely pay wages during employment and/or upon the termination of employment.

**RELEASE BY THE LWDA AND AGGRIEVED EMPLOYEES ("PAGA RELEASE")**

35. Upon the occurrence of the Effective Date, the LWDA and the Aggrieved Employees will release the Released Parties from the following "Released PAGA Claims": any and all actions, causes of action, suits, liabilities, claims, and demands whatsoever (including without limitation under theories of successor liability, joint employer liability, agency and/or conspiracy), whether known or unknown, which the Aggrieved Employee or State of California has or had against the Released Parties, or any of them, that are, were, or reasonably could have been asserted based on the facts, theories, and/or statutory or other violations alleged in the Second Amended Complaint, all other pleadings filed in the Lawsuits, and the notices sent to the LWDA pursuant to PAGA by or on behalf of the Plaintiff, including but not limited to, civil penalties under the Private Attorney General Act of 2004, Cal. Labor Code § 2698 *et seq.*, related to any claims for unpaid and/or underpaid wages of any type, failure to pay wages for all hours worked, failure to pay overtime, failure to provide or pay (or properly pay) for missed or non-compliant meal breaks, failure to authorize and permit or pay (or properly pay) for missed or non-compliant rest breaks, failure to pay wages at the regular rate of pay including but not limited to overtime, sick leave, and meal and rest break premiums, failure to indemnify employees for business expenses / employment-related losses



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/ expenditures, failure to furnish accurate itemized wage statements, failure to timely pay wages during employment and/or upon the termination of employment, and claims under the California Unfair Competition Law predicated on the foregoing, under any federal, state, local or administrative law, constitution, charter, law, rule, regulation or ordinance (including but not limited to the California Labor Code, any California Industrial Welfare Commission Wage Orders, and the California Unfair Competition Law), whether for economic damages, noneconomic damages, restitution, statutory penalties, civil penalties, liquidated damages, punitive damages, interest, attorneys' fees, costs of suit or other monies, through July 15, 2024.

**WAIVER OF CALIFORNIA CIVIL CODE SECTION 1542**

36. All Participating Class Members (including, without limitation, Plaintiff) and Aggrieved Employees intend and/or are deemed to intend that this Agreement should be effective as a bar to any and all of the claims released by Paragraphs 34 and 35. In furtherance of this intention, all Participating Class Members and Aggrieved Employees expressly waive any and all rights or benefits conferred on them by the provisions of Section 1542 of the California Civil Code, with respect to the Released Claims only. Section 1542 provides as follows:

> **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."**

All Participating Class Members and Aggrieved Employees understand fully the statutory language of Civil Code § 1542, and, with this understanding, assume all risks for the Released Claims and Released PAGA Claims released hereunder, whether known or unknown, suspected or unsuspected, and specifically waive all rights they may have under California Civil Code § 1542 with regard to the Released Claims and Released PAGA Claims only. The Participating Class Members and Aggrieved Employees understand that, if any of the facts relating in any manner to the Lawsuits, or to the release and dismissal of claims as provided in this Agreement, are hereafter


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found to be other than or different from the facts now believed to be true, they have expressly accepted and assumed that risk and agree that this Agreement and the release of claims contained herein shall nevertheless remain effective. The Participating Class Members and Aggrieved Employees desire and intend, or are deemed to desire and intend, that this Agreement shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown and unsuspected claims, if any, as well as those relating to the claims referred in Paragraphs 34 and 35 above.

The waiver contained in this Paragraph 36 is not intended to expand the nature of the claims released by the Participating Class Members and Aggrieved Employees beyond the Released Claims and Released PAGA Claims set out in Paragraphs 34 and 35, but rather is intended to ensure that the releases set out in Paragraphs 34 and 35 are fully enforceable and is not impeded by Section 1542.

**INJUNCTION BARRING PURSUIT OF RELEASED CLAIMS**

37. As part of the final approval of the settlement, Plaintiff, Participating Class Members, Aggrieved Employees, and the LWDA shall be enjoined from filing, initiating or continuing to prosecute any actions, claims, complaints, or proceedings in court, arbitration, with the California Division of Labor Standards Enforcement ("DLSE"), with the LWDA, or with any other entity, with respect to the claims released as described in Paragraphs 34-36 above. This settlement is conditioned upon the release by Plaintiff, Participating Class Members, Aggrieved Employees, and the LWDA as described in Paragraphs 34-36, above, and upon covenants by Plaintiff, all Participating Class Members, Aggrieved Employees, and the LWDA that they will not and cannot participate in any actions, lawsuits, proceedings, complaints, or charges brought individually, by the DLSE, the LWDA, or by any other agency, persons or entity in any court, arbitration or before any administrative body with respect to the Released Claims, nor will such Participating Class Members, Plaintiff, or the LWDA contest or interfere with efforts by Defendant or by any other Released Parties to oppose any attempt to bring such released claims against any of them. Additionally, it is agreed herein that neither injunctive or declaratory relief, nor any equitable relief beyond what could be characterized as restitution of claimed unpaid wages required to be paid pursuant to this

Settlement Agreement, will be ordered by the Court against Defendant in final approval of the settlement, which will otherwise be grounds for Defendant rescinding and terminating this Settlement Agreement.

## DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

38. The Parties shall promptly seek the Court's approval of this settlement. As soon as practicable after execution of this Settlement Agreement, Plaintiff/Class Representative and Class Counsel shall apply to the Court for the entry of a preliminary approval order which would accomplish the following:

a. Schedule a final fairness hearing on the question of whether the settlement, including the payment of attorneys' fees and costs, the Enhancement Award, and the LWDA Payment, should be finally approved as fair, reasonable, and adequate, and finally resolving any outstanding issues or disputes remaining from the administration of the Notice;

b. Deem the allegations of the Second Amended Complaint generally denied without the need for Defendant to file and serve an answer thereto;

c. Approve, as to form and content, the proposed Notice;

d. Direct the mailing of the Notice by U.S. Mail to the Settlement Class Members and Aggrieved Employees;

e. Preliminarily approve the settlement subject to the final review and approval by the Court;

f. Preliminarily approve the Settlement Administrator selected by Class Counsel as the Settlement Administrator and approving payment of the Settlement Administration Costs;

g. Preliminarily approve Class Counsel's request for attorneys' fees and litigation expenses and costs subject to final review and approval by the Court;

h. Preliminarily approve Class Counsel's request that the Class Representative receive an Enhancement Award in the amount of up to $10,000.00 subject to final review and approval by the Court; and

i. Conditionally certify the proposed Class for settlement purposes only.



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Not later than five (5) court days prior to the submission of the motion for preliminary approval of this Settlement Agreement to the Court, Plaintiff's counsel will submit a near-final draft thereof (including all supporting papers and the proposed order) to counsel for Defendant for their review and comment. Concurrently with the filing of the motion for preliminary approval of the settlement under this Agreement, Class Representative and Class Counsel will comply with all requirements under the PAGA to give notice and make submissions regarding the proposed settlement to the LWDA.

**DUTIES OF THE PARTIES FOLLOWING PRELIMINARY APPROVAL**

39. In conjunction with the request for final approval of the settlement provided for in this Settlement Agreement, Class Counsel will submit a proposed Final Approval Order and Judgment, which shall:

a. Grant final approval of the settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;

b. Approve Class Counsel's application for an award of attorneys' fees and reimbursement of costs;

c. Approve the Enhancement Award to the Class Representative;

d. Approve the LWDA Payment and Aggrieved Employee PAGA Payments under the PAGA;

e. Approve the Individual Settlement Payments to Participating Class Members;

f. Order that Plaintiff, Participating Class Members, Aggrieved Employees, and the LWDA are bound by the releases in the Paragraphs 34-36, regardless of whether they cash their check;

g. Permanently enjoin and restrain Plaintiff, Participating Class Members, Aggrieved Employees, and the LWDA from and against initiating or pursuing any claims settled herein and released by this Settlement Agreement; and

h. Enter judgment based thereon, with the Settlement Administrator providing notice thereof to the Settlement Class Members.



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Not later than five (5) court days prior to the submission of the motion for final approval of this Settlement Agreement to the Court, Plaintiff's counsel will submit a near-final draft thereof (including all supporting papers and the proposed order) to counsel for Defendant for their review and comment.

**ESCALATOR**

40. In connection with the Parties' settlement discussions, the Settlement Class Members' Unreleased Individual Pay Periods were estimated to be 345,960 (691,920 workweeks divided by 2) for the period of November 1, 2022 through March 21, 2024 (the data that was available at the time). In the event that the total number of Unreleased Individual Pay Periods for all Settlement Class Members for the period of November 1, 2022 through March 21, 2024 is greater than 380,556 (which is 10% higher than 345,960), then the GSF will be increased by one percent (1%) for each full percentage point above 380,556 (i.e., if the total number of Unreleased Individual Pay Periods for all Settlement Class Members is 1% higher than 380,556, then the GSF will be increased by 1%).

**PARTIES' AUTHORITY**

41. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

**MUTUAL FULL COOPERATION**

42. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to execution of such documents and to take such other actions as may reasonably be necessary to implement the terms of this Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the Court's preliminary and final approval of this Settlement Agreement and, following the Effective Date, take all necessary steps to secure the dismissal with prejudice of the Lawsuits.


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## NO PRIOR ASSIGNMENTS

43. 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.

## CONSTRUCTION

44. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arms-length mediated negotiations between the Parties, conducted under the auspices of mediator Paul Grossman, a highly respected and experienced class action mediator. The Parties further agree that this Settlement Agreement shall not be construed in favor of, or against, any party by reason of the extent to which any party, or their or its counsel, participated in the drafting of this Settlement Agreement.

## CAPTIONS AND INTERPRETATIONS

45. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

## EFFECT OF NON-APPROVAL

46. If the Court does not grant preliminary or final approval or if the appellate court fails to affirm final approval of the settlement, then: (1) the Settlement Agreement will be null and void *ab initio* and will have no force and effect; (2) the Parties shall be restored to their respective positions prior to entering into it, and no Party shall be bound by any of the terms of this Settlement Agreement; (3) nothing in this Settlement Agreement shall be construed as a determination, admission, or concession of any substantive or procedural issue in the Lawsuits, and nothing in this Settlement Agreement may be offered into evidence in any pleading, filing, hearing, or trial in the Lawsuits, or in any other judicial, arbitral, or administrative proceeding; (4) this Settlement Agreement shall be without force or effect, and the *Sosa* Class Action will continue to be litigated as if this Settlement Agreement never existed; and (5) Defendant shall have no obligation to make



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any payments to the LWDA, Aggrieved Employees, Settlement Class Members, Plaintiff, or Plaintiff's counsel; (6) any preliminary approval order, final approval order, and/or judgment shall be vacated; and (7) the Parties expressly reserve their rights with respect to the prosecution and defense of the Lawsuit as if this Settlement Agreement never existed.

**MODIFICATION**

47. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties or their counsel hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto. Thus, if the Court does not approve the Settlement Agreement as written, then the provisions of Paragraph 46 shall apply.

**INTEGRATION CLAUSE**

48. This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and the transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

**BINDING ON ASSIGNS**

49. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

**SIGNATORIES**

50. It is agreed that because of the large number of Settlement Class Members, it is impossible or impractical to have each Settlement Class Member execute this Settlement Agreement. As such, Class Counsel is signing on behalf of the Settlement Class Members. In addition, the Notice of Class Action Settlement, Exhibit B, will advise all Settlement Class Members of the binding nature of the Release and such shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member.

**CONFIDENTIALITY**



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51. Plaintiff will maintain this Settlement Agreement and proposed settlement as confidential, and Plaintiff and Defendant will not publicly disclose the same except as set forth in this Settlement Agreement. Except as set forth in this Settlement Agreement or as otherwise agreed in writing between the Parties, both before and following the execution of this Settlement Agreement, there will be no direct or indirect comment or publication by Plaintiff of the settlement in terms of affirmative or responsive media statements/comments, press releases or conferences, website postings or content, social media postings or content, other Internet postings or content, subscribed email messages, newsletters, disseminated updates, mass mailings, or any other comment or publication to the press, media or public at large, and Defendant will not authorize such comments or publications. This shall not apply to or limit the public filing of motions or other case materials in the Lawsuits related to seeking and obtaining Court approval of the proposed settlement and the related awards of attorneys' fees and costs, to communications between Plaintiff's counsel and Plaintiff or members of the settlement class in the Lawsuits, to communications between Defendant and Defendant's counsel, or as necessary to give effect to the Settlement Agreement's terms including but not limited to informing counsel and the court in overlapping actions. Prior to the filing of the motion for preliminary approval, Plaintiff and Defendant shall not directly or indirectly, through counsel or otherwise, discuss the settlement with class members other than Plaintiff (except as permitted above). The Parties understand and agree that there may be media coverage of the settlement not initiated by Plaintiff or Defendant, directly or indirectly. It is also agreed and understood that the Parties and each and every Settlement Class Member, may disclose the settlement to their families, plus their legal, tax, or accounting advisors, insurance companies, or as required by law, regulatory rules or regulatory requirements.

**WEBSITES**

52. The Parties agree that the Settlement Administrator may use U.S. Mail and its own website to provide notice and information about the settlement to Settlement Class Members. The domain name and subdomain name (if any) used for the Settlement Administrator's website for the settlement will be subject to Defendant's reasonable approval and shall not contain the terms "BofA" or "Bank of America" or similar identifier. Not later than the date that the Settlement



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Administrator must remit any unclaimed funds to the State of California's unclaimed property fund pursuant to the terms of the court-approved settlement, the Settlement Administrator's website for the settlement will be taken down. Plaintiff shall instruct Class Counsel that no information about the Lawsuits or the settlement may be posted on Plaintiff's counsel's social media or websites without Defendant's prior written consent.

**COUNTERPARTS**

53. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties.

**GOVERNING LAW**

54. The Parties agree that California law governs the interpretation and application of this Settlement Agreement, except to the extent governed by federal law in which case federal law will apply.

DATED: 11/30/2024

Andrea Sosa

**ANDREA SOSA**
Plaintiff and Proposed Class Representative

DATED: _________

**BANK OF AMERICA, N.A.**

By: ______________________

Print Name: ______________________

Print Title: ______________________



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Administrator must remit any unclaimed funds to the State of California's unclaimed property fund pursuant to the terms of the court-approved settlement, the Settlement Administrator's website for the settlement will be taken down. Plaintiff shall instruct Class Counsel that no information about the Lawsuits or the settlement may be posted on Plaintiff's counsel's social media or websites without Defendant's prior written consent.

**COUNTERPARTS**

53. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties.

**GOVERNING LAW**

54. The Parties agree that California law governs the interpretation and application of this Settlement Agreement, except to the extent governed by federal law in which case federal law will apply.

DATED: 11/30/2024

Andrea Sosa

**ANDREA SOSA**
Plaintiff and Proposed Class Representative

DATED: 12/18/2024

**BANK OF AMERICA, N.A.**

By: [signature]

Print Name: Aaron J. Longo

Print Title: SVP. Associate General Counsel

# “EXHIBIT A”

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Vincent C. Granberry, Esq. (SBN 276483)
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Attorneys for Plaintiff ANDREA SOSA,
on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

ANDREA SOSA, on behalf of herself and others similarly situated,

Plaintiff,

vs.

BANK OF AMERICA NATIONAL ASSOCIATION; and DOES 1 to 100, inclusive,

Defendants.

Case No.: 22STCV18958

**CLASS ACTION**

**PLAINTIFF ANDREA SOSA'S SECOND AMENDED COMPLAINT FOR DAMAGES AND RESTITUTION FOR:**

1. **FAILURE TO PAY WAGES FOR ALL HOURS WORKED AT MINIMUM WAGE IN VIOLATION OF LABOR CODE SECTIONS 1194 AND 1197**

2. **FAILURE TO PAY PROPER OVERTIME WAGES FOR DAILY OVERTIME WORKED, ALL HOURS WORKED, AND FAILURE TO INCLUDE ADDITIONAL REMUNERATION WHEN CALCULATING OVERTIME WAGES IN VIOLATION OF LABOR CODE SECTIONS 510, 1194, AND 1198**

3. **FAILURE TO AUTHORIZE OR PERMIT MEAL PERIODS IN VIOLATION OF LABOR CODE SECTIONS 512 AND 226.7**

4. **FAILURE TO AUTHORIZE OR PERMIT REST PERIODS IN VIOLATION OF LABOR CODE**

**SECTION 226.7**

5. **FAILURE TO INDEMNIFY EMPLOYEES FOR EMPLOYMENT-RELATED LOSSES/EXPENDITURES IN VIOLATION OF LABOR CODE SECTION 2802**

6. **FAILURE TO PAY WAGES FOR ACCRUED PAID SICK DAYS AT THE REGULAR RATE OF PAY IN VIOLATION OF LABOR CODE SECTION 246**

7. **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226**

8. **FAILURE TO TIMELY PAY ALL EARNED WAGES AND FINAL PAYCHECKS DUE AT TIME OF SEPARATION OF EMPLOYMENT IN VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203.**

9. **UNFAIR BUSINESS PRACTICES, IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTIONS 17200, ET SEQ.**

10. **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA"), LABOR CODE SECTION 2698, *et seq.***

**DEMAND FOR JURY TRIAL**

**COMES NOW** Plaintiff ANDREA SOSA ("Plaintiff"), who alleges and complains against Defendants BANK OF AMERICA NATIONAL ASSOCIATION; and DOES 1 to 100, inclusive (collectively "Defendants") as follows:

## I. <u>INTRODUCTION</u>

1. This is a representative Private Attorneys' General Act of 2004, Labor Code § 2698, *et seq*. ("PAGA") and class action lawsuit seeking unpaid wages and interest thereon for failure to pay wages for all hours worked at minimum wage and all overtime hours worked at the overtime

rate of pay; failure to authorize or permit all legally required and compliant meal periods or pay meal period premium wages; failure to authorize or permit all legally required and compliant rest periods or pay rest period premium wages; indemnification for all necessary expenditures or losses incurred by employees in direct consequence of discharging their duties; failure to pay wages for accrued paid sick days at the regular rate of pay; statutory penalties for failure to provide accurate wage statements; statutory waiting time penalties in the form of continuation wages for failure to timely pay employees all wages due upon separation of employment; applicable civil penalties pursuant to PAGA; injunctive relief and other equitable relief; reasonable attorneys' fees pursuant to Labor Code sections 218.5, 226(e) and 1194; costs; and interest brought on behalf of Plaintiff and others similarly situated.

## II. JURISDICTION AND VENUE

2. This Court has jurisdiction over Plaintiff's and putative class members' claims for failure to pay wages for all hours worked at minimum wage and overtime hours worked at the overtime rate of pay due; failure to authorize or permit all legally required and compliant meal periods or pay meal period premium wages; failure to authorize or permit all legally required and compliant rest periods or pay rest period premium wages; indemnification for all necessary expenditures or losses incurred by employees in direct consequence of discharging their duties; statutory penalties for failure to provide accurate wage statements; and claims for injunctive relief and restitution under California Business and Professions Code sections 17200, *et seq.*, for the following reasons: Defendants operate throughout California; Defendants employed Plaintiff and putative class members in locations throughout California, including but not limited to Los Angeles County, at 115 W. Foothill Road, Glendora, CA 91741 more than two-thirds of putative class members are California citizens; the principal violations of California law occurred in California; no other class actions have been filed against Defendants in the last four (4) years alleging wage and hour violations; the conduct of Defendants forms a significant basis for Plaintiff's and putative class members' claims; and Plaintiff and putative class members seek significant relief from Defendants.

## III. PARTIES

3. Plaintiff brings this action on behalf of herself and other members of the general

public similarly situated. The named Plaintiff and the class of persons on whose behalf this action is filed are current, former, and/or future employees of Defendants who work as hourly non-exempt employees. At all times mentioned herein, the currently named Plaintiff is and was a resident of California and was employed by Defendants in the State of California within the four (4) years prior to the filing of this Complaint.

4. Defendants employed Plaintiff as an hourly non-exempt employee from in or around October 2020 to present.

5. Plaintiff is informed and believes and thereon alleges that Defendant employed her and other hourly non-exempt employees throughout the State of California and therefore their conduct forms a significant basis of the claims asserted in this matter.

6. Plaintiff is informed and believes and thereon alleges that Defendant BANK OF AMERICA NATIONAL ASSOCIATION is authorized to do business within the State of California and is doing business in the State of California and/or that Defendants DOES 1-50 are, and at all times relevant hereto were persons acting on behalf of Defendant BANK OF AMERICA NATIONAL ASSOCIATION in the establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies. Defendant BANK OF AMERICA NATIONAL ASSOCIATION operates in Los Angeles County and employed Plaintiff and putative class members in Los Angeles County, including but not limited to, at 115 W. Foothill Road, Glendora, CA 91741

7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51-100 are individuals unknown to Plaintiff. Each of the individual Defendants is sued individually in his or her capacity as an agent, shareholder, owner, representative, supervisor, independent contractor and/or employee of each Defendant and participated in the establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.

8. Plaintiff is unaware of the true names of Defendants DOES 1-100. Plaintiff sues said defendants by said fictitious names and will amend this Complaint when the true names and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously named

Defendants is in some manner responsible for the events and allegations set forth in this Complaint.

9. Plaintiff is informed and believes and thereon alleges that at all relevant times, each Defendant was an employer, was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other defendants so as to be liable for their conduct with respect to the matters alleged in this Complaint. Plaintiff is further informed and believe and thereon allege that each Defendant acted pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other defendants. As used in this Complaint, "Defendant" means "Defendants and each of them," and refers to the Defendants named in the particular cause of action in which the word appears and includes Defendants BANK OF AMERICA NATIONAL ASSOCIATION and DOES 1 to 100, inclusive.

10. At all times mentioned herein, each Defendant was the co-conspirator, agent, servant, employee, and/or joint venturer of each of the other defendants and was acting within the course and scope of said conspiracy, agency, employment, and/or joint venture and with the permission and consent of each of the other Defendants.

11. Plaintiff makes the allegations in this Complaint without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff reserves all of Plaintiff's rights to plead in the alternative.

## IV. DESCRIPTION OF ILLEGAL PAY PRACTICES

12. Pursuant to the applicable Industrial Welfare Commission ("IWC") Wage Order ("Wage Order"), codified at California Code of Regulations, title 8, section 11040, Defendants are employers of Plaintiff within the meaning of Wage Order 4 and applicable Labor Code sections. Therefore, each of these Defendants is jointly and severally liable for the wrongs complained of herein in violation of the Wage Order and the Labor Code.

/ / /

13. **Failure to pay wages for all hours worked at the legal minimum wage**: Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer is required to pay hourly employees for all "hours worked," which includes all time that an employee is under the control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services which inure to the benefit of the employer.

14. Labor Code sections 1194 and 1197 require an employer to compensate employees for all "hours worked" at least at the minimum wage rate of pay as established by the IWC and the Wage Orders.

15. Plaintiff and similarly situated hourly non-exempt employees who worked remotely worked more minutes per shift than Defendants credited them with having worked. Defendants failed to pay Plaintiff and similarly situated employees who worked remotely all wages at the applicable minimum wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

(a) Requiring Plaintiff and similarly situated employees who worked remotely to spend time setting up their remote workstation equipment provided by Defendants

(b) Requiring Plaintiff and similarly situated employees who worked remotely to undergo an off-the-clock multi-step VPN log in procedure before being able to clock in for the start of their shift without being paid for this time. The log in procedure required Plaintiff and similarly situated employees who worked remotely to complete the following tasks off-the-clock:

i. Turn on or wake up the laptop computer provided by Defendants,

ii. Enter log in credentials to log onto computer,

iii. Wait an additional time for the computer to continue booting and complete the loading of its operating system,

iv. Launch the "Sisco" application,

v. Once the Sisco application was loaded, two passwords were required to connect to network,

vi. For password number one, Plaintiff and similarly situated employees again enter their log in credentials,

vii. For password number two, Plaintiff and similarly situated employees were required to launch a "VPN" application on their personal cell phone;

viii. Once loaded, they are required to log into the "VPN" application on personal cell phone using biometric information such as a fingerprint or facial identification;

ix. Once in the VPN application, employees retrieve a second unique password that Defendants' system sent their device; and

x. Utilizing the second password sent to the personal cell phone, Plaintiff and similarly situated employees are able to enter Defendants' timekeeping system and, finally, clock in for the start of their shift.

(c) "Rounding down" or "shaving down" Plaintiff's and similarly situated employees' punches, including punches for meal breaks, to the nearest quarter of an hour to the benefit of Defendants.

16. Plaintiff and similarly situated employees were not paid for this time resulting in Defendants' failure to pay minimum wage for all the hours Plaintiff and similarly situated employees worked.

17. Therefore, Defendants suffered, permitted, and required their hourly non-exempt employees to be subject to Defendants' control without paying wages for that time. This resulted in Plaintiff and similarly situated employees working time for which they were not compensated any wages, in violation of Labor Code sections 1194, 1197, and Wage Order 4.

18. **Failure to pay wages for overtime hours worked at the overtime rate of pay**: Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer is required to pay hourly employees for all "hours worked," which includes all time that an employee is under the control of the employer and all time the employee is suffered or permitted to work. This includes the time an employee spends, either directly or indirectly, performing services which inure to the benefit of the employer.

19. Labor Code sections 510 and 1194 and Wage Order 4 require an employer to

compensate employees at a higher rate of pay for hours worked in excess of eight (8) hours in a workday, more than forty (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

> Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Labor Code section 510; Wage Order 4, §3.

20. Defendants failed to pay Plaintiff and similarly situated employees all wages at the applicable minimum wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

(a) Requiring Plaintiff and similarly situated employees who worked remotely to spend time setting up their remote workstation equipment provided by Defendants.

(b) Requiring Plaintiff and similarly situated employees who worked remotely to undergo an off-the-clock multi-step VPN log in procedure before being able to clock in for the start of their shift without being paid for this time. The log in procedure took a minimum of ten minutes daily and required Plaintiff and similarly situated employees who worked remotely to complete the following task off-the-clock:

i. Turn on or wake up the laptop computer provided by Defendants,

ii. Enter log in credentials to log onto computer,

iii. Wait an additional time for the computer to continue booting and complete the loading of its operating system,

iv. Launch the "Sisco" application,

v. Once the Sisco application was loaded, two passwords were required to connect to network,

vi. For password number one, Plaintiff and similarly situated employees again enter their log in credentials,

vii. For password number two, Plaintiff and similarly situated employees were required to launch a "VPN" application on their personal cell phone;

viii. Once loaded, they are required to log into the "VPN" application on personal cell phone using biometric information such as a fingerprint or facial identification;

ix. Once in the VPN application, employees retrieve a second unique password that Defendants' system sent their device; and

x. Utilizing the second password sent to the personal cell phone, Plaintiff and similarly situated employees are able to enter Defendants' timekeeping system and, finally, clock in for the start of their shift.

(c) "Rounding down" or "shaving down" Plaintiff's and similarly situated employees' punches, including punches for meal breaks, to the nearest quarter of an hour to the benefit of Defendants.

21. To the extent the employees had already worked 8 hours in the day and on workweeks they had already worked 40 hours in a workweek, the employees should have been paid overtime for this unpaid time. This resulted in hourly non-exempt employees working time which should have been paid at the legal overtime rate but was not paid any wages in violation of Labor Code sections 510, 1194, and Wage Order 4.

22. **Failure to pay overtime at the proper overtime rate by failing to include all remuneration in calculating the regular rate of pay for purposes of paying overtime:** Defendants employ hourly non-exempt employees, including Plaintiff and others similarly situated, with a compensation structure that includes additional remuneration.

23. Overtime is based upon an employee's regular rate of pay. "The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee." *See* Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

24. In this case, Plaintiff alleges that, during certain pay periods, when she and similarly situated employees earned overtime wages, Defendants failed to pay them overtime wages at the

proper overtime rate of pay due to Defendants' failure to include all remuneration when calculating the regular rate of pay for purposes of computing Plaintiff's and similarly situated employees' overtime rate of pay. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration including, but not limited to, for example "Emergency Disaster Pay", and "FC Incentive Pay", "quarterly bonus" and "shift differential pay" when calculating Plaintiff's and similarly situated employees' regular rate of pay for the purpose of paying overtime.

25. Defendants' foregoing policy, practice, and/or procedure resulted in Defendants failing to pay Plaintiff and similarly situated employees at their overtime rate of pay for all overtime hours worked, in violation of Labor Code sections 510, 1194, 1198, and the Wage Order.

26. **Failure to authorize or permit all legally required and compliant meal periods and/or failure to pay meal period premium wages:** Defendants often employed hourly non-exempt employees, including the named Plaintiff and similarly situated employees, for shifts longer than five (5) hours in length and shifts longer than ten (10) hours in length.

27. California law requires an employer to authorize or permit an uninterrupted meal period of no less than thirty (30) minutes no later than the end of the employee's fifth hour of work and a second meal period no later than the employee's tenth hour of work. Labor Code §512; Wage Order 4, §11. If the employee is not relieved of all duties during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is only permitted when (1) the nature of the work prevents an employee from being relieved of all duty and (2) the parties have a written agreement agreeing to on-duty meal periods. If the employee is not free to leave the work premises or worksite during the meal period, even if the employee is relieved of all other duty during the meal period, the employee is subject to the employer's control and the meal period is counted as time worked. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally required and compliant meal period was not provided. Labor Code §226.7; Wage Order 4, §11.

28. Here, Plaintiff and similarly situated employees worked shifts long enough to entitle them to meal periods under California law. Nevertheless, Defendants employed policies, practices,

and/or procedures that resulted in their failure to authorize or permit meal periods to Plaintiff and similarly situated employees of no less than thirty (30) minutes for each five-hour period of work as required by law and/or failed to pay employees' meal period premium wages at their regular rate of compensation. Such policies, practices, and/or procedures included, but were not limited to:

(a) "Rounding down" or "shaving down" Plaintiff's and similarly situated employees' punches, including punches for meal breaks, to the nearest quarter of an hour to the benefit of Defendants resulting in short meal breaks.

29. Additionally, Defendants failed to pay Plaintiff and similarly situated employees a meal period premium wage of one (1) additional hour of pay at their regular rate of compensation for each workday the employees did not receive all legally required and compliant meal periods. Defendants employed policies and procedures which ensured that employees did not receive any meal period premium wages to compensate them for workdays in which they did not receive all legally required and compliant meal periods.

30. Finally, on occasions when Defendants paid Plaintiff and similarly situated employees a "premium" wage for late, missed, short, on-premises, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1) additional hour of pay at Plaintiff's and similarly situated employees' regular rate of compensation. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration including, but not limited to, for example "Emergency Disaster Pay", and "FC Incentive Pay", "quarterly bonus" and "shift differential pay", when calculating Plaintiff's and similarly situated employees' regular rate of compensation for the purpose of paying meal period premium wages.

31. The aforementioned policies, practices, and/or procedures of Defendants resulted in Plaintiff and similarly situated employees not being provided with all legally required and compliant meal periods and/or not receiving premium wages to compensate them for such instances, all in violation of California law.

32. **Failure to authorize and permit all legally required and compliant rest periods and/or failure to pay rest period premiums:** Defendants often employed non-exempt employees, including the named Plaintiff and similarly situated employees, for shifts of least three-and-a-half

(3.5) hours.

33. California law requires every employer to authorize and permit an employee a rest period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor Code §226.7; Wage Order 4, §12. If the employer fails to authorize or permit a required rest period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday the employer did not authorize or permit a legally required rest period. *Id*. Under California law, "[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code §226.7; Wage Order 4, §12. Rest periods, insofar as practicable, shall be in the middle of each work period. Wage Order 4, §12. Additionally, the rest period requirement "obligates employers to permit – and authorizes employees to take – off-duty rest periods." *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time. *Id*.

34. On occasions when Defendants paid Plaintiff and similarly situated employees a "premium" wage for late, missed, short, on-premises, on-duty, and/or interrupted rest periods, Defendants failed to pay the one (1) additional hour of pay at Plaintiff's and similarly situated employees' regular rate of compensation. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration including, but not limited to, for example "Emergency Disaster Pay", and "FC Incentive Pay", "quarterly bonus" and "shift differential pay", when calculating Plaintiff's and similarly situated employees' regular rate of compensation for the purpose of paying rest period premiums.

35. The aforementioned policies, practices, and/or procedures of Defendants resulted in Plaintiff and similarly situated employees not being provided with all legally required and compliant rest periods and/or not receiving premium wages to compensate them for such instances, all in violation of California law.

36. **Failure to indemnify employees for losses and expenditures incurred as part of**

**their employment:** Labor Code section 2802(a) states that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer…" An employer is prohibited from passing the ordinary business expenses and losses of the employer onto the employee. (Labor Code section 2802).

37. Defendants employed policies, practices, and/or procedures of impermissibly passing business-related expenses to Plaintiff and similarly situated employees who worked remotely. These policies, practices, and/or procedures included, but were not limited to, requiring Plaintiff and similarly situated employees who work remotely to use or purchase their own tools and/or resources in order to work for Defendants, including but not limited to internet, and/or cell phone (internet and cellular data use) for work-related purposes - without reimbursing Plaintiff and similarly situated employees for such use.

38. The costs incurred by Plaintiff and similarly situated remote employees to use or purchase their own tools and/or resources for their mandatory compliance with Defendants' aforementioned policies, practices, and/or procedures were significant as a result of their employment with Defendants.

39. Defendants employed policies and procedures which ensured Plaintiff and similarly situated remote employees would not receive indemnification for the aforementioned necessary expenditures incurred as a result of their employment with Defendants.

40. Defendants' aforementioned policies, practices, and/or procedures resulted in Plaintiff and similarly situated remote employees not receiving indemnification for employment-related expenditures, in violation of Labor Code section 2802.

41. **Failure to pay wages for accrued paid sick days at the regular rate of pay:** Defendants had a policy and/or procedure where Plaintiff and similarly situated employees accrued paid sick time.

42. Labor Code section 246, subdivision (a), states in relevant part "[a]n employee who…works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days." Additionally, an employee accrues

paid sick days at the rate of no-less-than one (1) hour per every thirty (30) hours worked, beginning at the commencement of employment. Labor Code section 246(b).

43. Here, Plaintiff and other similarly situated employees were employed by Defendants for 30 or more days and were entitled to paid sick days. Also, Plaintiff and other similarly situated employees began accruing paid sick days since the beginning of each of their respective employments with Defendants.

44. Labor Code section 246, subdivision (l), provides that an employer shall calculate the paid sick time for non-exempt employees in the same manner as the regular rate of pay for the workweek in which the employee elected to use paid sick time. "The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee." See Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

45. In this case, Plaintiff alleges that when she and other similarly situated employees elected to use paid sick time, Defendants failed to pay them sick time wages at the proper sick time rate of pay due to Defendants' failure to include all remuneration when calculating the sick time rate of pay. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration such as "Emergency Disaster Pay", "FC Incentive Pay", "quarterly bonus" and "shift differential pay", for example, when calculating Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees' regular rate of pay for the purpose of paying sick time.

46. Defendants' aforementioned policies, practices, and/or procedures resulted in Defendants failing to pay Plaintiff and other similarly situated employees at their sick time regular rate of pay for all sick time accrued, in violation of Labor Code section 246.

47. **Failure to provide accurate wage statements**: Labor Code section 226(a) provides, *inter alia*, that, upon paying an employee his or her wages, the employer must "furnish each of his or her employees ... an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable

order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."

48. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to provide accurate wage and hour statements to him and other similarly situated employees who were subject to Defendants' control for uncompensated time and who did not receive all their earned wages (including minimum wages, overtime wages, meal period premium wages, and/or rest period premium wages), in violation of Labor Code section 226.

49. **Failure to timely pay final wages:** An employer is required to pay all unpaid wages timely after an employee's employment ends. The wages are due immediately upon termination or within seventy-two (72) hours of resignation. Labor Code sections 201, 202.

50. As a result of the aforementioned violations of the Labor Code, Plaintiff alleges that employees were not paid their final wages in a timely manner as required by Labor Code section 203. Minimum wages for all hours worked, overtime wages for overtime hours worked, meal and/or rest period premium wages, sick rate pay, and required indemnification of employee expenditures (all described above), were not paid at the time of separation of employment, whether voluntarily or involuntarily, as required by Labor Code sections 201, 202, and 203.

## V. CLASS DEFINITIONS AND CLASS ALLEGATIONS

51. Plaintiff brings this action on behalf of herself, on behalf of others similarly situated, and on behalf of the general public, and as members of a Class covering the period of four (4) years before the filing of this Second Amended Complaint through the date the notice is mailed to a certified class as defined as follows:

A. **Minimum Wage Class**: All current and former hourly non-exempt employees employed by Defendants in California who were not paid at least minimum wage for all time they were subject to Defendants' control.

B. **Overtime Class:** All current and former hourly non-exempt employees employed by Defendants in California who worked more than eight (8) hours in a workday, forty (40) hours in a workweek, and/or seven (7) days in a workweek, to whom Defendants did not pay overtime wages.

C. **Regular Rate Class:** All current and former hourly non-exempt employees employed by Defendants in California who worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, who received additional remuneration during pay periods in which they were paid overtime wages, and whose compensation did not include such additional remuneration when Defendants calculated those employees' overtimes wages.

D. **Meal Period Class**: All current and former hourly non-exempt employees employed by Defendants in California who worked shifts more than five (5) hours yet Defendants failed to authorize or permit all required duty-free meal periods of not less than thirty (30) minutes.

E. **Meal Period Premium Wages Class**: All current and former hourly non-exempt employees employed by Defendants in California who received additional remuneration during pay periods in which they were paid meal period premium wages and whose regular rate of pay did not include such additional remuneration when Defendants calculated those employees' meal period premium wages.

F. **Rest Period Premium Wages Class**: All current and former hourly non-exempt employees employed by Defendants in California who received additional remuneration during pay periods in which they were paid rest period premium wages and whose regular rate of pay did not include such additional remuneration when Defendants calculated those employees' rest period premium wages.

G. **Indemnification Class**: All current and former hourly non-exempt employees employed by Defendants in California who worked remotely and who did not receive indemnification to reimburse them for the necessary expenditures incurred in the discharge of their duties.

H. **Sick Time Pay Class**: All current and former hourly non-exempt employees employed by Defendants in California who received additional remuneration during pay periods in which they accrued sick pay and whose regular rate of pay did not include such additional remuneration when Defendants calculated those employees' sick pay wages.

I. **Wage Statement Class**: All current and former hourly non-exempt employees employed by Defendants in California at any time who received inaccurate or incomplete wage and hour statements.

J. **Waiting Time Class**: All current and former hourly non-exempt employees employed by Defendants in California who did not receive payment of all unpaid wages upon separation of employment within the statutory time period.

K. **California Class**: All aforementioned classes are herein collectively referred to as the "California Class."

52. There is a well-defined community of interest in the litigation and the classes are ascertainable:

A. **Numerosity**: While the exact number of class members in each class is unknown to Plaintiff at this time, the Plaintiff classes are so numerous that the individual joinder of all members is impractical under the circumstances of this case.

B. **Common Questions Predominate**: Common questions of law and fact exist as to all members of the Plaintiff classes and predominate over any questions that affect only individual members of each class. The common questions of law and fact include, but are not limited to:

i. Whether Defendants violated Labor Code sections 1194 and 1197 by not paying wages at the minimum wage rate for all time that the Minimum Wage Class Members were subject to Defendants' control;

ii. Whether Defendants violated Labor Code sections 510 and 1194 by not paying the Overtime Class Members at the applicable overtime rate for working in excess of eight (8) hours in a workday, in excess of forty (40) hours in a workweek, and/or seven (7) days in a workweek;

iii. Whether Defendants violated Labor Code sections 510 and 1194 by not paying the Regular Rate Class Members at the applicable overtime rate for working in excess of eight (8) hours in a workday, in excess of forty (40) hours in a workweek, and/or seven (7) days in a workweek;

iv. Whether Defendants violated Labor Code sections 512 and 226.7, as well as the applicable Wage Order, by employing the Meal Period Class Members without providing all compliant and/or required meal periods and/or paying meal period premium wages;

v. Whether Defendants violated Labor Code sections 512 and 226.7, as well as the applicable Wage Order, by employing the Meal Period Premium Wages Class Members without paying meal period premium wages at the proper rate;

vi. Whether Defendants violated Labor Code section 226.7 by employing the Rest Period Class Members without paying proper rest period premium wages;

vii. Whether Defendants violated Labor Code section 226.7, as well as the applicable Wage Order, by employing the Rest Period Premium Wages Class Members without paying rest period premium wages at the proper rate;

viii. Whether Defendants violated Labor Code section 2802 by failing to provide Indemnification Class Members with reimbursement of costs to compensate them for the necessary expenditures incurred in the discharge of their duties;

ix. Whether Defendants violated Labor Code section 246, as well as the applicable wage order, by failing to provide Sick Time Pay Class Members with proper sick pay remuneration;

x. Whether Defendants failed to provide the Wage Statement Class Members with accurate itemized statements at the time they received their itemized statements;

xi. Whether Defendants failed to provide the Waiting Time Class Members with all of their earned wages upon separation of employment within the statutory time period;

xii. Whether Defendants committed unlawful business acts or practice within the meaning of Business and Professions Code sections 17200, *et seq.*;

xiii. Whether Class Members are entitled to unpaid wages, penalties, and other relief pursuant to their claims;

xiv. Whether, as a consequence of Defendants' unlawful conduct, the Class Members are entitled to restitution, and/or equitable relief; and

xv. Whether Defendants' affirmative defenses, if any, raise any common issues of law or fact as to Plaintiff and as to Class Members as a whole.

C. **Typicality**: Plaintiff's claims are typical of the claims of the class members in each of the classes. Plaintiff and members of the Minimum Wage Class sustained damages arising out of Defendants' failure to pay wages at least at minimum wage for all time the employees were subject to Defendants' control. Plaintiff and members of the Overtime Wage Class sustained damages arising out of Defendants' failure to pay overtime wages for overtime hours worked. Plaintiff and members of the Regular Rate Class sustained damages arising out of Defendants' failure to pay overtime wages at the proper rate for overtime hours worked. Plaintiff and members of the Meal Period Class sustained damages arising out of Defendants' failure to provide non-exempt employees with all required meal periods and/or meal periods that were duty-free and not less than thirty (30) minutes and/or failure to pay meal period premium wages as compensation. Plaintiff and members of the Meal Period Premium Wages Class sustained damages arising out of Defendants' failure to pay meal period premium wages at the proper rate. Plaintiff and members of the Rest Period Class sustained damages arising out of Defendants' failure to provide non-exempt employees with all required rest periods and/or rest periods that were duty-free and of a net ten (10) minutes and/or failure to pay rest period premium wages as compensation. Plaintiff and members of the Rest Period Premium Wages Class sustained damages arising out of Defendants' failure to pay rest period premium wages at the proper rate. Plaintiff and members of the Indemnification Class sustained damages from Defendants' failure to provide reimbursement of costs to compensate them for the necessary expenditures incurred in the discharge of their duties. Plaintiff and members of the Sick Time Pay Class sustained damages from Defendants' failure to provide sick pay at the proper rate. Plaintiff and members of the Wage Statement Class sustained damages arising out of Defendants' failure to furnish them with accurate itemized wage statements in compliance with

Labor Code section 226. Plaintiff and members of the Waiting Time Class sustained damages arising out of Defendants' failure to provide all unpaid yet earned wages due upon separation of employment within the statutory time limit.

C. **Adequacy of Representation**: Plaintiff will fairly and adequately protect the interests of the members of each class. Plaintiff has no interest that is adverse to the interests of the other class members.

D. **Superiority**: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Because individual joinder of all members of each class is impractical, class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. The expenses and burdens of individual litigation would make it difficult or impossible for individual members of each class to redress the wrongs done to them, while important public interests will be served by addressing the matter as a class action. The cost to and burden on the court system of adjudication of individualized litigation would be substantial, and substantially more than the costs and burdens of a class action. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

E. **Public Policy Consideration**: Employers throughout the state violate wage and hour laws. Current employees often are afraid to assert their rights out of fear of direct or indirect retaliation. Former employees fear bringing actions because they perceive their former employers can blacklist them in their future endeavors with negative references or by other means. Class actions provide the class members who are not named in the Complaint with a type of anonymity that allows for vindication of their rights.

## <u>FIRST CAUSE OF ACTION</u>

## FAILURE TO PAY WAGES FOR ALL HOURS OF WORK AT THE LEGAL MINIMUM WAGE RATE IN VIOLATION OF LABOR CODE SECTIONS 1194 AND 1197

**(Against All Defendants by Plaintiff and the Minimum Wage Class)**

53. Plaintiff incorporates all paragraphs above as though fully set forth herein.

54. At all times relevant to this Complaint, Plaintiff and the Minimum Wage Class were hourly non-exempt employees of Defendants.

55. Pursuant to Labor Code sections 1194, 1197, and the Wage Order, Plaintiff and the Minimum Wage Class are entitled to receive wages for all hours worked, i.e., all time they were subject to Defendants' control, and those wages must be paid at least at the minimum wage rate in effect during the time the employees earned the wages.

56. Defendants' policies, practices, and/or procedures required Plaintiff and the Minimum Wage Class to be engaged, suffered, or permitted to work without being paid wages for all of the time in which they were subject to Defendants' control.

57. Defendants employed policies, practices, and/or procedures including, but not limited to:

(a) Requiring Plaintiff and the Minimum Wage Class who worked remotely to spend time setting up their remote workstation equipment provided by Defendants

(b) Requiring Plaintiff and the Minimum Wage Class who worked remotely to undergo an off-the-clock multi-step VPN log in procedure before being able to clock in for the start of their shift without being paid for this time. The log in procedure required Plaintiff and the Minimum Wage Class worked remotely to complete the following tasks off-the-clock:

i. Turn on or wake up the laptop computer provided by Defendants,

ii. Enter log in credentials to log onto computer,

iii. Wait an additional time for the computer to continue booting and complete the loading of its operating system,

iv. Launch the "Sisco" application,

v. Once the Sisco application was loaded, two passwords were required to connect to network,

vi. For password number one, Plaintiff and similarly situated employees again enter their log in credentials

vii. For password number two, Plaintiff and similarly situated employees were required to launch a "VPN" application on their personal cell phone ;

viii. Once loaded, they are required to log into the "VPN" application on personal cell phone using biometric information such as a fingerprint or facial identification;

ix. Once in the VPN application, employees retrieve a second unique password that Defendants' system sent their device; and

x. Utilizing the second password sent to the personal cell phone, Plaintiff and similarly situated employees are able to enter Defendants' timekeeping system and, finally, clock in for the start of their shift.

(c) "Rounding down" or "shaving down" Plaintiff and the Minimum Wage Class punches, including punches for meal breaks, to the nearest quarter of an hour to the benefit of Defendants.

58. Plaintiff and the Minimum Wage Class were not paid for this time resulting in Defendants' failure to pay minimum wage for all the hours Plaintiff and the Minimum Wage Class worked.

59. As a result of Defendants' unlawful conduct, Plaintiff and the Minimum Wage Class have suffered damages in an amount subject to proof, to the extent that they were not paid wages at a minimum wage rate for all hours worked.

60. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiff and the Minimum Wage Class are entitled to recover unpaid minimum wage, interest thereon, liquidated damages in the amount of their unpaid minimum wage, and attorneys' fees and costs.

## SECOND CAUSE OF ACTION

## FAILURE TO PAY PROPER OVERTIME WAGES FOR DAILY OVERTIME WORKED, ALL HOURS WORKED, AND FAILURE TO INCLUDE ADDITIONAL REMUNERATION WHEN CALCULATING OVERTIME WAGES IN VIOLATION OF LABOR CODE SECTIONS 510, 1194, AND 1198

**(Against All Defendants by Plaintiff, the Overtime Class, and the Regular Rate Class)**

61. Plaintiff incorporates all paragraphs above as though fully set forth herein.

62. At times relevant to this Complaint, Plaintiff, the Overtime Class, and the Regular

Rate Class were hourly non-exempt employees of Defendants, covered by Labor Code sections 510 and 1194 and the Wage Order 4.

63. Pursuant to Labor Code sections 510 and 1194 and the Wage Order 4, hourly non-exempt employees are entitled to receive a higher rate of pay for all hours worked in excess of eight (8) hours in a workday, forty (40) hours in a workweek, and on the seventh day of work in a workweek.

64. Labor Code section 510, subdivision (a), states in relevant part:

> Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

65. Further, Labor Code section 1198 provides,

> The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

66. Despite California law requiring employers to pay employees a higher rate of pay for all hours worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and on the seventh day of work in a workweek, Defendants failed to pay all overtime wages to Plaintiff and the Overtime Class for their daily overtime hours worked.

67. Specifically, Defendants' employed policies, practices, and/or procedures including, but not limited to:

(a) Requiring Plaintiff, the Overtime Class, and the Regular Rate Class who worked remotely to spend time setting up their remote workstation equipment provided by Defendants

(b) Requiring Plaintiff, the Overtime Class, and the Regular Rate Class who worked remotely to undergo an off-the-clock multi-step VPN log in procedure before being able to clock in for the start of their shift without being paid for this time. The log in procedure took a minimum of ten minutes daily and required Plaintiff, the Overtime Class, and the Regular Rate Class who worked remotely to complete the following task off-the-clock:

i. Turn on or wake up the laptop computer provided by Defendants,

ii. Enter log in credentials to log onto computer,

iii. Wait an additional time for the computer to continue booting and complete the loading of its operating system,

iv. Launch the "Sisco" application,

v. Once the Sisco application was loaded, two passwords were required to connect to network,

vi. For password number one, Plaintiff and similarly situated employees again enter their log in credentials

vii. For password number two, Plaintiff and similarly situated employees were required to launch a "VPN" application on their personal cell phone ;

viii. Once loaded, they are required to log into the "VPN" application on personal cell phone using biometric information such as a fingerprint or facial identification;

ix. Once in the VPN application, employees retrieve a second unique password that Defendants' system sent their device; and

x. Utilizing the second password sent to the personal cell phone, Plaintiff and similarly situated employees are able to enter Defendants' timekeeping system and, finally, clock in for the start of their shift.

(c) "Rounding down" or "shaving down" Plaintiff, the Overtime Class, and the Regular Rate Class punches, including punches for meal breaks, to the nearest quarter of an hour to the benefit of Defendants.

(d) Plaintiff, the Overtime Class, and the Regular Rate Class were not paid overtime wages at 1.5x their regular rate of pay due to Defendants failure to include all remuneration including, but not limited to, "Emergency Disaster Pay", and "FC Incentive Pay", "quarterly bonus" and "shift differential pay" in employees' regular rate of pay for purposes of computing overtime wages.

68. Plaintiff, the Overtime Class, and the Regular Rate Class were not paid for this time.

69. To the extent that the foregoing unpaid time resulted from Plaintiff and the Overtime Class being subject to the control of Defendants when they worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven days in a workweek, Defendants failed to pay them at their overtime rate of pay for all the overtime hours they worked.

70. Overtime is based upon an employee's regular rate of pay. "The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee." *See* Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

71. In this case, Plaintiff and Regular Rate Class Members allege that, during certain pay periods earned overtime wages, Defendants failed to pay them overtime wages at the proper overtime rate of pay due to Defendants' failure to include all remuneration when calculating the regular rate of pay for purposes of computing Plaintiff and Regular Rate Class Members over time rate of pay. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration including, but not limited to, for example "Emergency Disaster Pay", and "FC Incentive Pay", "quarterly bonus" and "shift differential pay", when calculating Plaintiff's and Regular Rate Class Members' regular rate of pay for the purpose of paying overtime.

72. As a result of Defendants' unlawful conduct, Plaintiff, the Overtime Class, and the Regular Rate Class have suffered damages in an amount subject to proof, to the extent that they were not paid at their proper overtime rate of pay for all hours worked which constitute overtime.

73. Pursuant to Labor Code section 1194, Plaintiff, the Overtime Class, and the Regular Rate Class are entitled to recover the full amount of their unpaid overtime wages, prejudgment interest, and attorneys' fees and costs.

## THIRD CAUSE OF ACTION

## FAILURE TO AUTHORIZE OR PERMIT MEAL PERIODS IN VIOLATION OF LABOR CODE SECTIONS 512 AND 226.7

**(Against All Defendants by Plaintiff, the Meal Period Class, and the Meal Period Premium**

**Wages Class)**

74. Plaintiff incorporates all paragraphs above as though fully set forth herein.

75. At all times relevant to this Complaint, Plaintiff, the Meal Period Class, and the Meal Period Premium Wages Class were hourly non-exempt employees of Defendants, covered by Labor Code sections 512 and 226.7 and the Wage Order.

76. California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities no later than the end of the employee's fifth hour of work and a second meal period no later than the employee's tenth hour of work. Labor Code sections 226.7, 512; Wage Order 4, §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. If the employer requires the employee to remain at the work site or facility during the meal period, the meal period must be paid. This is true even where the employee is relieved of all work duties during the meal period. *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968. Labor Code section 226.7 provides that if an employee does not receive a required meal or rest period that "the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided."

77. In this case, Plaintiff and the Meal Period Class worked shifts long enough to entitle them to meal periods under California law. Nevertheless, Defendants employed policies, practices, and/or procedures that resulted in their failure to authorize or permit meal periods to Plaintiff and the Meal Period Class of no less than thirty (30) minutes for each five-hour period of work as required by law and/or failed to pay employees' meal period premium wages at their regular rate of compensation. Such policies, practices, and/or procedures included, but were not limited to:

(a) Rounding down" or "shaving down" Plaintiff, the Meal Period Class, and the Meal Period Premium Wages punches, including punches for meal breaks, to the nearest quarter of an hour to the benefit of Defendants resulting in short meal breaks.

78. Additionally, Defendants failed to pay Plaintiff and the Meal Period Class one (1) hour of pay at their regular rate of pay for each workday they did not receive all legally required and

legally compliant meal periods. Defendants lacked a policy and procedure for compensating Plaintiff and the Meal Period Class with premium wages when they did not receive all legally required and legally compliant meal periods.

79. Finally, on occasions when Defendants paid Plaintiff and the Meal Period Premium Wages Class a "premium" wage for late, missed, short, on-premises, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1) additional hour of pay at Plaintiff's and the Meal Period Premium Wages Class's regular rate of compensation. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration including, but not limited to, for example "Emergency Disaster Pay" and "FC Incentive Pay, when calculating Plaintiff's and the Meal Period Premium Wages Class's regular rate of pay for the purpose of paying meal period premiums.

80. Defendants' unlawful conduct alleged herein occurred in the course of employment of Plaintiff, the Meal Period Class, and the Meal Period Premium Wages Class and such conduct has continued through the filing of this Complaint.

81. Because Defendants failed to provide employees with meal periods in compliance with the law, Defendants are liable to Plaintiff, the Meal Period Class, and the Meal Period Premium Wages Class for one (1) hour of additional pay at the regular rate of compensation for each workday that Defendants did not provide all legally required and legally compliant meal periods, pursuant to Labor Code section 226.7 and the Wage Order.

82. Plaintiff, on behalf of herself, the Meal Period Class, and the Meal Period Premium Wages Class seeks damages and all other relief allowable, including a meal period premium wage for each workday Defendants failed to provide all legally required and legally compliant meal periods, plus pre-judgment interest.

## <u>FOURTH CAUSE OF ACTION</u>

## FAILURE TO AUTHORIZE OR PERMIT REQUIRED REST PERIODS IN VIOLATION OF LABOR CODE SECTION 226.7

**(Against All Defendants by Plaintiff, the Rest Period Class, and the Rest Period Premium Wages Class)**

83. Plaintiff incorporates all paragraphs above as though fully set forth herein.

84. At all times relevant to this Complaint, Plaintiff, the Rest Period Class, and the Rest Period Premium Wages Class were employees of Defendants, covered by Labor Code section 226.7 and Wage Order 4.

85. California law requires that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof…." Wage Order 4, §12. Employees are entitled to 10 minutes rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum*) (2012) 53 Cal.4th 1004, 1029; Labor Code §226.7. Additionally, the rest period requirement "obligates employers to permit – and authorizes employees to take – off-duty rest periods." *Augustus v. ABM Security Services, Inc*., (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time. *Id*. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided." Wage Order 4, §12; Labor Code §226.7.

86. In this case, Plaintiff and the Rest Period Class regularly worked shifts of more than three-and-a-half (3.5) hours. Nevertheless, Defendants employed policies, practices, and/or procedures that resulted in their failure to authorize or permit all legally required and compliant rest periods to Plaintiff and the Rest Period Class. Such policies, practices, and/or procedures included, but were not limited to including, but not limited to, for example "Emergency Disaster Pay", and "FC Incentive Pay", "quarterly bonus" and "shift differential pay".

87. Additionally, Defendants failed to pay Plaintiff and the Rest Period Class one (1) hour of pay at their regular rate of pay for each workday they did not receive all legally required and legally compliant rest periods. Defendants lacked a policy and procedure for compensating Plaintiff

and the Rest Period Class with premium wages when they did not receive all legally required and legally compliant rest periods.

88. On occasions when Defendants paid Plaintiff and the Rest Period Premium Wages Class a “premium” wage for late, missed, short, on-premises, on-duty, and/or interrupted rest periods, Defendants failed to pay the one (1) additional hour of pay at Plaintiff’s and the Rest Period Premium Wages Class’s regular rate of compensation. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration including, but not limited to, for example “Emergency Disaster Pay”, and “FC Incentive Pay”, “quarterly bonus” and “shift differential pay”, when calculating Plaintiff’s and the Rest Period Premium Wages Class’s regular rate of pay for the purpose of paying rest period premiums.

89. Defendants’ unlawful conduct alleged herein occurred in the course of employment of Plaintiff, the Rest Period Class, and the Rest Period Premium Wages Class and such conduct has continued through the filing of this Complaint.

90. Because Defendants failed to provide employees with rest periods in compliance with the law, Defendants are liable to Plaintiff, the Rest Period Class, and the Rest Period Premium Wages Class for one (1) hour of additional pay at the regular rate of compensation for each workday that Defendants did not provide all legally required and legally compliant rest periods, pursuant to Labor Code section 226.7 and the Wage Order.

91. Plaintiff, on behalf of herself, the Rest Period Class, and the Rest Period Premium Wages Class seeks damages and all other relief allowable, including a rest period premium wage for each workday Defendants failed to provide all legally required and legally compliant rest periods, plus pre-judgment interest.

## FIFTH CAUSE OF ACTION

## FAILURE TO INDEMNIFY EMPLOYEES FOR EMPLOYMENT-RELATED LOSSES AND EXPENDITURES IN VIOLATION OF LABOR CODE SECTION 2802

**(Against All Defendants by Plaintiff and the Indemnification Class)**

92. Plaintiff incorporates all paragraphs above as though fully set forth herein.

93. Plaintiff and members of the Indemnification Class have been employed by

Defendants in the State of California. Labor Code section 2802(a) states that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer…" An employer is prohibited from passing the ordinary business expenses and losses of the employer onto the employee. (Labor Code section 2802).

94. Defendants violated Labor Code section 2802 by employing policies, practices, and/or procedures of impermissibly passing business-related expenses to Plaintiff and Indemnification Class Members who worked remotely. These policies, practices, and/or procedures included, but were not limited to, requiring Plaintiff and Indemnification Class Members who work remotely to use or purchase their own tools and/or resources in order to work for Defendants, including but not limited to internet, and/or cell phone (internet and cellular data use) for work-related purposes - without reimbursing Plaintiff and Indemnification Class Members for such use.

95. The costs incurred by Plaintiff and Indemnification Class Members to use or purchase their own tools and/or resources for their mandatory compliance with Defendants' aforementioned policies, practices, and/or procedures were significant as a result of their employment with Defendants.

96. Moreover, Defendants employed policies and procedures which ensured that Plaintiff and Indemnification Class Members would not receive indemnification for all necessary expenditures or losses incurred by them in direct consequence of discharging their duties. Defendants' aforementioned policies, practices, and/or procedures resulted in Plaintiff and Indemnification Class Members not receiving indemnification for employment-related expenditures in compliance with California law.

97. Because Defendants failed to indemnify employees for the necessary expenditures incurred in the discharge of their duties, they are liable to Plaintiff and Indemnification Class Members for monies to compensate them for such expenditures or losses pursuant to Labor Code section 2802.

98. As a direct and proximate result of Defendants' violation of Labor Code section 2802, Plaintiff and Indemnification Class Members have suffered irreparable harm and monetary

damages entitling them to both injunctive relief and restitution. Plaintiff, on behalf of themself and on behalf of the Indemnification Class, seeks damages and all other relief allowable including indemnification for all employment-related expenses as well as ordinary business expenses incurred by Defendants and passed on to Plaintiff and Indemnification Class Members, pursuant to Labor Code section 2802.

99. Pursuant to Labor Code Section 2802, Plaintiff and Indemnification Class Members are entitled to recover full indemnification, reasonable attorneys' fees and costs of suit.

## SIXTH CAUSE OF ACTION

## FAILURE TO PAY WAGES FOR ACCRUED PAID SICK DAYS AT THE REGULAR RATE OF PAY IN VIOLATION OF LABOR CODE SECTION 246

**(Against All Defendants by Plaintiff and the Sick Time Pay Class)**

100. Plaintiff incorporates all paragraphs above as though fully set forth herein.

101. At all times relevant to this Complaint, Plaintiff and the Sick Time Pay Class were employees of Defendants, covered by Labor Code section 246 and Wage Order 4.

102. Labor Code section 246, subdivision (a), states in relevant part "[a]n employee who…works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days." Additionally, an employee accrues paid sick days at the rate of no-less-than one (1) hour per every thirty (30) hours worked, beginning at the commencement of employment. Labor Code section 246(b).

103. Here, Plaintiff and the Sick Time Pay Class were employed by Defendants for 30 or more days and were entitled to paid sick days. Also, Plaintiff and the Sick Time Pay Class began accruing paid sick days during their employment with Defendants.

104. Labor Code section 246, subdivision (l), provides that an employer shall calculate the paid sick time for non-exempt employees in the same manner as the regular rate of pay for the workweek in which the employee elected to use paid sick time. "The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee." See Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

105. In this case, Plaintiff alleges that when she and the Sick Time Pay Class elected to use paid sick time, Defendants failed to pay them sick time wages at the proper sick time rate of pay due to Defendants' failure to include all remuneration when calculating the sick time rate of pay. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration such as "Emergency Disaster Pay", and "FC Incentive Pay", "quarterly bonus" and "shift differential pay", for example, when calculating Plaintiff's and the Sick Time Pay Class's regular rate of pay for the purpose of paying sick time.

106. Defendants' unlawful conduct alleged herein occurred in the course of employment of Plaintiff and the Sick Time Pay Class, and such conduct has continued through the filing of this Complaint.

107. Because Defendants failed to provide employees with wages for sick time in compliance with the law, Defendants are liable to Plaintiff and the Sick Time Pay Class for payment at the regular rate of compensation for each sick time period that Defendants did not provide sick pay, pursuant to Labor Code section 246.

108. Plaintiff, on behalf of herself, and the Sick Time Pay Class, seek damages and all other relief allowable for each sick time period taken where Defendants failed to pay wages for, plus pre-judgment interest.

## SEVENTH CAUSE OF ACTION

## FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226

**(Against All Defendants by Plaintiff and the Wage Statement Class)**

109. Plaintiff incorporates all paragraphs above as though fully set forth herein.

110. At all times relevant to this Complaint, Plaintiff and the Wage Statement Class were hourly, non-exempt employees of Defendants, covered by Labor Code section 226.

111. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and the Wage Statement Class were entitled to receive, semimonthly or at the time of each payment of wages, an itemized wage statement accurately stating the following:

> (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from

> payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

112. As a derivative of Defendants' claims above, Plaintiff alleges that Defendants failed to provide accurate wage and hour statements to her and the Wage Statement Class who were subject to Defendants' control for uncompensated time and who did not receive all their earned wages (including minimum wages, overtime wages, meal period premium wages, and/or rest period premium wages), in violation of Labor Code section 226.

113. Defendants provided Plaintiff and the Wage Statement Class with itemized statements which stated inaccurate information including, but not limited to, the number of hours worked, the gross wages earned, and the net wages earned.

114. Defendants' failure to provide Plaintiff and the Wage Statement Class with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the Wage Statement Class with accurate wage statements but intentionally provided wage statements they knew were not accurate. Defendants knowingly and intentionally put in place practices which deprived employees of wages and resulted in Defendants knowingly and intentionally providing inaccurate wage statements. These practices included Defendants' failure to include all hours worked and all wages due.

115. As a result of Defendants' unlawful conduct, Plaintiff and the Wage Statement Class have suffered injury. The absence of accurate information on their wage statements has prevented earlier challenges to Defendants' unlawful pay practices, will require discovery and mathematical computations to determine the amount of wages owed, and will cause difficulty and expense in attempting to reconstruct time and pay records. Defendants' conduct led to the submission of inaccurate information about wages and amounts deducted from wages to state and federal government agencies. As a result, Plaintiff and the Wage Statement Class are required to participate

in this lawsuit and create more difficulty and expense for Plaintiff and the Wage Statement Class from having to reconstruct time and pay records than if Defendants had complied with their legal obligations.

116. Pursuant to Labor Code section 226(e), Plaintiff and the Wage Statement Class are entitled to recover fifty (50) dollars per employee for the initial pay period in which a section 226 violation occurred and one hundred dollars per employee per violation for each subsequent pay period, not to exceed an aggregate penalty of four thousand (4,000) dollars per employee.

117. Pursuant to Labor Code section 226(h), Plaintiff and the Wage Statement Class are entitled to bring an action for injunctive relief to ensure Defendants' compliance with Labor Code section 226(a). Injunctive relief is warranted because Defendants continue to provide currently employed Wage Statement Class members with inaccurate wage statements in violation of Labor Code section 226(a) and currently employed Wage Statement Class members have no adequate legal remedy for the continuing injuries that will be suffered as a result of Defendants' ongoing unlawful conduct. Injunctive relief is the only remedy available for ensuring Defendants' compliance with Labor Code section 226(a).

118. Pursuant to Labor Code sections 226(e) and 226(h), Plaintiff and the Wage Statement Class are entitled to recover the full amount of penalties due under Section 226(e), reasonable attorneys' fees, and costs of suit.

## EIGHTH CAUSE OF ACTION

## FAILURE TO TIMELY PAY ALL EARNED WAGES AND FINAL PAYCHECKS UPON SEPARATION OF EMPLOYMENT IN VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203

**(Against All Defendants by Plaintiff and the Waiting Time Class)**

119. Plaintiff incorporates by reference and re-alleges each and every allegation contained in this pleading as though fully set forth herein.

120. At all times relevant to this Complaint, Plaintiff and the Waiting Time Class were employees of Defendants, covered by Labor Code sections 201 and 202.

121. An employer is required to pay all unpaid wages timely after an employee's

employment ends. The wages are due immediately upon termination or within seventy-two (72) hours of resignation. Labor Code sections 201, 202. If an employee gave seventy-two (72) hours previous notice, they were entitled to payment of all wages earned and unpaid at the time of resignation. *Id*.

122. Defendants failed to pay Plaintiff and the Waiting Time Class, with all wages earned and unpaid prior to separation of employment, in accordance with either Labor Code section 201 or 202. At all relevant times within the limitations period applicable to this cause of action, Defendants maintained a policy or practice of not paying hourly employees all earned wages timely upon separation of employment.

123. Defendants' failure to pay Plaintiff and the Waiting Time Class with all wages earned prior to separation of employment timely in accordance with Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by hourly workers prior to separation of employment in accordance with Labor Code sections 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code sections 201 and 202. Defendants' practices include failing to pay at least minimum wage for all time worked, overtime wages for all overtime hours worked, and/or meal and/or rest period premium wages. When Defendants failed to pay Plaintiff and the Waiting Time Class all earned wages timely upon separation of employment, they knew what they were doing and intended to do what they did.

124. Pursuant to either Labor Code section 201 or 202, Plaintiff and the Waiting Time Class are entitled to all wages earned prior to separation of employment that Defendants have yet to pay them.

125. Pursuant to Labor Code section 203, Plaintiff and the Waiting Time Class are entitled to continuation of their wages, from the day their earned and unpaid wages were due until paid, up to a maximum of thirty (30) days.

126. As a result of Defendants' conduct, Plaintiff and the Waiting Time Class have suffered damages in an amount, subject to proof, to the extent they were not paid for all wages earned prior to separation of employment.

127. As a result of Defendants' conduct, Plaintiff and the Waiting Time Class have

suffered damages in an amount, subject to proof, to the extent they were not paid all continuation wages owed under Labor Code section 203.

128. Plaintiff and the Waiting Time Class are entitled to recover the full amount of their unpaid wages, continuation wages under Labor Code section 203, and interest thereon.

**NINTH CAUSE OF ACTION**

**UNFAIR BUSINESS PRACTICES, IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200, et seq.**

**(Against All Defendants by Plaintiff and the California Class)**

129. Plaintiff incorporates all paragraphs above as though fully set forth herein.

130. The unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business and Professions Code section 17200. This unfair conduct includes Defendants' use of policies, practices, and/or procedures which resulted in: failure to pay employees at least at the minimum wage rate for all hours which they worked; failure to pay overtime wages for all overtime hours worked; failure to authorize or permit all legally required and compliant meal periods or pay meal period premium wages; failure to authorize or permit all legally required and compliant rest periods or pay rest period premium wages; failure to indemnify all necessary expenditures or losses incurred in direct consequence of discharging duties; failure to pay wages for accrued paid sick days at the regular rate of pay; failure to provide accurate wage and hour statements; and failure to timely pay all earned wages and final paychecks upon separation of employment in violation of Labor Code sections 201, 202, and 203.. Due to their unfair and unlawful business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to pay minimum wages for all hours worked; pay overtime wages for all overtime hours worked; authorize or permit all legally required and compliant meal periods or pay meal period premium wages; authorize or permit all legally required and compliant rest periods or pay rest period premium wages; indemnify all necessary expenditures or losses incurred in direct consequence of discharging duties; pay wages for accrued paid sick days at the regular rate of pay; provide accurate wage and hour statements; and timely pay all earned wages and final paychecks upon separation of

employment in violation of Labor Code sections 201, 202, and 203.

131. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the California Class have suffered injury in fact and lost money or property, as described in more detail above.

132. Pursuant to Business and Professions Code section 17203, Plaintiff and the California Class are entitled to restitution of all wages and other monies rightfully belonging to them that Defendants failed to pay and wrongfully retained by means of their unlawful and unfair business practices. Plaintiff also seeks an injunction against Defendants on behalf of the California Class enjoining Defendants, and any and all persons acting in concert with them, from engaging in each of the unlawful policies, practices, and/or procedures set forth herein.

## TENTH CAUSE OF ACTION

## CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.

**(Against all Defendants by Plaintiff)**

133. Plaintiff incorporates all paragraphs above as though fully set forth herein.

134. During the period beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 226, 226.7, 510, 512, 1194, 1197, 1198, 2802, and Sections 14 and 15 of the applicable Wage Orders.

135. Specifically, Defendants have committed the following violations of California Labor Code:

136. **Failure to pay wages for all hours worked at the legal minimum wage:** Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer is required to pay hourly employees for all "hours worked," which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services which inure to the benefit of the employer.

137. Labor Code sections 1194 and 1197 require an employer to compensate employees for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the

Wage Orders.

138. In this case, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more minutes per shift than Defendants credited them with having worked. Specifically, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all wages at the applicable minimum wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

(a) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees who worked remotely to spend time setting up their remote workstation equipment provided by Defendants;

(b) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees who worked remotely to undergo an off-the-clock multi-step VPN log in procedure before being able to clock in for the start of their shift without being paid for this time. The log in procedure required Plaintiff and other current and former aggrieved California-based hourly non-exempt employees who worked remotely to complete the following tasks off-the-clock:

xi. Turn on or wake up the laptop computer provided by Defendants,

xii. Enter log in credentials to log onto computer,

xiii. Wait an additional time for the computer to continue booting and complete the loading of its operating system,

xiv. Launch the "Sisco" application,

xv. Once the Sisco application was loaded, two passwords were required to connect to network,

xvi. For password number one, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees again enter their log in credentials,

xvii. For password number two, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were required to launch a "VPN" application on their personal cell phone ;

xviii. Once loaded, they are required to log into the "VPN" application on personal cell phone using biometric information such as a fingerprint or facial identification;

xix. Once in the VPN application, employees retrieve a second unique password that Defendants' system sent their device; and

xx. Utilizing the second password sent to the personal cell phone, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees are able to enter Defendants' timekeeping system and, finally, clock in for the start of their shift.

(c) "Rounding down" or "shaving down" Plaintiff and other current and former aggrieved California-based hourly non-exempt employees punches, including punches for meal breaks, to the nearest quarter of an hour to the benefit of Defendants.

139. Therefore, Defendants suffered, permitted, and required Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to be subject to Defendants' control without paying wages for that time. This resulted in Plaintiff and other current and former aggrieved California-based hourly non-exempt employees working time for which they were not compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable Wage Order.

140. **Failure to pay wages for overtime hours worked at the overtime rate of pay and Failure to pay overtime at the proper overtime rate by failing to include all remuneration in calculating the regular rate of pay for purposes of paying overtime**: Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer is required to pay hourly employees for all "hours worked," which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services that inure to the benefit of the employer.

141. Labor Code sections 510 and 1194 require an employer to compensate employees a higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty (40)

hours in a workweek, and on any seventh consecutive day of work in a workweek:

> Any work in excess of eight (8) hours in one workday, any work in excess of forty (40) hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of work in any one (1) workweek, shall be compensated at the rate of no less than one-and-one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Labor Code section 510.

142. In this case, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

(a) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees who worked remotely to spend time setting up their remote workstation equipment provided by Defendants.

(b) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees who worked remotely to undergo an off-the-clock multi-step VPN log in procedure before being able to clock in for the start of their shift without being paid for this time. The log in procedure required Plaintiff and other current and former aggrieved California-based hourly non-exempt employees who worked remotely to complete the following tasks off-the-clock:

i. Turn on or wake up the laptop computer provided by Defendants,
ii. Enter log in credentials to log onto computer,
iii. Wait an additional time for the computer to continue booting and complete the loading of its operating system,
iv. Launch the "Sisco" application,
v. Once the Sisco application was loaded, two passwords were required to connect to network,
vi. For password number one, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees again enter their log in credentials,

vii. For password number two, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were required to launch a "VPN" application on their personal cell phone ;

viii. Once loaded, they are required to log into the "VPN" application on personal cell phone using biometric information such as a fingerprint or facial identification;

ix. Once in the VPN application, employees retrieve a second unique password that Defendants' system sent their device; and

x. Utilizing the second password sent to the personal cell phone, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees are able to enter Defendants' timekeeping system and, finally, clock in for the start of their shift.

(c) "Rounding down" or "shaving down" Plaintiff and other current and former aggrieved California-based hourly non-exempt employees punches, including punches for meal breaks, to the nearest quarter of an hour to the benefit of Defendants.

143. Additionally, Plaintiff alleges that, during certain pay periods, when she and similarly situated employees earned overtime wages, Defendants failed to pay them overtime wages at the proper overtime rate of pay due to Defendants' failure to include all remuneration when calculating the regular rate of pay for purposes of computing Plaintiff and other current and former aggrieved California-based hourly non-exempt employees overtime rate of pay. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration including, but not limited to, for example "Emergency Disaster Pay", and "FC Incentive Pay", "quarterly bonus" and "shift differential pay", when calculating Plaintiff and other current and former aggrieved California-based hourly non-exempt employees' regular rate of pay for the purpose of paying overtime.

144. The foregoing policies, practices, and/or procedures resulted in time during each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were under the control of Defendants but were not compensated. To the extent that the

foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code sections 510 and 1194 and the applicable Wage Order.

145. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

146. California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 4 at §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

147. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally required and compliant meal period was not provided. Labor Code section 226.7; Wage Order 4 at §11.

148. In this case, Defendants failed to authorize or permit legally required and compliant meal periods to Plaintiff and other current and former aggrieved California-based hourly non-exempt employees due to Defendants' policies, practices, and/or procedures, including but not limited to:

(a) "Rounding down" or "shaving down" Plaintiff and other current and former aggrieved California-based hourly non-exempt employees punches, including punches for meal breaks, to the nearest quarter of an hour to the benefit of Defendants resulting in short meal breaks.

149. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or procedure of failing to compensate Plaintiff and other current and former aggrieved California-based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees did not receive legally required and compliant meal periods, in violation of Labor Code section 226.7.

150. Finally, on occasions when Defendants paid Plaintiff and other current and former aggrieved California-based hourly non-exempt employees a "premium" wage for late, missed, short, on-premises, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1) additional hour of pay at Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regular rate of compensation. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration including, but not limited to, for example "Emergency Disaster Pay", and "FC Incentive Pay", "quarterly bonus" and "shift differential pay", when calculating Plaintiff and other current and former aggrieved California-based hourly non-exempt employees' regular rate of compensation for the purpose of paying meal period premium wages.

151. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff and other current and former aggrieved California-based hourly non-exempt employees not receiving wages to compensate them for workdays during which Defendants did not provide them with meal periods in compliance with California law.

152. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than three-and-a-half (3.5) hours.

153. California law requires every employer to authorize and permit an employee a rest period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor Code

section 226.7; Wage Order 4 at §12. Under California law, "[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code section 226.7; Wage Order 4 at §12. Rest periods, insofar as practicable, shall be in the middle of each work period. Wage Order 4 at §12. Additionally, the rest period requirement "obligates employers to permit – and authorizes employees to take – off-duty rest periods." *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time. *Id*.

154. If the employer fails to authorize or permit a required rest period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday the employer did not authorize or permit a legally required rest period. Labor Code section 226.7; Wage Order 4 at § 12.

155. On occasions when Defendants paid Plaintiff and other current and former aggrieved California-based hourly non-exempt employees a "premium" wage for late, missed, short, on-premises, on-duty, and/or interrupted rest periods, Defendants failed to pay the one (1) additional hour of pay at Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regular rate of compensation. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration including, but not limited to, for example "Emergency Disaster Pay", "FC Incentive Pay", "quarterly bonus" and "shift differential pay", when calculating Plaintiff and other current and former aggrieved California-based hourly non-exempt employees' regular rate of compensation for the purpose of paying rest period premiums.

156. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or procedure of failing to compensate Plaintiff and other current and former aggrieved California-based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each workday they did not receive legally required and compliant rest periods, in violation of Labor Code section 226.7.

157. Finally, on occasions when Defendants paid Employee and other current and former

aggrieved California-based hourly non-exempt employees a "premium" wage for late, missed, short, on-premises, on-duty, and/or interrupted rest periods, Defendants failed to pay the one (1) additional hour of pay at Employee's and other current and former aggrieved California-based hourly non-exempt employees' regular rate of compensation. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration such as "Emergency Disaster Pay", "FC Incentive Pay", "quarterly bonus" and "shift differential pay", for example, when calculating Employee's and other current and former aggrieved California-based hourly non-exempt employees' regular rate of pay for the purpose of paying rest period premium wages.

158. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff and other current and former aggrieved California-based hourly non-exempt employees not receiving wages to compensate them for workdays in which Defendants did not provide them with rest periods in compliance with California law.

159. **Failure to Indemnify for Losses and Expenditures Incurred as Part of Employment:** California law requires that every employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in discharge of his or her duties or at the obedience of the directions of the employer. Moreover, an employer is prohibited from passing the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, § 2802.)

160. Defendants have violated Labor Code Section 2802 by failing to indemnify Plaintiff and other current and former aggrieved California-based non-exempt hourly employees' necessary expenditures they incurred in the discharge of their duties. These policies, practices, and/or procedures included, but were not limited to, requiring Plaintiff and other current and former aggrieved California-based non-exempt hourly employees' who work remotely to use or purchase their own tools and/or resources in order to work for Defendants, including but not limited to internet, and/or cell phone (internet and cellular data use) for work-related purposes - without reimbursing Plaintiff and other current and former aggrieved California-based non-exempt hourly employees' for such use.

161. Moreover, Defendants employed policies and procedures which ensured Plaintiff and aggrieved employees would not receive indemnification for their employment related expenses.

This practice resulted in Plaintiff and aggrieved employees not receiving such indemnification in compliance with California law.

162. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their employment related expenses, including but not limited to costs related to use of their personal cell phones and costs associated with their uniforms pursuant to Labor Code section 2802.

163. **Failure to pay wages for accrued paid sick days at the regular rate of pay:** Defendants had a policy and/or procedure where Employee and other current and former aggrieved California-based hourly non-exempt employees accrued paid sick time.

164. Labor Code section 246, subdivision (a), states in relevant part "[a]n employee who…works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days." Additionally, an employee accrues paid sick days at the rate of no-less-than one (1) hour per every thirty (30) hours worked, beginning at the commencement of employment. Labor Code section 246(b).

165. Here, Employee and other current and former aggrieved California-based hourly non-exempt employees were employed by Defendants for 30 or more days and were entitled to paid sick days. Also, Employee and other current and former aggrieved California-based hourly non-exempt employees began accruing paid sick days since the beginning of each of their respective employment with Defendants.

166. Labor Code section 246, subdivision (l), provides that an employer shall calculate the paid sick time for non-exempt employees in the same manner as the regular rate of pay for the workweek in which the employee elected to use paid sick time. "The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee." See Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

167. In this case, Employee alleges that when she and other current and former aggrieved California-based hourly non-exempt employees elected to use paid sick time, Defendants failed to pay them sick time wages at the proper sick time rate of pay due to Defendants' failure to include all remuneration when calculating the sick time rate of pay. Specifically, Defendants maintained a

policy, practice, and/or procedure of failing to include all remuneration such as "Emergency Disaster Pay", "FC Incentive Pay", "quarterly bonus" and "shift differential pay", for example, when calculating Employee's and other current and former aggrieved California-based hourly non-exempt employees' regular rate of pay for the purpose of paying sick time.

168. Defendants' foregoing policy, practice, and/or procedure resulted in Defendants failing to pay Employee and other current and former aggrieved California-based hourly non-exempt employees at their sick time regular rate of pay for all sick time accrued, in violation of Labor Code section 246.

169. **Failure to provide complete and accurate wage statements:** Labor Code section 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an employee his or her wages, the employer must "furnish each of his or her employees ... an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."

170. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all wages earned (including minimum wages, overtime wages, meal period premium wages, and/or rest period premium wages) rendered Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees' wage statements inaccurate, in violation of Labor Code section 226.

171. **Failure to timely pay final wages:** An employer is required to pay all unpaid wages timely after an employee's employment ends. The wages are due immediately upon termination or

within seventy-two (72) hours of resignation. Labor Code sections 201, 202.

172. As a result of the aforementioned violations of the Labor Code, Plaintiff alleges that employees were not paid their final wages in a timely manner as required by Labor Code section 203. Minimum wages for all hours worked, overtime wages for overtime hours worked, meal and/or rest period premium wages, sick rate pay, and required indemnification of employee expenditures (all described above), were not paid at the time of separation of employment, whether voluntarily or involuntarily, as required by Labor Code sections 201, 202, and 203.

## PRAYER FOR RELIEF

**WHEREFORE, PLAINTIFF ON HER OWN BEHALF AND ON BEHALF OF THOSE SIMILARLY SITUATED, PRAYS AS FOLLOWS:**

**ON THE FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH, AND NINTH CAUSES OF ACTION:**

1. That the Court determine that this action may be maintained as a class action (for the entire California Class and/or any and all of the specified sub-classes) pursuant to Code of Civil Procedure section 382 and any other applicable law;

2. That the named Plaintiff be designated as a class representative for the California Class (and all sub-classes thereof);

3. For a declaratory judgment that the policies, practices, and/or procedures complained herein are unlawful; and

4. For an injunction against Defendants enjoining them, and any and all persons acting in concert with them, from engaging in each of the unlawful policies, practices, and/or procedures set forth herein.

## ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the minimum wage provisions of the Labor Code and the IWC Wage Order as to Plaintiff and the Minimum Wage Class;

2. For damages, according to proof, including but not limited to unpaid wages;

3. For any and all legally applicable penalties;

4. For liquidated damages pursuant to Labor Code section 1194.2;

5. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 1194, and post-judgment interest;

6. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code section 1194;

7. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and,

8. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

**ON THE SECOND CAUSE OF ACTION:**

1. That Defendants be found to have violated the overtime provisions of the Labor Code and the IWC Wage Order as to Plaintiff and the Overtime Class;

2. For damages, according to proof, including but not limited to unpaid wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 1194, and post-judgment interest;

5. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code section 1194; and

6. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

**ON THE THIRD CAUSE OF ACTION:**

1. That Defendants be found to have violated the meal period provisions of the Labor Code and the IWC Wage Order as to Plaintiff and the Meal Period Class;

2. For damages, according to proof, including unpaid premium wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and

5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

**ON THE FOURTH CAUSE OF ACTION:**

1. That Defendants be found to have violated the rest period provisions of the Labor Code and the IWC Wage Order as to Plaintiff and the Rest Period Class;

2. For damages, according to proof, including unpaid premium wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and

5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

**ON THE FIFTH CAUSE OF ACTION:**

1. That the Defendants be found to have violated the indemnification provisions of the Labor Code as to the Plaintiff and the Indemnification Class;

2. For damages, according to proof, including unpaid use and/or costs of necessary tools and/or resources;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 2802, and post-judgment interest;

5. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code section 2802; and

6. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

**ON THE SIXTH CAUSE OF ACTION:**

1. That Defendants be found to have violated the provisions of the Labor Code regarding failure to pay wages for accrued paid sick time as to Plaintiff and the Sick Time Pay Class;

2. For damages and/or penalties, according to proof, including unpaid regular rate wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor

Code section 218.6, and post-judgment interest; and

5. For such other further relief, in law and/or equity, as the Court deems just or appropriate

4. For attorneys' fees and costs of suit, including but not limited to those recoverable under Labor Code section 246; and

5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

**ON THE SEVENTH CAUSE OF ACTION:**

1. That Defendants be found to have violated the provisions of the Labor Code regarding accurate itemized paystubs as to Plaintiff and the Wage Statement Class;

2. For damages and/or penalties, according to proof, including damages and/or statutory penalties under Labor Code section 226, subdivision (e), and any other legally applicable damages or penalties;

3. For pre-judgment interest and post-judgment interest;

4. For an injunction against Defendants enjoining them, and any and all persons acting in concert with them, from engaging in violations of Labor Code section 226(a);

5. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code section 226, subdivision (e); and,

6. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

**ON THE EIGHTH CAUSE OF ACTION:**

1. That Defendants be found to have violated Business and Professions Code sections 17200, *et seq*., for the conduct alleged herein as to the California Class;

2. A declaratory judgment that the practices complained herein are unlawful;

3. An injunction against Defendants enjoining them, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies and patterns set forth herein;

4. For restitution to the full extent permitted by law; and

5. For such other further relief, in law and/or equity, as the Court deems just or

appropriate.

**ON THE NINTH CAUSE OF ACTION:**

1. That Defendants be found to have violated the provisions of the Labor Code regarding payment of all unpaid wages due upon resignation or termination as to Plaintiff and the Waiting Time Class;

2. For damages and/or penalties, according to proof, including damages and/or statutory penalties under Labor Code section 203 and any other legally applicable damages or penalties;

3. For pre-judgment interest, including under Labor Code section 218.6, and post-judgment interest; and

4. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

**ON THE TENTH CAUSE OF ACTION:**

1. That Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to those recoverable under the California Labor Code, including but not limited to section 2699(f);

3. For attorneys' fees and costs of suit, including but not limited to those recoverable under California Labor Code section 2699(g); and

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

Dated: June 26, 2024

Respectfully submitted,
**LAVI & EBRAHIMIAN, LLP**

By: *______/s/ Malcolm Clayton______*
Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Malcolm E. Clayton, Esq.
Attorneys for Plaintiff ANDREA SOSA
on behalf of herself and others similarly situated

/ / /

## DEMAND FOR JURY TRIAL

Plaintiff ANDREA SOSA demands a trial by jury for herself and the California Class on all claims so triable.

Dated: June 26, 2024

Respectfully submitted,
**LAVI & EBRAHIMIAN, LLP**

By: *\/s/ Malcolm Clayton*
Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Malcolm E. Clayton, Esq.
Attorneys for Plaintiff ANDREA SOSA
on behalf of herself and others similarly situated

# “EXHIBIT B”

*ANDREA SOSA V. BANK OF AMERICA NATIONAL ASSOCIATION*
(CASE NOS. 22STCV18958 AND 22STCV33904)
SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES
NOTICE OF CLASS ACTION SETTLEMENT

*You are not being sued. This notice affects your rights. Please read it carefully.*

## Why Am I Receiving This Notice

On <insert>, the Honorable Stuart M. Rice of the Superior Court of the State of California for the County of Los Angeles (the "Court") granted preliminary approval of a class action settlement ("Settlement") in connection with *Andrea Sosa v. Bank of America National Association*, Case Nos. 22STCV18958 and 22STCV33904 (the "Lawsuits"). You have received this notice because the records of Bank of America, N.A. ("Bank of America") indicate that you fall within one or both of the following groups, and therefore may be entitled to a payment from the Settlement:

> "Settlement Class Members:" current or former non-exempt employees who worked for Defendant in California from June 26, 2020, through July 15, 2024, but excluding: (1) anyone other than the Plaintiff who has filed their own separate class or PAGA action as a named plaintiff alleging the same or similar claims being released by the settlement prior to April 16, 2024; and (2) any current or former non-exempt employees who previously released all claims being released in the settlement of the Lawsuits.
>
> "Aggrieved Employees:" current and former non-exempt employees who worked for Defendant in California from June 9, 2021, through July 15, 2024, and whose PAGA claims being settled and released in this Settlement Agreement have not all been released previously as part of another court-approved PAGA settlement. Aggrieved Employees will be entitled to a share of the Employee Payment of the PAGA Amount even if their individual claims have been fully or partially released, and even if they submit a valid Request for Exclusion (as defined below) from the Settlement Agreement.

This is not a notice of a lawsuit against you. **You are not being sued.** The Lawsuits were brought on behalf of all persons who are Settlement Class Members and/or Aggrieved Employees for their benefit. Your participation, or nonparticipation, in the Settlement will not affect your employment with Bank of America in any way whatsoever.

The notice is 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.

The Final Fairness and Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at <insert> a.m./p.m. on <insert>, 2025 in Courtroom ___ of Superior Court of the State of California for the County of Los Angeles located at 312 North Spring Street, Los Angeles, CA 90012.

Please also note that the Final Fairness and Approval Hearing may be rescheduled by the Court to another date and/or time. Please visit [CPT website] for any scheduling changes.

If you move, you must send the Settlement Administrator your new address; otherwise, you may never receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator.

You may participate in the Settlement notwithstanding Bank of America's Arbitration Policy and that Policy's requirement that employees bound by that Policy arbitrate their Covered Claims, as defined under the Policy. Your participation in the Settlement and the Lawsuits does not impact the enforceability of the Arbitration Policy, and Bank of America does not waive any procedural or substantive right to enforce the Arbitration Policy or any other applicable arbitration agreement, in any other action or circumstances.

## Summary of the Litigation

Plaintiff Andrea Sosa, on her behalf and on behalf of other current and former non-exempt employees, alleges that Bank of America violated California state labor laws as a result of, among other things, its alleged: (1) failure to pay minimum wage for all hours worked; (2) failure to pay overtime compensation properly; (3) failure to provide compliant meal periods and failure to pay meal period premium wages properly; (4) failure to provide compliant rest breaks and failure to rest break period premium wages properly; (5) failure to indemnify employees for employment-related losses/expenditures; (6) failure to pay wages for accrued paid sick days at the regular rate of pay; (7) failure to provide employees with accurate, itemized wage statements; (8) failure to timely pay all earned wages and final paychecks due at the time of separation of employment; and (9) unfair business practices. Plaintiff also seeks civil penalties for the above alleged violations pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA").

Bank of America contends that it has complied with all applicable state and federal laws, and Bank of America continues to deny each and all of the claims of the Lawsuits.

On March 21, 2024, the Parties participated in a mediation with Paul Grossman, an experienced mediator in class action litigation. Mr. Grossman made a mediator's proposal that the Parties accepted on April 16, 2024, and the Parties signed a Memorandum of Understanding on May 29, 2024.

Counsel for Plaintiff, and the attorneys appointed by the Court to represent the class, Lavi & Ebrahimian, LLP ("Class Counsel"), have investigated and researched the facts and circumstances underlying the issues raised in the cases and the applicable law. While Class Counsel believe that the claims alleged in the Lawsuits have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Settlement Class Members.

Bank of America believes the claims alleged in the Lawsuits have no merit, but has agreed to settle the Lawsuits in order to avoid the expense of continued litigation. By agreeing to settle, Bank of America is **not** admitting liability on any of the factual allegations or claims in the Lawsuits, and is not admitting that class certification would have been appropriate in either of the Lawsuits.

## Summary of The Proposed Settlement Terms

Under the terms of the Settlement, Bank of America will pay a total amount of $4,400,000.00. This amount is inclusive of: (1) Individual Settlement Payments to all Settlement Class Members and the employee-side payroll taxes associated therewith; (2) an Enhancement Award of $10,000 to Plaintiff for her services on behalf of the class; (3) Class Counsels' attorneys' fees in an amount up to one-third of the Gross Settlement Fund ($1,466,666.67) and Plaintiff's litigation costs and expenses in an amount up to $35,000.00; (4) a $220,000.00 settlement of claims under PAGA ("PAGA Amount"), inclusive of a $165,000.00 payment to the California Labor and Workforce Development Agency ("LWDA") ("LWDA Payment"), and a $55,000.00 payment ("Employee Payment") to be divided amongst all Aggrieved Employees (regardless of whether they opt-out of the Settlement); and (5) reasonable Settlement Administrator's fees and expenses currently estimated at $40,000. After deducting the above payments, a total of approximately $2,638,333.33 (the "Net Settlement Fund") will be allocated to Settlement Class Members who do not opt out of the Settlement.

A Settlement Administrator – CPT Group – has been appointed by the Court to administer the Settlement, including distributing this notice and the payments described above.

**Individual Settlement Payments to Settlement Class Members**. To determine each Settlement Class Member's Estimated and Final Individual Settlement Payments, Defendant shall provide: (1) the number of pay periods during which each Settlement Class Member was employed (and was not on a leave of absence or on vacation for the entire week) for the period of November 1, 2022, through July 15, 2024, minus any pay periods for which all claims being settled and released in this Settlement Agreement have already been released ("Period A Unreleased Individual Pay Periods"); and (2) the number of pay periods during which each Settlement Class Member was employed (and was not on a leave of absence or on vacation for the entire week) and received Occasional Illness pay for the period of June 26, 2020 through October 31, 2022 ("Period B Unreleased Individual Pay Periods"). To determine each Settlement Class Member's estimated share of the Net Settlement Fund, the Settlement Administrator will assign each Settlement Class Member a total number of points by:

1. Multiplying his or her number of Period A Unreleased Individual Pay Periods by 5. This amount shall be referred to as the "Weighted Period A Points."

2. Adding the Weighted Period A Points to his or her number of Period B Unreleased Individual Pay Periods. The sum of a Settlement Class Member's Weighted Period A Points and the number of Period B Unreleased Individual Pay Periods shall be referred to as the Settlement Class Member's "Individual Total Pay Period Points.

The Settlement Administrator will then:

1. Add the Individual Total Pay Period Points for every Settlement Class Member and divide the Net Settlement Fund by that sum to get the dollar value per Pay Period Point, which value shall be referred to as the "Class Pay Period Value," and

2. Multiply each Settlement Class Member's Individual Total Pay Period Points by the Class Pay Period Value to get each Settlement Class Member's "Estimated Individual Settlement Payment."

After Final Approval Order and Judgment of this Settlement Agreement is entered, the Settlement Administrator will then calculate each Participating Class Member's Final Individual Settlement Payment as follows:

1. Add the Individual Total Pay Period Points for each Participating Class Member and divide the Net Settlement Fund by that number to get a dollar value per Pay Period Point, which value shall be referred to as the "Final Class Pay Period Value."

2. Multiply each Participating Class Member's Individual Total Pay Period Points by the Final Class Pay Period Value to get each Participating Class Member's "Final Individual Settlement Payment."

The Individual Settlement Payment will be reduced by any required deductions for each Class Member as specifically set forth herein, including employee-side tax withholdings or deductions.

According to Defendant's records, you worked a total of << Period A PayPeriods>> Unreleased Individual Pay Periods and << Period B PayPeriods>> Unreleased Individual Pay Periods. Please note that if you previously released the Released Claims in a previous individual release or a collective or class settlement that has been factored into the number of Unreleased Individual Pay Periods. Your estimated Individual Settlement Payment is <<SettAmt>>. This is an estimate only.

**Aggrieved Employee PAGA Payments**. Bank of America will calculate the number of pay periods during which the employee was an Aggrieved Employee minus any pay periods for which PAGA claims being settled and released in the Settlement have already been released ("Unreleased PAGA Pay Periods"). To determine the Aggrieved Employee PAGA Payments, the Settlement Administrator will use the following formula: the Settlement Administrator shall calculate a pay period value by dividing the Employee Payment by the total number of Unreleased PAGA Pay Periods for all Aggrieved Employees ("PAGA Pay Period Value"). The Settlement Administrator shall then calculate each Aggrieved Employee's share of the Employee Payment by multiplying the Aggrieved Employee's Unreleased PAGA Pay Periods by the PAGA Pay Period Value.

Submitting a Request for Exclusion does not exclude an Aggrieved Employee from the release of claims under California Labor Code §§ 2698, *et seq.*, and the Aggrieved Employee will receive their portion of the Employee Payment even if he or she submits a valid Request for Exclusion.

According to Defendant's records, you worked a total of <<PAGAPeriods>> Unreleased PAGA Pay Periods. Please note that if you previously participated in another settlement that resulted in you and the LWDA releasing the PAGA Released Claims that has been factored into the number of Unreleased PAGA Pay Periods. Your estimated Aggrieved Employee PAGA Payment is <<PAGAAmt>>. This is an estimate only.

**Your Estimated Payment**: Based on the above, your estimated payment from the settlement is approximately <<estAmount>>. If you believe the pay period information provided above is incorrect, you may dispute the calculation by sending payroll records or documentation in support of your dispute to the Settlement Administrator. Please remember that the number of pay periods used to calculate the payments is impacted by any applicable previous individual release or collective or class settlement where you previously released the Released Claims and/or PAGA Released Claims. All disputes must be postmarked or faxed on or before <insert date> and must be sent to:

*Andrea Sosa Settlement Administrator*
c/o CPT Group, Inc.
[CPT Address]

If you dispute the information stated above, Bank of America's records will control unless you are able to submit payroll records that establish otherwise.

**Taxes on Settlement Payments**. For purposes of this settlement, Final Individual Settlement Payments will be allocated 15% for unpaid wages and 85% for civil or statutory penalties, non-wage damages, and pre-judgment interest. The Aggrieved Employee PAGA Payments will be treated as civil and/or statutory penalties. IRS Form W-2s and IRS Form 1099s, as appropriate, will be distributed to Participating Class Members, Aggrieved Employees, and the appropriate taxing authorities. You should consult your tax advisor concerning the tax consequences of the payments you receive under the Settlement.

## Your Options Under the Settlement

**Option 1 – *Automatically Receive a Payment from the Settlement***

If want to receive your payment from the Settlement, then no further action is required on your part. You will automatically receive your payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the Settlement, you will be mailed a check for your Individual Settlement Payment and Aggrieved Employee PAGA Payment. In addition, you will be deemed to have released or waived the Released Claims and Released PAGA Claims:

> **Released Claims**: Each Participating Class Member (which includes Plaintiff) will release Bank of America, N.A., and any of its affiliates, parents (including Bank of America Corporation), subsidiaries, predecessors, or successors, and each of their employees, agents, shareholders, officers, directors, attorneys, insurers, and any person or entity that could be jointly liable with Bank of America Corporation and Bank of America, N.A. for the claims being released by this Settlement Agreement (individually a "Released Party" and collectively the "Released Parties") from any and all actions, causes of action, suits, liabilities, claims, and demands whatsoever (including without limitation under theories of successor liability, joint employer liability, agency and/or conspiracy), whether known or unknown, which the Participating Class Member has or had against the Released Parties, or any of them, that are, were, or reasonably could have been asserted based on the facts, theories, and/or statutory or other violations alleged in the Second Amended Complaint, all other pleadings filed in the Lawsuits, and the notices sent to the LWDA pursuant to PAGA by or on behalf of the Plaintiff, and claims under the California Unfair Competition Law predicated on the foregoing, including any related statutory damages, liquidated damages, penalties (including but not limited to penalties under PAGA), interest, and/or attorneys' fees and costs, under any federal, state, local or administrative law, constitution, charter, law, rule, regulation or ordinance (including but not limited to the California Labor Code, any California Industrial Welfare Commission Wage Orders, and the California Unfair Competition Law) through July 15, 2024 (the "Released Claims"). For avoidance of doubt, the Released Claims shall include, but not be limited to, any claims for: unpaid and/or underpaid

wages of any type, failure to pay wages for all hours worked, failure to pay overtime, failure to provide or pay (or properly pay) for missed or non-compliant meal breaks, failure to authorize and permit or pay (or properly pay) for missed or non-compliant rest breaks, failure to pay wages at the regular rate of pay including but not limited to overtime, sick leave, and meal and rest break premiums, failure to indemnify employees for business expenses / employment-related losses / expenditures, failure to furnish accurate itemized wage statements, and failure to timely pay wages during employment and/or upon the termination of employment.

**Released PAGA Claims**: The LWDA and the Aggrieved Employees will release the Released Parties from the following "Released PAGA Claims": any and all actions, causes of action, suits, liabilities, claims, and demands whatsoever (including without limitation under theories of successor liability, joint employer liability, agency and/or conspiracy), whether known or unknown, which the Aggrieved Employee or State of California has or had against the Released Parties, or any of them, that are, were, or reasonably could have been asserted based on the facts, theories, and/or statutory or other violations alleged in the Second Amended Complaint, all other pleadings filed in the Lawsuits, and the notices sent to the LWDA pursuant to PAGA by or on behalf of the Plaintiff, including but not limited to, civil penalties under the Private Attorney General Act of 2004, Cal. Labor Code § 2698 et seq., related to any claims for unpaid and/or underpaid wages of any type, failure to pay wages for all hours worked, failure to pay overtime, failure to provide or pay (or properly pay) for missed or non-compliant meal breaks, failure to authorize and permit or pay (or properly pay) for missed or non-compliant rest breaks, failure to pay wages at the regular rate of pay including but not limited to overtime, sick leave, and meal and rest break premiums, failure to indemnify employees for business expenses / employment-related losses / expenditures, failure to furnish accurate itemized wage statements, failure to timely pay wages during employment and/or upon the termination of employment, and claims under the California Unfair Competition Law predicated on the foregoing, under any federal, state, local or administrative law, constitution, charter, law, rule, regulation or ordinance (including but not limited to the California Labor Code, any California Industrial Welfare Commission Wage Orders, and the California Unfair Competition Law), whether for economic damages, noneconomic damages, restitution, statutory penalties, civil penalties, liquidated damages, punitive damages, interest, attorneys' fees, costs of suit or other monies, through July 15, 2024.

All Participating Class Members (including, without limitation, Plaintiff) and Aggrieved Employees intend and/or are deemed to intend that this Agreement should be effective as a bar to any and all of the claims released by the paragraphs above. In furtherance of this intention, all Participating Class Members and Aggrieved Employees expressly waive any and all rights or benefits conferred on them by the provisions of Section 1542 of the California Civil Code, with respect to the Released Claims only. Section 1542 provides as follows:

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

You understand fully the statutory language of Civil Code § 1542, and, with this understanding, assume all risks for the Released Claims and Released PAGA Claims released hereunder, whether known or unknown, suspected or unsuspected, and specifically waive all rights they may have under California Civil Code § 1542 with regard to the Released Claims and Released PAGA Claims only. You understand that, if any of the facts relating in any manner to the Lawsuits, or to the release and dismissal of claims as provided in the Settlement Agreement, are hereafter found to be other than or different from the facts now believed to be true, they have expressly accepted and assumed that risk and agree that this Agreement and the release of claims contained herein shall nevertheless remain effective. You desire and intend, or are deemed to desire and intend, that the Settlement Agreement shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown and unsuspected claims, if any, as well as those relating to the claims referred in the paragraphs above.
The waiver contained in this paragraph is not intended to expand the nature of the claims released by the Participating Class Members and Aggrieved Employees beyond the Released Claims and Released PAGA Claims set out in the paragraphs above, but rather is intended to ensure that the releases set out in the paragraphs above are fully enforceable and is not impeded by Section 1542.

**Option 2 – *Opt Out of the Settlement***
If you do not wish to participate in the Settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator, which must expressly include: (1) language indicating an objective intent not to participate in the class settlement, such as "I elect to opt-out of the *Andrea Sosa v. Bank of America, N.A.* class action settlement. I understand that by doing so, I will not participate in the settlement, and will not receive any money from it. However, I will still receive my Aggrieved Employee PAGA Payment, if any, and will still be bound to the PAGA release."; (2) your full name, address, telephone number, and last four digits of your Social Security Number; and (3) your signature.

If you do not wish to participate in the Settlement, you can mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

*Andrea Sosa Settlement Administrator*
c/o CPT Group, Inc.
[CPT address and fax]

The Request for Exclusion must be postmarked or faxed not later than <insert>. If you submit a Request for Exclusion that is not postmarked or faxed by <insert>, or that does not include all of the required information, your Request for Exclusion will be rejected, and you will be included in the Settlement Class.

If you choose **Option 2**, you will not receive an Individual Settlement Payment and you will not release the Released Claims. However, if you are an Aggrieved Employee, you will still receive your Aggrieved Employee PAGA Payment and release the Released PAGA Claims.

**Option 3 – *Object to the Settlement***
If you decide to object to the Settlement because you find it unfair or unreasonable, you may submit a written objection stating why you object to the settlement. Written objections must provide: (1) your full name and signature; (2) a written statement of all grounds for the objection accompanied by any legal and

factual grounds for such objection; and (3) a statement indicating whether you are represented by counsel and identifying any such counsel. The objection must be mailed to the administrator at *Andrea Sosa Settlement Administrator*, c/o CPT Group, Inc., [CPT address].

Any Settlement Class Member who is capable of objecting may do so orally by appearing at the Final Fairness Hearing. The Court retains final authority with respect to the consideration and admissibility of any objections. Counsel for the parties shall file any response to the objections submitted by objecting Settlement Class Members at least ten (10) court days before the date of the Final Fairness and Approval Hearing.

All written objections must be received by the Settlement Administrator by not later than <insert>. By submitting an objection, you are not excluding yourself from the Settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the Settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Fairness and Approval Hearing set for <insert> at <insert> a.m./p.m. in the Superior Court of the State of California for the County of Los Angeles and discuss your objection with the Court and the parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the Settlement and be deemed to have released the Released Claims and Released PAGA Claims if the Court grants final approval.

## Additional Information

This Notice of Class Action Settlement is only a summary of the Lawsuits and the Settlement. If there is any discrepancy between this Notice and the Settlement Agreement, the terms of the Settlement Agreement will control. For a more detailed statement of the matters involved in the Lawsuits and the Settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator, Class Counsel, or counsel for Bank of America:

Counsel for Plaintiff:

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Elizabeth L. Harrier
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PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE WITH INQUIRIES.