

1 APALLA U. CHOPRA, SBN 163207
2 achopra@omm.com
3 O'MELVENY & MYERS LLP
4 400 South Hope Street
5 Los Angeles, California 90071-2899
6 Telephone: 213-430-6000
7 Facsimile: 213-430-6407

8 ADAM P. KOHSWEENEY, SBN 229983
9 akohsweeney@omm.com
10 SUSANNAH K. HOWARD, SBN 291326
11 showard@omm.com
12 O'MELVENY & MYERS LLP
13 Two Embarcadero Center
14 San Francisco, CA 94111-3823
15 Telephone: 415-984-8912
16 Facsimile: 415-984-8701

17 Attorneys for Defendant
18 Bank of America, N.A.

19 AARON KAUFMANN, SBN 148580
20 akaufmann@leonardcarder.com
21 DAVID POGREL, SBN 203787
22 dpogrel@leonardcarder.com
23 LEONARD CARDER, LLP
24 1330 Broadway, Suite 1450
25 Oakland, CA 94612
26 Telephone: 510-272-0169
27 Facsimile: 510-272-0174

28 EDWARD J. WYNNE, SBN 165819
ewynne@wynnelawfirm.com
WYNNE LAW FIRM
Wood Island
80 E. Sir Francis Drake Blvd., Ste. 3-G
Larkspur, CA 94939
Telephone: 415-461-6400
Facsimile: 415-461-3900

Attorneys for Plaintiff and the class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco

GINA MCLEOD, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A., and DOES
1 through 10, inclusive,

Defendant.

Case No. 3:16-cv-03294-EMC

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

Judge: Hon. Edward M. Chen

Complaint Filed: May 9, 2016

I.
PREAMBLE

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

2. McLeod, who was formerly employed by BofA as a Mortgage Loan Officer, filed a complaint commencing the above-captioned action in the Superior Court of California for the County of Alameda on May 09, 2016, where it was assigned case number RG16814887. BofA filed an answer on June 13, 2016. On June 14, 2016, BofA filed a notice of removal [Doc. No. 1], and the action was removed to this Court and assigned case number 3:16-CV-03294-EMC (together with the prior removed action, the “Lawsuit”). McLeod filed a First Amended Complaint [Doc. No. 13] on July 20, 2016, in response to which BofA filed an Answer to First Amended Complaint [Doc. No. 14] on the same day.

3. The Lawsuit generally alleges that the Settling Class consists of “salespersons who paid out-of-pocket business expenses reasonably necessary for the performance of their jobs as Loan Officers employed by [BofA] for which [Named] Plaintiff and [the Settling Class] have not received reimbursement from” BofA. (First Amend. Compl. ¶ 1.) Based on this allegation, the Lawsuit contends that BofA failed to comply with California Labor Code § 2802, thereby also violating The California Labor Code Private Attorney General Act of 2004, California Labor Code §§ 2698 *et seq.* (“PAGA”) and engaging in unfair business practices in violation of California Business & Professions Code § 17200 *et seq.* The Lawsuit is framed as both a class action and a PAGA representative action, and the Named Plaintiff seeks statutory and/or civil penalties, an award of allegedly unreimbursed expenses, injunctive relief, restitution, declaratory relief, attorneys’ fees and costs, and such other relief as the Court may award.

4. BofA believes that the Lawsuit’s claims and allegations are meritless, and contends that it has a robust business expense reimbursement policy that fully complies with all applicable law.

5. On December 18, 2016, the Settling Parties attended a full day mediation in San Francisco, California before private mediator David A. Rotman of Gregorio, Haldeman & Rotman, a highly regarded mediator who is intensely familiar with employment class actions lawsuits. The mediation was not successful. The Settling Parties aggressively litigated the Lawsuit, and after full briefing Named Plaintiff’s class certification motion was argued on November 16, 2017. This Court certified a class in an Order dated December 13, 2017 [Doc. No. 39], defining the class as:

All persons who are or have been employed, at any time from May 9, 2012 through [December 13, 2017] by [BofA] in California under the job titles Loan Officer, Senior Loan Officer, Mortgage Loan Officer, Senior Mortgage Loan Officer, and Senior Lending Officer.

Subsequently, the Settling Parties attended a Settlement Conference before Magistrate Judge Elizabeth D. Laporte on May 18, 2018. Although the case did not settle on that

1 date the Settling Parties continued direct negotiations, and sought additional guidance
2 from this Court in an *in camera* case management conference on June 28, 2018. The
3 Settling Parties ultimately reached a settlement in principle on August 12, 2018.

4 6. During the course of the Lawsuit, the Settling Parties have engaged in
5 significant investigation of the facts at issue and have exchanged extensive documents and
6 information, which have allowed the Settling Parties to fully assess the value of the claims
7 involved. The Settling Parties have agreed to avoid further litigation and to settle and
8 resolve the Lawsuit, as well as all existing and potential disputes, actions, lawsuits,
9 charges, and claims that are or could have been raised in the Lawsuit, that the Settling
10 Class has or may have against BofA, to the fullest extent permitted by law and without
11 any admission of liability or wrongdoing by either party. The Named Plaintiff and their
12 counsel have concluded that the Settlement is fair, reasonable, and in the best interests of
13 the Settling Class and respectfully request that the Settlement be approved by the Court.

14 7. This Agreement shall become effective upon the “Effective Date,” as set
15 forth in Section VII below. The Settling Parties hereby agree to do all things and to
16 engage in all procedures reasonably necessary and appropriate to obtain final Court
17 approval of this Agreement, in consideration for: (a) the payment by BofA of the
18 consideration described herein, subject to the terms, conditions and limitations of this
19 Agreement; and (b) the release and dismissal with prejudice of the Lawsuit and all claims
20 by the Named Plaintiff and Settling Class Members, as described in Paragraphs 31, 53, 54,
21 55, and 56 of this Agreement.

22 II.

23 PAYMENTS TO THE SETTLING CLASS, CLASS COUNSEL, NAMED 24 PLAINTIFF, AND THE CLAIMS ADMINISTRATOR

25 8. Subject to Court approval, and the provisions of this Agreement, BofA shall
26 pay an aggregate total of eleven million dollars and no cents (\$11,000,000.00) (the “Gross
27 Settlement Value” or “GSV”) in consideration for the settlement and dismissal with
28 prejudice of the Lawsuit and the related release of all claims the Named Plaintiff and the

1 Settling Class Members may have against the BofA Releasees, as contained in Paragraphs
2 31, 53, 54, 55, and 56 of this Agreement. Fifty thousand United States Dollars and zero
3 cents (\$50,000.00) of the GSV (the “PAGA Allocation”) shall be allocated to claims
4 under PAGA.

5 9. BofA shall deposit the full GSV in an interest-bearing account to be
6 established by the Claims Administrator (as defined in Paragraph 14) no later than
7 fifteen (15) business days after receipt of notice of the Court’s entry of a Preliminary
8 Approval Order in connection with this settlement with all interest earned accruing to the
9 benefit of Settling Class Members and Class Counsel. Should the Settlement Effective
10 Date never be reached for any reason, the Gross Settlement Amount and all interest
11 earned shall be returned to Defendant. The GSV shall remain in said account, pending
12 occurrence of the Effective Date as defined in Section VII of the Agreement. The Claims
13 Administrator shall not disburse any portion of these funds until after the Effective Date.

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

22 III. 23 SETTLING CLASS

24 11. Solely for the purpose of effectuating this Settlement, and subject to Court
25 approval, the Settling Parties hereby stipulate to modify the certified litigation class in the
26 Lawsuit to create a “Settling Class” comprised of “Settling Class Members” defined as
27 follows:
28

1 All persons who are or have been employed, at any time from
2 May 9, 2012 through the date of Preliminary Approval, by
3 BofA in California under the job titles Mortgage Loan Officer
4 (job code SM009), Senior Mortgage Loan Officer (job code
5 SM172), Senior Lending Officer (job code SM172), FC
6 Lending Officer (job code SM611), Senior FC Lending
7 Officer - E (job code SM610), and/or Senior FC Lending
8 Officer - NE (job code SM614).

9 Accordingly, the “Settling Class Period” is defined as May 9, 2012, through the date this
10 Settlement receives Preliminary Approval.

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

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

24 14. Subject to Court approval, the Settling Parties agree that Settlement
25 Services, Inc. will be appointed as Claims Administrator. The Claims Administrator will
26 be responsible for establishing and maintaining an interest-bearing account for the GSV;
27 mailing the class notices; receiving and logging adjustment forms and requests for
28 exclusion; researching and updating addresses through skip-traces and similar means;
answering questions from the Settling Class members; reporting on the status of the
Settlement to the Settling Parties; preparing a declaration regarding its due diligence in the
claims administration process; providing the Settling Parties with data regarding the filing

1 of adjustment forms and requests for exclusion; calculating and distributing settlement
 2 checks; calculating tax obligations; remitting any and all tax obligations to the appropriate
 3 taxing authorities; processing the PAGA Allocation; and doing such other things as the
 4 Settling Parties may direct. The Claims Administrator will be solely responsible for any
 5 and all tax obligations (including, by way of example but not of limitation, any reporting
 6 obligations and/or taxes owed) resulting from interest earned by the GSV, and in no case
 7 shall BofA bear any responsibility at all with respect to same.

8 **IV.**
 9 **APPOINTMENT OF NAMED PLAINTIFF' COUNSEL**
 10 **AS SETTLING CLASS COUNSEL**

11 15. Class Counsel as defined in this Court's December 13, 2017 [Doc. No. 39],
 12 Order shall be counsel for the Settling Class.

13 **V.**
 14 **SETTLEMENT APPROVAL PROCEDURES**
 15 **AND NOTICE TO CLASS MEMBERS**

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

19 17. By October 9, 2018, Class Counsel shall file a motion requesting an order
 20 which, *inter alia*, grants preliminary approval of the Settlement Agreement, modifies the
 21 litigation class for settlement purposes only, and sets a date for the settlement fairness
 22 hearing ("Final Approval Hearing"). In conjunction with this request, Class Counsel shall
 23 submit this Agreement, supporting papers, and proposed forms of all notices and other
 24 documents, in the form attached hereto, necessary to implement the Settlement
 25 Agreement. The Preliminary Approval Order shall provide for notice of the Agreement
 26 and related matters ("Settlement Class Notice") including notice of the procedure to
 27 withdraw from the Class to be sent to the Settling Class as specified herein. The
 28 Preliminary Approval Order submitted to the Court shall be in the form attached hereto as

1 Exhibit A, and the Settlement Class Notice shall be in the form attached hereto as
2 Exhibit B, and as further described in Paragraph 47 of this Agreement.

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

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

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

26 21. The Claims Administrator shall set up and maintain a website to post the
27 Notice and provide other relevant information for Class Members about the Settlement.
28

1 The uniform resource locator (URL) of said website shall not contain the terms “Bank of
2 America” or “BofA” or similar identifier.

3 **VI.**

4 **PROCEDURE FOR OBJECTIONS AND OPT-OUTS**

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

14 23. Class members are requested to submit written objections within sixty (60)
15 days from the date the Settlement Class Notice is first mailed. Class members will also be
16 notified by the Settlement Class Notice that they may appear at the Court hearing
17 scheduled for final approval of the Settlement to have objections heard by the Court. Any
18 attorney who represents an individual objecting to the Settlement must file a Notice of
19 Appearance with the Court and timely serve counsel for all parties. All objections or
20 other correspondence must state the name and number of the case, which is *McLeod v.*
21 *Bank of America, N.A.*, Case No. 3:16-CV-03294-EMC.

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

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

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

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

VII.

THE EFFECTIVE DATE

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

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

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

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

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

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

31. Entry by the Court of an Order and Judgment Granting Final Approval and dismissing the Lawsuit with prejudice. The parties shall jointly prepare and lodge a proposed Order and Judgment to this effect in advance of the Final Approval Hearing, which shall reflect, inter alia: the dismissal of the Lawsuit with prejudice; that the Settlement is effective as a release of all claims alleged in the Lawsuit as to all individuals who did not exclude themselves from the Settlement, including those who did not cash a check or receive a payment; and the Court's approval of the settlement pursuant to the terms of this Agreement, including but not limited to the releases set out in Paragraphs 53, 54, 55, and 56.

32. The occurrence of the "Effective Date of Judgment," which shall be deemed to be the last to occur of the following:

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

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

**VIII.
EFFECT OF NON-APPROVAL,
FAILURE OF THE EFFECTIVE DATE TO OCCUR, OPT-OUTS**

IN EXCESS OF FIVE PERCENT

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

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

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

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

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

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

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

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

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

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

38. BofA recognizes that Class Counsel will apply to the Court for an award of: (i) attorneys' fees in an amount up to, but not more than, thirty percent (30%) of the GSV; and (ii) reasonable and necessary costs and expenses (including expenses incurred by Named Plaintiff in the prosecution of this action) in an amount up to, but not more than, seventy-five thousand United States Dollars and no cents (\$75,000.00). BofA will not oppose Class Counsel's application under this Paragraph 38 and the Named Plaintiff, Class Counsel, and Settling Class Members shall not seek payment of attorneys' fees or reimbursement of costs or expenses except as set forth herein. Class Counsel's application under this Paragraph 38 shall be scheduled for determination at the Final Approval Hearing, but Class Counsel's application shall be filed and served before the Class Notice is distributed and will be posted on Class Counsel's website and the Claims Administrator's website.

39. BofA recognizes that, at the same time the application under Paragraph 38 is made, Class Counsel will also apply to the Court for an additional award to Named Plaintiff, in an amount not to exceed fifteen thousand United States Dollars and no cents (\$15,000.00), as reasonable additional compensation for the time and effort expended by her in connection with the initiation and maintenance of the Lawsuit and in consideration for the additional release set out in Paragraph 54 (the "Enhancement Award"). BofA will not oppose Class Counsel's application under this Paragraph 39 and the Named Plaintiff, Class Counsel, and Settling Class Members shall not seek payment of any additional enhancement awards except as set forth herein. Any Enhancement Award will be in addition to any amount McLeod may be entitled to receive on account of her own

1 individual claims pursuant to Section XI of this Agreement. Class Counsel's application
2 under this Paragraph 39 shall be scheduled for determination at the Final Approval
3 Hearing, but Class Counsel's application shall be filed and served before the Class Notice
4 is distributed and will be posted on Class Counsel's website and the Claims
5 Administrator's website.

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

8 41. If the Court does not approve the total amount of attorneys' fees, costs,
9 and/or Enhancement Award requested by Class Counsel pursuant to Paragraphs 38 and/or
10 39 of this Agreement, any remaining portion of requested amount will be added to the Net
11 Settlement Value (as that term is defined in Paragraph 43(e) of this Agreement). The
12 Claims Administrator shall recalculate the Class Member payments to account for any
13 reduction in the amount of attorneys' fees, costs and/or Enhancement Award made by the
14 Court.

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

23 **X.**
24 **PLAN OF ALLOCATION AND**
25 **DISTRIBUTION OF THE SETTLEMENT**

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

27 (a) First, to any attorneys' fees and reasonable and necessary costs and
28 expenses of Class Counsel (including expenses incurred by Named Plaintiff in the

1 prosecution of this action), as may be awarded by the Court pursuant to Paragraph
2 38 of this Agreement.

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

5 (c) Third, to the State of California in the amount of thirty-seven
6 thousand five hundred United States Dollars and no cents (\$37,500.00) in penalties
7 pursuant to PAGA (75% of the PAGA Allocation);

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

11 (e) Fifth, to the “Net Settlement Value” or “NSV.” The Net Settlement
12 Value shall be defined as the value of the GSV less the items described in
13 Subparagraphs 43(a)-(d). The NSV shall include the Settling Class’ share of the
14 PAGA payment in the amount of twelve thousand United States Dollars and zero
15 cents (\$12,500.00) (*i.e.*, 25% of the PAGA Allocation). The Net Settlement Value
16 shall be allocated to the Settling Class as described in Section XI. The Claims
17 Administrator shall be responsible for the allocation and distribution of the Net
18 Settlement Value to the Settling Class Members who submit timely Adjustment
19 Forms as set forth in Paragraph 46 herein.

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

26 44. The Claims Administrator shall make payments from the GSV pursuant to
27 this Section X within five (5) calendar days after the Effective Date, but only after the
28

1 Effective Date.

2 45. In light of the nature of the claims in the Lawsuit, for the purposes of
3 determining and/or calculating applicable taxes, one hundred percent (100%) of each
4 Class Member Payment (as that term is defined in Paragraph 51 of this Agreement) shall
5 be classified as ordinary income and penalties, payable on a Form 1099. One hundred
6 percent (100%) of the Named Plaintiff' Enhancement Award will be allocated to ordinary
7 income, payable on a Form 1099. The Named Plaintiff and Settling Class Members shall
8 be individually responsible for any and all tax implications or obligations attributable to
9 receipt of the Enhancement Award and/or Class Member Payments. The Claims
10 Administrator shall be responsible for generating any necessary or appropriate documents
11 and remitting any necessary monies to the appropriate agencies in connection with
12 payments hereunder (including remitting 75% of the PAGA Allocation to the State of
13 California). BofA shall provide the Claims Administrator with any information
14 reasonably necessary to perform the calculations discussed in this Paragraph 45.

15 **XI.**
16 **DETERMINATION OF THE AMOUNT, PROCESSING,**
17 **AND PAYMENT OF CLASS MEMBER CLAIMS**

18 46. The Settlement Class Notice sent to each Settling Class Member shall be
19 accompanied by a separate Adjustment Form which is attached hereto as Exhibit C. The
20 Adjustment Form shall be individualized for each Settling Class Member with
21 information reflecting the time periods during the Class Period in which the individual
22 was actively employed in a class-qualifying capacity pursuant to the spreadsheet
23 discussed in Paragraph 18 of this Agreement. Additionally, the Adjustment Form will
24 contain the estimated dollar value of the Class Member Payment, as that term is defined in
25 Paragraph 51 of this Agreement, assuming that Class Counsel's requests under Paragraphs
26 38 and 39 of this Agreement are granted in their entirety and that all information
27 contained in the spreadsheet discussed in Paragraph 18 is correct. The Class Notice and
28 Adjustment Form shall inform each Settling Class Member may submit a corrected

1 Adjustment Form, along with supporting documentation, to the Claims Administrator to
2 the extent a Settling Class Member believes that any of the information pertaining to that
3 individual on the Adjustment Form is incorrect. Return the completed Adjustment Form
4 with a postmark reflecting a date within sixty (60) calendar days from the date of first
5 mailing of the Settlement Class Notice (the "Notice Period Deadline"). Settling Class
6 Members bear the responsibility of insuring that information of the Adjustment Form is
7 correct and that any Adjustment Forms submitted to the Claims Administrator are actually
8 received by the Claims Administrator in compliance with this Agreement.

9 47. The Settlement Class Notice shall contain the release and waiver of claims
10 against BofA limited to and contained in Paragraphs 53, 55, and 56 of this Agreement,
11 and an easily understood statement alerting Settling Class Members that by failing to
12 submit a request for exclusion the individual is executing a release and waiver of all such
13 claims the employee may have against BofA, whether or not they receive a payment.

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

24 49. All putative Settling Class Members who have not returned a completed and
25 timely request for exclusion shall be bound by the dismissal with prejudice of the Lawsuit
26 and the release of claims set forth in Paragraphs 53, 55, and 56 of this Agreement.

27 50. As soon as practicable after the Notice Period Deadline, the Claims
28

Administrator shall calculate the “Per Week Payment” for use in the allocation and distribution of the Net Settlement Value to the Settling Class. The Per Week Payment shall be determined as follows:

(a) The Claims Administrator will determine, from either the spreadsheet referenced in Paragraph 18 or the resolution of a dispute pursuant to Paragraph 48, the number of weeks that a Settling Class member was actively employed during the Settling Class Period covered by the spreadsheet discussed in Paragraph 18 (the “Compensable Weeks”);

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

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

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

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

XII. RELEASES

53. **Release by Settling Class.** As of the Effective Date and in exchange for the consideration, undertakings, and covenants undertaken by BofA in this Agreement, including but not limited to the provisions of Paragraph 8 and Section XIII, and to the extent permitted by applicable law, the Settling Class hereby releases, discharges, and

1 covenants not to sue Bank of America, N.A. and Bank of America Corporation, including
2 its and their predecessors, successors, affiliates, parents, subsidiaries, related companies,
3 property owners, employees, agents, shareholders, officers, directors, attorneys, insurers,
4 and any entity which could be jointly liable with Bank of America, N.A. and/or Bank of
5 America Corporation or any of them (individually and collectively “the BofA Releasees,”)
6 from and with respect to any and all actions, causes of action, suits, liabilities, claims, and
7 demands whatsoever, whether known or unknown, during the Settling Class Period, which
8 the Settling Class, or individual members thereof, has, or had against the BofA Releasees,
9 or any of them, which are based on, or in any way related to any claims that were alleged
10 in the Lawsuit or could have been alleged in the Lawsuit based on the current or prior
11 pleadings therein, including without limitation claims for violation of: Labor Code §
12 2802; Business & Professions Code §§ 17200 *et seq.*; The Labor Code Private Attorney
13 General Act of 2004, Labor Code §§ 2698 *et seq.*; or any other California or local or
14 federal law, ordinance, and/or administrative regulation relating to the reimbursement of
15 business expenses, and any additional claims for penalties, wages, interest or other monies
16 predicated on same (the “Released Claims”).

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

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

54. **Additional Release by Named Plaintiff.** In exchange for the consideration, undertakings, and covenants undertaken by BofA in this Agreement, including but not limited to the provisions of Paragraph 8, and to the extent permitted by applicable law, the Named Plaintiff – in addition to the release set out in Paragraph 53 of this Agreement – further hereby release, discharge, and covenant not to sue the BofA Releasees with respect to and from any and all claims, charges of discrimination, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, disputed wages, obligations, debts, expenses, attorneys’ fees, damages, penalties, interest, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which they now own or hold or they have at any time heretofore owned or held, arising out of or in any way connected with her employment, separation of employment, or any other relationship with, the BofA Releasees, or any other transactions, occurrences, acts or omissions or any loss, damage or injury whatever, known or unknown, suspected or unsuspected, resulting from any act or omission by or on the part of said BofA Releasees, or any of them, committed or omitted prior to the date of the Court’s order granting final approval; provided, however, that claims for retaliation for filing the Lawsuit, for additional short term disability benefits, and under the Age Discrimination in Employment Act, as modified by the Older Workers Benefits Protection Act, are excluded (collectively, “Named Plaintiff” Claims”). The parties intend the Named Plaintiff” release

to be general and comprehensive in nature and to release all Named Plaintiff's Claims and potential Named Plaintiff's Claims against the BofA Releasees to the maximum extent permitted at law. Named Plaintiff's Claims being released include specifically, by way of description, but not by way of limitation, any and all claims arising out of or in any way related to: (i) any interactions between Named Plaintiff and the BofA Releasees; (ii) Named Plaintiff's employment, separation of employment, contractual, and/or quasi-contractual relationship with the BofA Releasees; (iii) any allegations as to disputed wages, remuneration, and/or other compensation, due by operation of statute, ordinance, contract, or quasi-contract; (iv) any federal, state, or local law prohibiting discrimination or retaliation on the basis of age, race, color, ancestry, religion, disability, sex, national origin, or citizenship, including, without limitation, claims under Title VII, the California Fair Employment and Housing Act, the California Labor Code, the California IWC Orders, the Employee Retirement Income Security Act, and the Americans With Disabilities Act or any other similar statutes whatever the city, county, state, or country of enactment; (v) any claims under the Family and Medical Leave Act of 1993 and/or the California Family Rights Act; and (vi) any transactions, occurrences, acts, statements, disclosures, or omissions occurring prior to the date of the Court's order granting final approval.

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

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

1 All Settling Class Members understand fully the statutory language of Civil Code §
 2 1542, and, with this understanding, assume all risks for claims released hereunder that
 3 have already arisen or may in the future arise, whether known or unknown, suspected or
 4 unsuspected, and specifically waive all rights they may have under California Civil Code
 5 § 1542. The Settling Class Members understand that, if any of the facts relating in any
 6 manner to the Lawsuit, or to the release and dismissal of claims as provided in this
 7 Agreement, are hereafter found to be other than or different from the facts now believed to
 8 be true, they have expressly accepted and assumed that risk and agree that this Agreement
 9 and the release of claims contained herein shall nevertheless remain effective. The
 10 Settling Class desires and intends, or is are deemed to desire and intend, that this
 11 Agreement shall be given full force and effect according to each and all of its express
 12 terms and provisions, including those relating to unknown and unsuspected claims, if any,
 13 as well as those relating to the claims referred to above.

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

18 **XIII.** 19 **CONSENT DECREE**

20 57. From the Date of Final Approval of this Settlement until the fifth (5th)
 21 anniversary of said date (the “Covered Period”) with respect to the job titles Mortgage
 22 Loan Officer (job code SM009), Senior Mortgage Loan Officer (job code SM172), Senior
 23 Lending Officer (job code SM172), FC Lending Officer (job code SM611), Senior FC
 24 Lending Officer - E (job code SM610), and/or Senior FC Lending Officer - NE (job code
 25 SM614), including any job titles that may in whole or in part replace these job titles
 26 (collectively, the “Covered Positions”) will take the following steps to further socialize
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1 and implement its business expense reimbursement policy (the “Global Expense
2 Standard”):

3 (a) Send monthly e-mail reminders to individuals in the Covered
4 Positions, and individuals responsible for directly managing the Covered Positions,
5 indicating that miles driven, tolls and parking paid, and other expenses incurred in
6 connection with work travel consistent with the Global Expense Standard are
7 reimbursable per the Global Expense Standard.

8 (b) Train newly hired individuals in Covered Positions on the Global
9 Expense Standard, and in particular its applicability to work travel, and provide annual
10 refresher training to individuals who directly manage the Covered Positions.

11 (c) Part of the training referenced in Paragraph 57(b) will specifically
12 address how to access BofA’s expense reimbursement software (Concur, and/or any
13 successor in whole or in part thereto) on a smartphone.

14 58. Class Counsel and Named Plaintiff agrees that the steps outlined in
15 Paragraph 57 constitute reasonable and good faith efforts by the Bank to comply with
16 Labor Code § 2802 and constitutes part of a fair and reasonable class action settlement
17 resolving all for relief set forth in the Lawsuit.

18 59. As part of Final Approval Order and Judgement, BofA will move the Court
19 to order that compliance with Paragraph 57 will constitute a complete defense against
20 Labor Code § 2802 claims by individuals in Covered Positions for work travel-related
21 reimbursement during the Covered Period, to the extent those claims involve allegations
22 that BofA takes insufficient affirmative steps to socialize or promulgate its Global
23 Expense Standard or otherwise fails to take sufficient action to encourage or compel
24 individuals in Covered Positions to submit for expense reimbursement (the “Decree”).
25 Named Plaintiff and Class Counsel will not oppose this request. The parties understand
26 and agree that the Decree is not intended to provide a defense for failure to comply with
27 the Global Expense Standard (for example, a manager’s refusal to reimburse for business
28

1 travel, or a manager's attempt to pressure individuals into not submitting expense reports).
2 Rather, the Decree's intended and desired effect is to ensure that the Bank's current
3 Global Expense Standard, as supplemented with the items listed in Paragraph 57, is
4 sufficient to comply with Labor Code § 2802 to the extent it is implemented and followed.

5 60. No later than nine (9) months after the Final Approval Order and Judgement
6 is entered, and for every anniversary thereafter during the operative period of the Consent
7 Decree, BofA will send a report to Plaintiff's Counsel confirming that the steps set out in
8 Paragraph 57 have been implemented.

9 61. To the extent that BofA, at any point during the Covered Period, fails to
10 implement the steps set out in Paragraph 57 it shall not be found to be in violation of the
11 Decree until after (i) notice is provided of any alleged violation and/or non-compliance
12 and (ii) an opportunity to cure has been provided. Notice shall be provided in writing
13 pursuant to Paragraph 66 and at least forty-five (45) calendar days shall be provided for
14 BofA to cure. BofA's cure shall be effective to the extent that it implements the step at
15 issue during the cure period (for example, by sending an e-mail that was not sent or
16 conducting a training that was not provided).

17 62. The Covered Period shall expire on the fifth (5th) anniversary of the date of
18 Final Approval of the Settlement without need for any action by Class Counsel, BofA, or
19 the Court. BofA, in its sole and complete discretion, may move the Court to terminate the
20 Covered Period early in the event of legislative developments or of a ruling by the
21 Supreme Court of California that renders the further implementation of the Decree
22 unlawful, unnecessary, and/or ineffective.

23 63. Class Counsel and Named Plaintiff understand and agree that obtaining the
24 certainty provided by this Section XIII was a principal and material reason BofA agreed to
25 the Settlement, and that any failure of the Court to fully grant the request described herein
26 shall allow BofA the right, but not the obligation, to rescind the Settlement in its entirety,
27 which shall have the effect laid out in Paragraph 36.
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XIV.
ADDITIONAL TERMS AND CONDITIONS

64. Settlement Fair and Reasonable

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

65. Settlement the Result of Arm's-Length Bargaining.

The terms of the settlement of this Suit resulted from approximately a year and a half of litigation generally, including a period of approximately four months of arm's-length negotiations regarding settlement generally and this Agreement in particular.

66. Notices.

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

TO THE SETTLING CLASS:

Edward J. Wynne
Wynne Law Firm
Wood Island
80 E. Sir Francis Drake Blvd., Ste. 3-G
Larkspur, CA 94939
Telephone: 415-461-6400
Facsimile: 415-461-3900

TO BofA:

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

1 67. No Admission of Liability.

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

17 68. Modification by Writing Only.

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

21 69. Representations.

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

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

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

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

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

15 70. Further Cooperation.

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

19 71. Construction and Integration.

20 This Agreement, including its exhibits, constitutes the entire agreement and
21 understanding between the parties, and supersedes any previous agreements or
22 understandings between the Settling Parties. No representations, warranties or
23 inducements have been made to any party concerning the subject matter of this
24 Agreement and/or exhibits other than the representations, warranties and covenants
25 contained in such documents. This Agreement and related exhibits shall be construed
26 each as a whole, and with reference to one another, according to their fair meaning and
27 intent. Each of the Settling Parties represent that its/his counsel has participated and
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1 cooperated in the drafting and preparation of this Agreement and related exhibits; hence,
2 in any construction to be made of this Agreement and/or exhibits, the same shall not be
3 construed against any party on the basis that said party was the drafter.

4 72. Governing Law.

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

10 73. Counterparts.

11 This Agreement may be executed in one or more faxed counterparts, which
12 may be filed with the Court. All executed counterparts, and each of them, shall be
13 deemed to be one and the same instrument. Once available, a complete set of executed
14 counterparts shall be filed with the Court. Copies of the complete set of executed
15 counterparts may be used for all purposes in lieu of the originals, and shall have the same
16 force and effect as the originals.

17 74. Attorneys' Fees, Costs and Expenses.

18 Except as otherwise specifically provided for herein, each party shall bear
19 its/her own attorneys' fees, costs and expenses, taxable or otherwise, incurred by them in
20 or arising out of the Lawsuit, and shall not seek reimbursement thereof from any other
21 party to this Agreement.

22 75. Publicity.

23 The Named Plaintiff and Class Counsel agree that they will not publicize or
24 announce this Settlement in press release or marketing materials, or on the internet
25 (subject to Paragraph 75(iii)). This provision shall not bar: (i) the Named Plaintiff nor
26 Class Counsel from responding to affirmative inquiries initiated by the press and by
27 Settling Class Members; (ii) the Parties or their counsel from informing Class members
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1 about the Settlement and insuring that all Class members have notice of the Settlement; or
2 (iii) posting publically available information on Class Counsels' websites.

3 76. Continuing Jurisdiction.

4 Except as otherwise specifically provided for herein, Courtroom 6 of the
5 United States District Court for the Northern District of California, San Francisco, shall
6 retain jurisdiction to construe, interpret, and enforce this Agreement and the settlement, to
7 supervise all notices, the administration of the settlement and this Agreement and
8 distribution of the GSV, and to hear and adjudicate any dispute arising from or related to
9 the settlement and/or this Agreement.

10 77. Class Action Fairness Act.

11 Within fifteen (15) calendar days of the date this Agreement is filed with the
12 Court, BofA will file and serve a notice indicating compliance with 28 U.S.C. § 1715(b).
13 The Settling Parties agree that the final approval hearing will not be held prior to the
14 ninetieth (90th) calendar day after this notice is filed.

15 78. Calculation of Time

16 To the extent that any timeframe set out in this Agreement is ambiguous,
17 said ambiguity shall be resolved by applying the conventions contained in Rule 6 of the
18 Federal Rules of Civil Procedure.

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EXHIBIT A

1 LEONARD CARDER, LLP
AARON KAUFMANN, SBN 148580
2 DAVID POGREL, SBN 203787
ELIZABETH GROPMAN, SBN 294156
3 1330 Broadway, Suite 1450
Oakland, CA 94612
4 Telephone: (510) 272-0169
Facsimile: (510) 272-0174
5 akaufmann@leonardcarder.com
dprogel@leonardcarder.com
6 egropman@leonardcarder.com

7 WYNNE LAW FIRM
8 EDWARD J. WYNNE, SBN 165819
80 E. Sir Francis Drake Boulevard, Suite 3G
9 Larkspur, CA 94939
Telephone: (415) 461-6400
10 Facsimile: (415) 461-3900
ewynne@wynnelawfirm.com
11

12 *Attorneys for Plaintiff*
Gina McLeod

13 **UNITED STATES DISTRICT COURT**
14
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 GINA MCLEOD, individually and on behalf of
all others similarly situated,

17 Plaintiff,

18
19 v.

20 BANK OF AMERICA, N.A. and DOES 1
through 10, inclusive,

21 Defendants.
22
23
24

Case No. 3:16-cv-03294-EMC

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
ORDERING CLASS NOTICE**

Date: October 23, 2018

Time: 1:30 p.m.

Courtroom: 5, 17th Floor

Before: Hon. Edward M. Chen

Complaint Filed: May 9, 2016

Plaintiff Gina McLeod (“Plaintiff”), on behalf of herself and the certified class, and Defendant Bank of America, N.A. (“Defendant” or “BofA”), by and through their respective counsel, appeared in front of this Court on October 23, 2018, on Plaintiff’s unopposed Motion for Preliminary Approval of Class Action Settlement. Plaintiff submitted the Joint Stipulation of Class Action Settlement and Release (the “Settlement Agreement” or “Settlement Stipulation”). Having considered the briefs, Settlement Agreement, the oral argument submitted by counsel, and the relevant statutory and case law, the Court GRANTS Plaintiff’s Motion, ORDERS Class Notice, and FINDS as follows:

I. INTRODUCTION

Plaintiff Gina McLeod seeks preliminary approval of a \$11,000,000 non-reversionary settlement between Plaintiff and BofA to settle the mileage reimbursement and related claims on behalf of the certified class of Mortgage Loan Officers (“MLOs”). In addition to the monetary payment, the settlement includes a five-year consent decree, under which BofA will take several significant steps to encourage its MLOs to access its reimbursement policy for their job-related mileage. The proposed settlement is fair, reasonable and adequate and the standards for certification of the proposed class in the context of a settlement are satisfied.

II. BACKGROUND

A. Litigation History

Plaintiff Gina McLeod filed this lawsuit in the Superior Court of the State of California for the County of Alameda May 9, 2016. The original complaint alleged certain wage-related claims against BofA. The lawsuit was styled as a class action on behalf of California Mortgage Loan Officers. (Dkt 1.) Defendant BofA removed the action to this Court on June 14, 2016. (Dkt 1.)

On July 20, 2016, Plaintiff amended the complaint to add a cause of action pursuant to the Labor Code Private Attorney General Act of 2004 (PAGA), Labor Code § 2698 *et seq.* (Dkt. 13), to which Defendant answered the same day. (Dkt. 14.)

In August 2016, the parties engaged in early mediation and exchanged certain relevant documents, including BofA expense reimbursement policies and procedures, class data, and a

1 survey of a subset of the MLO population. Subsequent to the mediation, the parties engaged in
 2 extensive formal discovery, resulting in BofA's production of approximately 4,400 documents,
 3 including, but not limited to, policies and procedures, templates and forms, emails, expense
 4 reimbursement data, class contact data, handbooks and manuals, and Plaintiff's payroll and
 5 personnel files. Plaintiff took the deposition of Defendant's corporate representative in September
 6 2017 and Plaintiff had her deposition taken in October 2017.

7 On October 12, 2017, Plaintiff filed her Motion for Class Certification and, on December
 8 13, 2017, the Court granted the motion for class certification and certified the following class:

9 All persons who are or have been employed, at any time from May 9, 2012
 10 through the date of the Court's granting of class certification in this matter, by
 11 Bank of America, National Association ("Bank of America") in California under
 12 the job titles Loan Officer, Senior Loan Officer, Mortgage Loan Officer, Senior
 Mortgage Loan Officer, and Senior Lending Officer (collectively "Loan
 Officers" or "Class Members").

13 (Dkt. 39, p. 29.)

14 On December 27, 2017, Defendant filed a Fed.R.Civ.P. 23(f) petition with the Ninth
 15 Circuit seeking permission to appeal the order granting class certification. (Ninth Circuit Case No.
 16 17-80255, Dkt. 1-2.) The parties agreed to delay sending notice to the class until all settlement
 17 efforts were exhausted. At the parties' request, the Court referred the parties to Magistrate Judge
 18 Laporte for settlement discussions. (Dkt. 43.) On April 26, 2018, the Ninth Circuit rejected
 19 Defendant's Rule 23(f) petition. (Case 17-80255, Dkt. 3.) On May 18, 2018, the parties appeared
 20 before Magistrate Judge Laporte for the Settlement Conference; the conference did not result in a
 21 settlement, but the parties made headway and continued direct negotiations. (Dkts. 49, 55.)

22 On August 16, 2018, the parties advised the Court that they had reached a settlement and
 23 were finalizing the Settlement Agreement. (Dkt. 57.) On October 9, 2018, Plaintiff filed the
 24 instant motion for preliminary approval of a class action settlement.

25 **B. Settlement Agreement**

26 Under the Settlement Agreement, BofA has agreed to pay a "Gross Settlement Fund" of
 27 \$11,000,000 and submit to a five-year consent decree. The Gross Settlement Fund includes: (1)
 28

1 pro rata settlement awards to class members who do not exclude themselves from the case; (2) a
 2 \$50,000 PAGA allocation, \$37,500 of which will go to the LWDFa and \$12,500 of which will go
 3 back to the class; (3) Plaintiff's counsel's fee award (up to 30% of the Gross Settlement Amount,
 4 or \$3,300,000) and reimbursement of litigation expenses (not to exceed \$75,000); (4) a class
 5 representative service award for Plaintiff of \$15,000; and (5) settlement administration costs (not
 6 to exceed \$20,300). This leaves a Net Settlement Fund (including the \$12,500 from the PAGA
 7 settlement) of approximately \$7,552,200.

8 The Net Settlement Fund will be allocated to individual class members based on the
 9 amount of workweeks during the settlement class period. It is estimated that there are 188,820
 10 workweeks covered by this settlement. Class members will receive approximately \$40 per
 11 workweek after deductions, which represents approximately 73 miles per week based on current
 12 IRS mileage rates of 54.5 cents per mile. On a pure head count basis, MLOs can expect to receive
 13 approximately \$4,000.

14 In addition, Defendant will submit to a five-year consent decree that includes the following
 15 terms: (1) monthly email reminders to MLOs and their supervisors informing them about being
 16 able to seek reimbursement for business-related travel; (2) training to newly hired MLOs; (3)
 17 refresher training to MLO supervisors related to reimbursement for work-related travel; and (4)
 18 training to MLOs and their supervisors on how to access BofA's reimbursement software on a
 19 smartphone. Defendant will also report to Class Counsel on an annual basis of its compliance with
 20 the terms and conditions of the consent decree.

21 The proposed settlement class definition is as follows:

22 All persons who are or have been employed, at any time from May 9, 2012
 23 through the date of Preliminary Approval, by BofA in California under the job
 24 titles Mortgage Loan Officer (job code SM009), Senior Mortgage Loan Officer
 25 (job code SM172), Senior Lending Officer (job code SM172), FC Lending
 Officer (job code SM611), Senior FC Lending Officer - E (job code SM610),
 and/or Senior FC Lending Officer - NE (job code SM614).

26 This definition amends the class definition previously approved by this Court by: (1) specifying
 27 the covered positions to include job code numbers; and, (2) extending the class period to cover the
 28

weeks since the Court certified the class in December 2017.

Upon preliminary approval from this Court, the Settlement Administrator, Settlement Services, Inc., is to send a Notice Packet to the class. The Notice Packet shall include an adjustment form. Because this is not a claims-made settlement, Class Members are not be required to make a submission to participate in the settlement. In addition, the Claims Administrator will establish a website and a toll-free telephone number for Class Member inquiries.

III. DISCUSSION

A. The Standard for Preliminary Approval

The “universal standard” in evaluating the fairness of a settlement is whether the settlement is “fundamentally fair, adequate and reasonable.” *Officers for Justice v. Civil Service Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). Court approval of a class action settlement is a two-step process. First, counsel submits the proposed terms of the settlement to the court, and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the settlement does not disclose a basis to doubt its fairness or other obvious deficiencies, the court directs that notice be given to the class and sets a final fairness hearing. Herr, *Manual for Complex Litigation, Fourth*, § 21.632 (2004).

Preliminary approval should be granted if the proposed settlement falls “within the range of possible final approval.” *Gautreaux v. Pierce*, 690 F.2d at 616, 621 n.3 (7th Cir. 1982). Preliminary approval is “a determination that there is what might be termed ‘probable cause’ to submit the proposal to class members and hold a full-scale hearing as to its fairness.” *In re Traffic Executive Association-Eastern Railroads*, 627 F.2d 631, 634 (2d Cir. 1980). A proposed settlement is presumed to be fair when: it is reached through arm’s-length negotiations; the putative class is represented by experienced counsel; and the parties have conducted sufficient discovery. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2nd Cir. 2005). Here, this Court finds that all of the factors giving rise to a presumption of fairness exist. The proposed settlement was the product of arm’s-length, non-collusive negotiations, overseen by an experienced mediator and later a Magistrate Judge from this Court; the class is represented by

1 experienced counsel; and the parties have conducted sufficient discovery, both formal and
2 informal.

3 The Ninth Circuit has also suggested that district courts consider the following factors in
4 evaluating the fairness of a class action settlement: the strength of the plaintiff's case; the risk,
5 expense, complexity, and likely duration of further litigation; the risk of maintaining class action
6 status throughout the trial; the amount offered in settlement; the extent of discovery completed
7 and the stage of the proceedings; the experience and views of counsel; the presence of a
8 governmental participant; and the reaction of the class members to the proposed settlement.
9 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). The relative degree of importance
10 to be attached to any particular factor depends upon the circumstances of each case. *Torrissi v.*
11 *Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993). Here, the pertinent factors weigh in
12 favor of granting preliminary approval.

13 A proposed settlement is presumed to be fair when: it is reached through arm's-length
14 negotiations; the putative class is represented by experienced counsel; and the parties have
15 conducted sufficient discovery. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2nd
16 Cir. 2005). Here, all of the factors giving rise to a presumption of fairness exist. The proposed
17 settlement was the product of arm's-length, non-collusive negotiations, overseen by an
18 experienced mediator and later a Magistrate Judge from this Court; the class is represented by
19 experienced counsel; and the parties have conducted sufficient discovery, both formal and
20 informal. Thus, the settlement is presumed to be fair.

21 The Ninth Circuit has also suggested that district courts consider the following factors in
22 evaluating the fairness of a class action settlement: the strength of the plaintiff's case; the risk,
23 expense, complexity, and likely duration of further litigation; the risk of maintaining class action
24 status throughout the trial; the amount offered in settlement; the extent of discovery completed
25 and the stage of the proceedings; the experience and views of counsel; the presence of a
26 governmental participant; and the reaction of the class members to the proposed settlement.
27 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). The relative degree of importance
28

1 to be attached to any particular factor depends upon the circumstances of each case. *Torrissi v.*
2 *Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993). Here, the pertinent factors weigh in
3 favor of granting preliminary approval.

4 **B. Whether the Settlement Falls Within the Range of Possible Approval**

5 The Court first considers whether the Settlement Agreement falls within the range of
6 possible approval. “To evaluate the range of possible approval criterion, which focuses on
7 substantive fairness and adequacy, courts primarily consider plaintiffs’ expected recovery
8 balanced against the value of the settlement offer.” *Harris v. Vector Mktg. Corp.*, No. C-08-5198
9 *EMC*, 2011 WL 1627973, at *9 (N.D. Cal. Apr. 29, 2011).

10 As explained above, the Settlement Agreement provides for a recovery for the class of
11 \$11,000,000, less attorneys’ fees and expenses, Plaintiff’s service award, the PAGA settlement,
12 and settlement administration costs. This represents a substantial recovery for the class, in light of
13 the risk, expense, complexity, and likely duration of further litigation. As set forth above, class
14 members can expect to receive approximately \$40 per workweek after deductions. Based on
15 current IRS mileage rates of 54.5 cents per mile, the monetary settlement represents 73 miles per
16 week. Plaintiff was able to reach 33 current or former MLOs who reported driving an average of
17 approximately 170 non-commute, unreimbursed miles on average per week. Therefore, the
18 settlement before the Court represents approximately 43 percent of the number of miles that
19 Plaintiff estimates the average MLO drives on a weekly basis. BofA contends Plaintiff’s estimated
20 mileage is high and that the class would unlikely recover damages based on a figure as high as
21 170 miles per week. In light of Plaintiff’s estimate and the potential that a damages award could
22 be less, the settlement amount is substantial and fair.

23 The consent decree will likely increase the value of the settlement to MLOs who continue
24 in the job, as they will benefit financially from increased awareness that BofA’s expense
25 reimbursement policy covers mileage incurred on the job. The consent decree thus provides a
26 meaningful work-place reform for both class members who stay on as MLOs and future MLOs.

27 To assess the fairness, adequacy and reasonableness of a class action settlement, the Court
28

1 must weigh the immediacy and certainty of substantial settlement proceeds against the risks
2 inherent in continued litigation. *In re General Motors Corp.*, 55 F.3d 768, 806 (3rd Cir.1995)
3 (“The present value of the damages plaintiffs would likely recover if successful, appropriately
4 discounted for the risk of not prevailing, should be compared with the amount of the proposed
5 settlement.”); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal.1979). Plaintiff
6 identifies certain risks that it may face in further litigation. Defendant BofA has at all times
7 maintained that it has taken reasonable efforts to comply with Labor Code § 2802. For instance,
8 Defendant has maintained a written reimbursement policy, utilizes CONCUR (an expense
9 reimbursement program that allows MLOs to submit their work-related travel as a business
10 expense), and provides all new employees with the expense policy upon hiring. Defendant argues,
11 Plaintiff cannot establish that Defendant did not exercise due diligence and did not take all
12 reasonable steps to ensure that the MLOs were paid for their work-related travel per *Stuart v.*
13 *RadioShack Corp.*, 641 F.Supp.2d 901, 904 (N.D. Cal. 2009). While Plaintiff believes she can
14 defeat this defense, there remains a risk that a jury could agree with Defendant. Another area of
15 risk is the lack of records of work-related mileage. In essence, the risk in continued litigation is
16 extremely high. Thus, this Court agrees with Plaintiff’s counsel’s assessment that benefits of this
17 settlement outweigh the risk and that settlement at this juncture is in the best interests of the class.

18 Plaintiff conducted extensive formal and informal discovery. Plaintiff propounded
19 extensive written discovery in terms of interrogatories and document requests resulting on the
20 production of over 4,400 documents. Additionally, Plaintiff took Defendant’s deposition and had
21 her deposition taken. Plaintiff conducted a survey on small subset of the class. Class Counsel had
22 Defendant’s expense reimbursement data for the entire class analyzed by an expert. Based on the
23 evidence and counsels’ experience, Class Counsel and Plaintiff was able to make an informed
24 decision that settlement was in the best interests of the class.

25 In this case, Plaintiff and the class are represented by competent and experienced counsel.
26 Plaintiff’s counsel recommends the proposed settlement as fair, adequate and reasonable to the
27 class members and in their best interests.

1 Accordingly, the Court finds that the proposed settlement is within the range of
2 reasonableness.

3 **IV. ADMISSIONS, NON-APPROVAL, AND TIMING**

4 Neither this Order nor the Settlement Stipulation, nor any of their terms or provisions, nor
5 any of the negotiations or proceedings connected with them, shall be construed as an admission or
6 concession by Defendant of the truth of any of the allegations in this litigation, or of any liability,
7 fault or wrongdoing of any kind.

8 In the event the proposed settlement as provided in the Settlement Stipulation is not
9 approved by the Court, or for any reason the parties fail to obtain a final approval order as
10 contemplated in the Settlement Stipulation, or the Settlement Stipulation is terminated or voided
11 pursuant to its terms, the Settlement Stipulation shall become null and void and of no further force
12 or effect, and shall not be used or referred to for any purpose whatsoever, and this Order shall be
13 treated as vacated nunc pro tunc. In such event, the Settlement Stipulation and all negotiations and
14 proceedings relating to it shall be withdrawn without prejudice as to the rights of any and all parties
15 thereto.

16 The Court may, for good cause, extend any of the deadlines set forth in this order without
17 further notice to the class.

18 **V. CONCLUSION**

19 Good cause appearing therefor, **IT IS HEREBY ORDERED** that:

20 1. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Class is certified,
21 and the Stipulation of Settlement is preliminarily approved.

22 2. Plaintiff Gina McLeod is approved as the Class Representative.

23 3. Edward J. Wynne, Wynne Law Firm, and Aaron Kaufmann, Leonard Carder LLP
24 are appointed Class Counsel.

25 4. SSI is appointed as Claims Administrator.

26 5. Notice of the proposed settlement, and the rights of Class Members, including the
27 right to opt out of the settlement, shall be given by mailing of the Notice of Class Action
28

1 Settlement by first class, postage prepaid, to all Class Members pursuant to the applicable
2 provisions in the Settlement Stipulation. Class Members shall be mailed the Adjustment Form.
3 Bank of America shall provide the Claims Administrator with the information necessary to
4 conduct this mailing as set forth in the Settlement Stipulation;

5 6. A hearing shall be held before this Court on _____ at _____
6 to consider whether the settlement should be given final approval by the Court:

7 (a) Written objections by Class Members to the proposed settlement will be
8 considered if delivered on or before the Notice Response Deadline;

9 (b) At the Final Approval Hearing, Class Members may be heard orally in
10 support of or in opposition to the settlement;

11 (c) Class Counsel and counsel for Bank of America should be prepared at the
12 hearing to respond to objections filed by Class Members, and to provide other information as
13 appropriate, bearing on whether or not the settlement should be approved; and

14 (d) At the Final Approval Hearing, the Court shall consider any motions or
15 applications for attorney fees, costs and litigation expenses, and incentive payment to the Class
16 Representative, consistent with the Settlement Stipulation, as well as a motion regarding the effect
17 of the consent decree per Paragraph 59 of the Settlement Stipulation, and any such motions shall
18 be filed with the Court no more than 30 days before the Notice Response Deadline.

19 7. In the event that the Effective Date occurs, all Settlement Class Members will be
20 deemed to have forever released and discharged the Released Claims. In the event that the
21 Effective Date does not occur for any reason whatsoever, the Settlement Stipulation shall be
22 deemed null and void and shall have no effect whatsoever.

23 8. Pending further order of the Court, all proceedings in this matter except those
24 contemplated herein and in the Settlement Stipulation are stayed.

25 9. The Court expressly reserves the right to adjourn or continue the Final Approval
26 Hearing without further notice to the Class.

27 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

IT IS SO ORDERED, this the ____ day of _____, 2018.

Honorable Edward M. Chen
United States District Judge

EXHIBIT B

GINA MCLEOD, individually and on behalf of all) Case No. 3:16-cv-03294-EMC
others similarly situated,)

Plaintiff,

V.

BANK OF AMERICA, N.A.

Defendant.

NOTICE OF CLASS ACTION SETTLEMENT

IMPORTANT LEGAL NOTICE – THIS LAWSUIT SETTLEMENT MAY AFFECT YOUR RIGHTS

TO: ALL PERSONS WHO WORKED FOR BANK OF AMERICA, N.A. AS A MORTGAGE LOAN OFFICER IN CALIFORNIA, AT ANY TIME FROM MAY 9, 2012 TO OCTOBER 1, 2018

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SHARE OF THE SETTLEMENT	If you do nothing, you will receive a settlement payment and release all claims covered by this Settlement.
EXCLUDE YOURSELF OR “OPT OUT”	If you “opt out” of the lawsuit, you <i>will not</i> receive any payment under this settlement. However, you will also not release any of your claims and will be free to pursue any claims you may have against Bank of America.
OBJECT	You may write an objection to the Court stating why you do not like the settlement. You may also appear in Court and explain why you do not like the settlement or use an attorney to appear for you. If you object, this does not mean you opt out of the class (in fact, as explained below, if you opt out of the class, you will not be permitted to object to the settlement terms).

1. Why Did I Receive This Notice?

You are receiving this Notice because records from Bank of America, N.A. (“BofA”) indicate that you worked for BofA as a Mortgage Loan Officer in California at some time between May 9, 2012 and October 1, 2018. BofA and Plaintiff Gina McLeod (“Plaintiff”) have entered into a proposed class settlement of legal claims relating to Mortgage Loan Officers (the “Settlement”) in the above-captioned action (the “Action”). This Notice (1) describes the settlement, (2) explains your rights, including how to participate in the settlement, how to object to the settlement, or how to request to be excluded from the action, as well as what happens in each

scenario, and (3) provides the calculation of your potential settlement share. ***This Notice contains important information that may affect you. Please read it carefully.***

2. What Is The Case About?

On May 9, 2016, Plaintiff filed a lawsuit in California alleging that BofA failed to reimburse Mortgage Loan Officers for business expenses, specifically auto-related expenses incurred as employees of BofA. The Lawsuit seeks to recover these expenses, as well as related penalties and interest. That lawsuit is currently pending in front of Judge Edward M. Chen in the U.S. District Court, Northern District of California, San Francisco. The case is entitled *Gina McLeod v. Bank of America, N.A., et. al.*, Case No. 3:16-cv-03294-EMC. The Court has made no determination as to merits of these claims.

3. What Is A Class Action?

A class action lawsuit is a legal proceeding where one or more persons sue on behalf of other people who have similar claims. In this case, Gina McLeod, a former BofA Mortgage Loan Officer, filed this Lawsuit on behalf of herself and on behalf of a class including BofA Mortgage Loan Officers. A class action allows the Court to resolve the claims of all the class members at the same time. On December 13, 2017, the Court certified a class action for Mortgage Loan Officers, and it appointed Plaintiff Gina McLeod and her attorneys (“Class Counsel”) to represent the class.

4. Background of Settlement.

Class Counsel believe that the claims asserted in the Lawsuit have merit because they contend that BofA did not take adequate steps to reimburse its Mortgage Loan Officers for their auto expenses. BofA contends it had a valid expense reimbursement policy that covered auto expenses and thus the claims here do not have merit. Class Counsel recognizes the expense, length and uncertainty of continued litigation. Although BofA denies that it committed any wrongdoing, it believes that further litigation would be protracted, expensive, and contrary to its best interests. Thus, the parties negotiated the settlement described here. The Court has determined on a preliminary basis that the settlement is fair, reasonable, and adequate and in the best interests of the Class Members.

5. What Are The Terms Of The Proposed Settlement?

BofA has agreed to pay a total amount of \$11,000,000, which includes the following: (a) approximately \$XXXXXX to the Class Members to be distributed as set forth below (the “Payout Fund”); (b) settlement administration expenses; (c) Plaintiff’s service award for acting as the class representative; and (d) attorneys’ fees and costs to Class Counsel; and (e) penalties to the State of California. BofA’s payment of this settlement in no way admits any wrongdoing and is being paid to avoid litigating the claims alleged in the Lawsuit.

In addition to the settlement payment, BofA has agreed to take the following steps to promote use of its auto expense reimbursement policy: (1) train new Mortgage Loan Officers regarding its expense reimbursement policy, with specific mention that it covers reasonable auto expenses incurred in the course of their work; (2) training mortgage lending sales management personnel that the expense reimbursement policy of the bank includes reimbursing for reasonable, work-related auto expenses; and (3) sending monthly e-mails to all Mortgage Loan Officers reminding them to submit their reimbursement requests for auto expenses. BofA has committed to make these efforts for the next [redacted] years as part of the Settlement.

The Court granted preliminary approval of the settlement on [date of preliminary approval] on behalf of a class defined as:

all persons who are or have been employed, at any time from May 9, 2012 through [redacted] [the date of Preliminary Approval], by BofA in California under the job titles Mortgage Loan Officer (job code SM009), Senior Mortgage Loan Officer (job code SM172), Senior Lending Officer (job code SM172), FC Lending Officer (job code SM611), Senior FC Lending Officer - E (job code SM610), and/or Senior FC Lending Officer - NE (job code SM614) (collectively “Mortgage Loan Officers”).

6. How Will My Share of the Settlement Amount Be Calculated?

The enclosed Adjustment Form provides the approximate amount you could expect to receive from the Settlement.

Each Class Member will have a share of the Payout Fund calculated based on the number of workweeks the Class member worked as a Mortgage Loan Officer for BofA in California between May 9, 2012 and October [redacted], 2018. The Payout Fund will be divided by the total number of workweeks worked by Mortgage Loan Officers between May 9, 2012 and October [redacted], 2018 to establish a value for each workweek. That weekly value will then be multiplied by the number of workweeks worked by each Mortgage Loan Officer who participates in the settlement, to determine each individual Mortgage Loan Officer’s settlement amount. For tax reporting purposes, your settlement amount will be reported as miscellaneous income on a 1099-MISC tax form, with no withholding taken. Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

7. When Will I Receive My Settlement Payment?

If the Court grants final approval of the Settlement, it is anticipated that the distribution of individual settlement payments will be made as soon as five (5) days after final approval. The earliest that this could occur is in [redacted] 2019.

8. What Are My Options Under the Settlement?

(a) Do Nothing and Receive a Share of the Settlement.

If you choose to do nothing in response to this Notice, you will receive a payment from the Payout Fund, as described above. You will be deemed a part of the Class Action, and you will be releasing all claims you may have against BofA related to the allegations in the lawsuit that BofA failed to reimburse Mortgage Loan Officers for their work-related auto expenses. You will not be able to file a lawsuit or maintain any existing lawsuit against BofA for any conduct being released as part of the settlement.

(b) Request To Be Excluded From, Or “Opt Out” Of, The Settlement.

You may request to be excluded from, or “opt out” of, the Settlement. If you request to opt out, you will NOT receive any money, nor will you release your claims. To request to be excluded from the Settlement, you *must* prepare and complete your request to be excluded from the settlement, *sign it*, and mail it to the Settlement Administrator, at the address below, on or before [redacted], 2019. Any request for exclusion not postmarked on or before [redacted], 2019 will be void unless the Court agrees to review the late exclusion.

(c) Object To The Settlement.

Any Class Member may object to the Settlement. If you wish to object, you may do so in writing and should state the basis for your objection(s). To object in writing, please state the basis for the objection, sign it, and mail it to the Settlement Administrator, at the address below, on or before [redacted], 2019. You should also send a copy to Class Counsel and counsel for BofA at the addresses identified below. Your objection should be postmarked on or before [redacted], 2019. You may also object by appearing at the final approval hearing. At the final approval hearing described in section 13, below, the Court will consider all written

objections without the need for a personal appearance. You have the right to appear at the hearing to present any objections, either in person or through an attorney of your choice at your expense. If you plan to appear at the hearing, you should state your intention in either your written objection or submit a separate notice of intent to appear with the Court.

9. What if the Information on My Adjustment Form is Incorrect?

The Adjustment Form enclosed with this Notice lists the dates that you worked for BofA as a “Mortgage Loan Officer” (as defined above) during the Class Period. If you believe that the dates worked information are incorrect, you may dispute or “challenge” the listed time period(s) by submitting a written challenge along with any documents or other supporting evidence to the Settlement Administrator, at the address below. Such challenges must be post-marked by no later than [REDACTED], 2019. Challenges post-marked after this date will not be honored.

BofA’s records will be presumed to be correct, but the Settlement Administrator will evaluate any information and evidence you submit and may in its discretion use dates different from those in BofA’s records. Any disputes will be finally resolved by the Settlement Administrator without the possibility of appeal.

10. Who is the Settlement Administrator?

The Settlement Administrator is a company hired by the Parties to administer the Settlement. The Settlement Administrator’s contact information is:

California BofA Mortgage Loan Officer Class Action Administrator
c/o ADMINISTRATOR NAME
ADDRESS
Phone: () -

The Settlement Administrator’s duties include processing challenges, objections and exclusions, making payments to the Class Members, and getting answers to any questions you may have.

11. Who are the Lawyers Representing the Parties?

Lawyers for PLAINTIFF and the CLASS:

LEONARD CARDER, LLP

Aaron Kaufmann
1330 Broadway, Ste. 1450
Oakland, California 94612
Telephone: 510-272-0169
Email akaufmann@leonardcarder.com

WYNNE LAW FIRM

Edward J. Wynne
80 E. Sir Francis Drake Blvd., Ste. 3-G
Larkspur, California 94939
Telephone: 415-461-6400
Email: ewynne@wynnelawfirm.com

12. How Will the Lawyers and the Representative for the Class Be Paid?

Class Counsel, that is the lawyers representing Plaintiff and the Class Members, will be paid from the \$11,000,000 total settlement amount. Class Counsel will request approval from the Court for payment of attorneys’ fees of 30% of the total Settlement, plus reimbursement of actual litigation costs up to \$75,000. These payments are for services provided, and to be provided, to the Class, and to compensate Class Counsel for the risk of bringing this case on a “contingent basis” where they invested time and all litigation costs with the chance of no recovery. These amounts will not exceed \$3,375,000 and are subject to Court approval. Class Counsel will also ask the Court to approve an individual payment award to Plaintiff Gina McLeod of up to

\$15,000 for her services as Class Representative and her willingness to accept the risks of bringing this case. This amount is also subject to the Court's approval.

13. Notice of Hearing on Final Approval and Objections to Class Action Settlement.

A Final Fairness Hearing will be held before Judge Edward M. Chen on [REDACTED], 2019, at [REDACTED] am/pm in Courtroom 6 of the U.S. District Court, Northern District of California, located at 450 Golden Gate Ave., San Francisco, California, 94102, to determine whether the proposed Settlement is fair, reasonable, and adequate. The hearing may be continued without further notice. You do not need to appear at this hearing unless you wish to object to the Settlement. If you have sent a written objection, you may appear at the hearing at your option, either in person or through an attorney of your choice at your expense. If you plan to appear at the hearing, you should state your intention in either your written objection or submit a separate notice of intent to appear with the Court.

14. What Is Being Released As Part of the Settlement?

Upon the final approval of the settlement by the Court, and except as to such rights or claims as may be created by the Joint Stipulation of Class Action Settlement, each Class Member (other than those who timely request to be excluded from the Settlement) shall be deemed to have fully, finally, and forever released BofA from any and all claims that accrued between May 9, 2012 and October [REDACTED], 2018 based on their employment in California as a Mortgage Loan Officer for any alleged failure to reimburse auto expenses under California Labor Code section 2802, including but not limited to claims for recovery of business expenses or related penalties under any legal theory.

15. Getting More Information About the Settlement

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at [www.\[REDACTED\].com](http://www.[REDACTED].com), by contacting Class Counsel, by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court, Northern District of California, 450 Golden Gate Avenue, San Francisco, California, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.

If you move or change address, please notify the Settlement Administrator of your new address by mail or by telephone (see contact information above in section 10). It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your Settlement Payment.

It is strongly recommended that you keep a copy of any challenge, request for exclusion and/or objection that you submit, and proof of timely mailing and/or faxing, until after the Final Approval hearing.

EXHIBIT C

ESTIMATED SETTLEMENT SHARE FORM

MCLEOD v. BANK OF AMERICA

Your **estimated** share of the settlement in this case is \$ [REDACTED]. This estimate is based on the number of workweeks that Bank of America's records show you worked as a "Mortgage Loan Officer" (job codes SM009, SM172, SM611, SM610, and/or SM614, as described in section 5 of the enclosed Notice of Class Action Settlement), and is subject to change, as detailed below.

If you ACCEPT the information used to calculate your estimated share, as set forth below, you do NOT need to do anything to receive your money. Only if you believe that any of the information below is INACCURATE should you complete this form and return it to the Claims Administrator:

MAIL, EMAIL OR FAX ANY CHALLENGES OR ADDRESS UPDATES TO:

BANK OF AMERICA Mortgage Loan Officer Class Action Administrator

c/o NAME OF ADMINISTRATOR

ADDRESS

EMAIL ADDRESS

Phone: () -

Important:

1. It is strongly recommended that you keep proof of timely mailing, emailing, and/or faxing for your records until receipt of your settlement payment.
2. If you change your mailing address, please send your new mailing address to the Claims Administrator. It is your responsibility to keep a current address on file with the Claims Administrator to ensure receipt of your settlement payment.

Your Contact Information.

The Claims Administrator is using the following contact information for you. If any of your contact information is inaccurate, please correct that information and return a copy of this form to the Claims Administrator at the address above.

<<Name>>

<<Address>>

<<City>>, <<State> <Zip>>

() --

Home Telephone Number

Your Employment Dates And Estimated Settlement Share.

Bank of America's records show that during the period of May 9, 2012 through October [REDACTED], 2018, you held one or more of the covered "Mortgage Loan Officer" positions (job codes SM009, SM172, SM611, SM610, and/or SM614) in California in the following time periods:

<<Dates>>

Your total number of compensable workweeks during the above period is: <<number of workweeks>>

Based upon the estimated share for each compensable workweek at an estimated amount per week worked of \$ [REDACTED], your settlement share is currently **estimated** at \$ [REDACTED], assuming that all Class Members identified to date participate in the Settlement (i.e., can be located and do not opt out). This amount is subject to change, either up or down, depending upon the number of Class Members who submit challenges to estimated amounts, the outcome of those challenges, the number of Class Members who opt out, and other possible factors.

Challenge Procedure.

Check the box below ONLY if you wish to challenge the dates listed above. You do NOT have to submit this form if the dates of employment listed above are accurate. All fields must be complete for your challenge to be accepted. **Any challenges must be post-marked by no later than [REDACTED], 2019.** Challenges post-marked after this date will not be honored.

- ☐ I wish to challenge the employment dates listed above. Below is a written statement of what I believe to be my correct dates of employment as a "Mortgage Loan Officer" with Bank of America in California during the period from May 9, 2012 through October [REDACTED], 2018. My statement is supported by the enclosed information and/or documentary evidence that supports my challenge. I understand that, by submitting this challenge, I authorize the Claims Administrator to review Bank of America's records and determine the validity of my challenge.

Signature

Name of Class Member _____ **[preprinted]**

Class Member ID Number (from address label): _____
[preprinted]

I believe that my correct dates of employment as a "Mortgage Loan Officer" in California for Bank of America during the class period are _____ to _____.

Statement of reasons and documentation of dates of employment according to Class Member: _____

[attach documentation and use separate page(s) as necessary]