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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

MARLENE MOLINA, individually, on a
representative basis, and on behalf of all others
similarly situated;

Plaintiff,

vs.

U.S. BANK NATIONAL ASSOCIATION;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2300344
c/w CIVSB2302908
*[Assigned to Hon. Jessica Morgan, Dept S26,
for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing
Date: May 22, 2024
Time: 8:30 a.m.
Dept.: S26

Complaint filed: January 24, 2023

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment department within my firm where I am also a Partner. I represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

1 **COUNSEL'S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled well over 500 employee vs. employer litigation matters during my
7 23 years in practice. Over the last 17 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled well over 250 class action and
10 representative action wage/hour cases, and have been appointed by the court as class counsel and
11 have received final court approval and judgment in over half of those actions to date, and
12 anticipate receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered well in excess of
14 \$250 million in damages for my clients and the class members (who often work as nurses,
15 ambulance drivers, technicians, warehouse workers, truck drivers, sales, professional
16 occupations and countless other trades). My team and I once held the record for the largest
17 PAGA-only case in California's history - a \$12.5 million-dollar court approved settlement,
18 which followed extensive litigation, summary adjudication and writs to the CA Supreme Court
19 against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior Court).

20 5. I have tried two major class and PAGA cases against Fortune 100 companies over
21 the last few years. I was lead counsel in a PAGA case that my firm tried in the Orange County
22 Superior Court and received a \$425,000 judgment. I was co-counsel in a class action case
23 against Walmart that was tried to the jury in District Court, wherein the jury awarded Plaintiffs
24 over \$6 million. Both cases were appealed, and ultimately the jury trial verdict was affirmed and
25 the PAGA case was reversed and remanded.

26 6. I was named by the LA Times as one "Southern California Leading Lawyers" in
27 the May 2023 issue of Consumer Attorney's of Southern California (a recognition given to 17
28 employment/labor law attorneys in 2023). Additionally, over the last 5+ consecutive years, I

1 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
2 only 5% of lawyers receive.

3 **BRIEF SUMMARY OF THE SETTLEMENT**

4 7. Following a contested litigation process, Plaintiff and Defendant (collectively,
5 the “Parties”) entered into a Class and PAGA Settlement Agreement and Release (the
6 “Settlement Agreement” or “S.A.”), which is attached hereto as **Exhibit 1**.

7 8. The Settlement Agreement seeks to release and discharge Defendant from the
8 claims brought against it in exchange for Defendant’s agreement to pay \$4,550,000 on a non-
9 reversionary, non-claims made basis (each Class Member will receive his/her share of the Net
10 Settlement Amount without having to submit a claim form or take any action, except for those
11 who opt-out). As set forth in the motion and Settlement Agreement, Plaintiff seeks to represent
12 “All current and former nonexempt employees employed by U.S. Bank in California who
13 recorded hours worked during at least one Workweek during the Class Period.”

14 9. Under the terms of the Settlement Agreement, Defendant will not oppose
15 Plaintiff Counsel’s application for a reasonable award of attorney’s fees not to exceed
16 \$1,516,666.67 (1/3 of the Gross Settlement Amount), litigation expenses not to exceed
17 \$30,000, Settlement Administrator Costs of \$50,500, PAGA penalties of \$200,000 (with 75%
18 to the LWDA and 25% to the Aggrieved Employees on a pro rata basis), and a Service
19 Payment of \$10,000 to Plaintiff Marlene Molina (“Class Representative”). (S.A. ¶ 3.2 et seq.).
20 After subtracting the agreed-upon deductions from the Settlement Amount, approximately
21 \$2,742,833.33 will be available to pay the individual settlement amounts to approximately the
22 Class Members who do not opt-out of the settlement, as follows:

<i>Gross Settlement Amount</i>	\$ 4,550,000.00
Attorneys’ Fees (1/3)	\$ 1,516,666.67
Litigation Costs	\$ 30,000.00
Administrator Costs	\$ 50,500.00
PAGA Penalties	\$ 200,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 2,742,833.33

1 10. Assuming 14,000 Class Members, the average payment to each class member
2 will be approximately \$200. However, the actual payment will be calculated on a pro-rata basis
3 according to the number of Weeks Worked during each Class and the corresponding number of
4 Share Points credited to each Class Member. In addition, the Aggrieved Employees will
5 receive a share of the \$50,000 PAGA Penalties (25% of the total \$200,000 PAGA allocation),
6 calculated pro-rata based on approximately Weeks Worked during the PAGA Period.

7 11. Each Class Member will receive the Class Notice, explaining the nature of the
8 case, and the process for participating, objecting and opting-out, and advising of his/her
9 estimated settlement payment and the number of Weeks he/she is credited with working during
10 the Class Period which is attached hereto as **Exhibit 2**.

11 **PROCEDURAL BACKGROUND**

12 12. My office has performed considerable work and diligently investigated and
13 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
14 significant settlement fund for the benefit of the Class. We efficiently communicated and
15 exchanged information informally with Defense counsel which enabled the parties to
16 successfully settle the case. Because of the risks involved in litigating the case and the contested
17 legal and factual issues, we believe this settlement to be fair, reasonable, and adequate.

18 13. After being retained by Plaintiff, we sent a letter to Defendant requesting the
19 production of Plaintiff's personnel and timekeeping records in order to further evaluate his wage
20 and hour claims. On January 24, 2023, we submitted a letter to the California Labor Workforce
21 Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act
22 of 2004 (the "PAGA").

23 14. That same day, Plaintiff filed a class action complaint in this action. Once the 65-
24 day exhaustion period expired to bring PAGA claims, Plaintiff then filed a separate action in this
25 Court for PAGA Penalties, which was designated as case number CIVSB2302908. The Court
26 consolidated the initial class complaint with the later filed PAGA complaint, which collectively
27 allege causes of action for: (1) failure to pay minimum and regular wages (including but not
28 limited to pre and post shift work, calculation of the regular rate, computer boot up, sick pay and

1 other wage violations), (2) failure to pay overtime wages, (3) failure to provide compliant meal
2 periods, (4) failure to provide compliant rest breaks, (5) failure to reimburse business expenses,
3 (6) failure to pay vested vacation, (7) failure to timely pay wages each period, (8) failure to
4 timely pay all wages owed upon separation of employment, (9) failure to provide accurate
5 itemized wage statements; (10) unfair and unlawful competition, and (11) related PAGA claims.

6 15. Defendant retained counsel and immediately began to defend the case, including
7 alleging in the Joint Initial Status Conference Report that “Defendant generally denies the
8 allegations in Plaintiff’s Complaint, and asserts the affirmative defenses set forth in its Answer.”
9 Thereafter, Plaintiff served formal written discovery, including special interrogatories, form
10 interrogatories, requests for admissions and request for production of documents. Plaintiff also
11 demanded the names and contact information of all class members and aggrieved employees and
12 provided a Belaire Notice to Defendant. In turn, Defendant served formal written discovery on
13 Plaintiff and noticed Plaintiff’s deposition. However, prior to engaging in further discovery and
14 a contested class certification motion, the Parties agreed to submit the matter to mediation.

15 16. In preparation for the mediation, the Parties informally exchanged documents and
16 information that allowed both sides to calculate the potential damages and evaluate potential risk,
17 including policies and procedures pertaining to each claim alleged, and statistics relating to the
18 number of current and former employees, number of shifts, pay periods and weeks worked and
19 other things. Defendant also provided its written policies and practices and a robust sampling of
20 payroll and timekeeping records for Class Members, which included hundreds of pages of
21 documentation and over 1,250,000 rows of excel data. This information enabled both parties to
22 take a deep dive into the claims. Additionally, during this process, Plaintiff and his counsel
23 analyzed, researched, and investigated the potential issues, including matters related to the
24 calculation of damages, trial, and appellate issues and risks. Plaintiff also retained an expert
25 (Sean Berger of Berger Consulting Group) to perform a statistical analysis of the claims and
26 violations.

27 17. On January 19, 2024, Plaintiff and Defendant participated in mediation before
28 Steve Rottman, a highly regarded and experienced wage-and-hour class action mediator. The

1 matter resolves at mediation pursuant to a mediator's proposal, which was accepted by the
2 Parties.

3 **SUMMARY OF THE CLAIMS AND DEFENSES**

4 18. Here, Plaintiff alleged numerous wage and hour violations on behalf of the Class
5 Members. However, Defendant vigorously contested and denied Plaintiff's material allegations
6 on the merits and as to the propriety of a class action or PAGA representative action.

7 19. One of the primary claims in this action was based on Defendant's alleged failure
8 to pay all required wages. And Plaintiff alleged that this occurred through several distinct
9 violations.

10 20. *First*, Plaintiff claimed that she and the Class Members were required to perform
11 off-the-clock work due to a computer-based timekeeping system that was not accessible until
12 employees completed various boot-up tasks (at the beginning of shifts) and through which
13 employees had to clock out and then perform various shut down tasks (at the end of shifts).
14 However, Defendant denied any liability for this claim on two fronts by: (1) arguing that Class
15 Members were responsible for recording and entering their own timekeeping; thus, if a Class
16 Member entered 8:00 a.m. as the "start time" in the timekeeping, Defendant had no actual or
17 constructive knowledge of work performed prior to that time, and no liability attaches, and (2)
18 offering evidence that Defendant paid the Class Members an extra two minutes per shift worked
19 to account for this "computer boot up time" thus negating any potential violations.

20 21. *Second*, Plaintiff also alleged that Defendant used a "rounding" policy that only
21 paid the Class in quarter- or half-hour increments. But Defendant vehemently opposed these
22 claims and argued that it had a written policy that strictly prohibited any off-the-clock work and
23 that there was no rounding policy that deprived the Class of wages.

24 22. *Third*, Plaintiff alleged that Defendant failed to pay all vested vacation wages
25 owed to departing employees, in violation of Labor Code § 227.3, due to a practice that paid
26 departing employees at the base rate rather than at the proper "final rate" as required. Defendant
27 also opposed this claim and, moreover, argued that Plaintiff's interpretation of Labor Code §
28 227.3 was incorrect and that Defendant did not violate the requirements of the statute.

1 23. *Fourth*, Plaintiff brought claims for underpaid overtime, sick pay, and meal
2 premiums based on the fact that Defendant paid the Class on an hourly basis plus other
3 nondiscretionary compensation (such as shift differentials, COVID premiums, and bonuses), yet
4 Defendant failed to properly include this compensation in the regular rate and other calculations.
5 However, Defendant disputed this claim and argued that it properly calculated and paid all
6 required wages, including by incorporating nondiscretionary compensation into the necessary
7 calculations.

8 24. Plaintiff also argued that the Class Members were often denied compliant meal
9 and rest breaks due to the nature of the work. However, Defendant argued that it provided and
10 made available meal and rest breaks to all employees, and any employee who did not take a meal
11 or rest break did so entirely of his or her own volition. In this regard, Defendant produced its
12 written policies and practices, which it argued show full compliance with the law. As such,
13 Defendant argued that these claims were without merit because, for each violation, a fact-finder
14 would have to determine why a break was noncompliant/nonexistent, because if it was by the
15 employee's choice, no liability attaches to the Defendant.

16 25. Plaintiff also alleged various other Class and PAGA claims, such as the failure to
17 reimburse business expenses, failure to timely pay all wages owed upon termination, failure to
18 provide accurate itemized wage statements, and other claims related to the alleged violations
19 mentioned above. However, Defendant argued that these other claims, as well as the
20 "derivative" claims, have no merit.

21 26. Despite the disputed nature of the claims, the Parties concluded that further
22 litigation of the Action would be protracted and expensive, and that it is desirable that the Action
23 be fully and finally settled to limit further risk, expense, and protracted litigation.

24 **EVALUATION OF THE SETTLEMENT**

25 27. In preparation for mediation, Peter Carlson, a senior associate with 10 years of
26 litigation experience within my office, and I formulated a damages model and risk analysis based
27 upon detailed data obtained through informal discovery and information exchanges. The
28 summary of the claims below is based on calculations by our expert and us, and the risks that we

1 potentially faced, giving significant credit to the defenses that Defendant raised or would likely
2 raise in further proceedings.

3 28. Following the informal exchange and other information provided by Defendant,
4 we estimated the following data points through the date of mediation(1) 11,154 Class Members,
5 (2) 1,019,399 workweeks during the Class Period, (3) 4,587,296 shifts worked during the Class
6 Period, and (4) approximately 235,147 wage statements during the PAGA Period. From these
7 metrics, and when factoring in claim certification probabilities and liability probabilities, we
8 formulated detailed damages models to value the claims in preparation for mediation and to
9 reach a realistic and reasonable resolution.

10 29. Here, Plaintiff alleged a variety of claims against Defendant, which boil down to
11 these categories: (1) unpaid wages, (2) meal and rest break violations, (3) failure to reimburse
12 business expenses, (4) waiting time penalties under Labor Code §§ 201 – 203, (5) wage
13 statement penalties under § 226(e), and (6) PAGA civil penalties for the same claims.

14 30. Plaintiff's unpaid wage claims had several distinct theories of liability. *First*,
15 Plaintiff alleged that Defendant failed to compensate for all hours worked due to unpaid
16 computer boot-up and shut down time. *Second*, Plaintiff alleged that Defendant utilized a
17 "rounding" practice that only paid the Class in quarter-hour increments. *Third*, Plaintiff argued
18 that Defendant's practice of paying final vacation at the base rate violated Labor Code § 227.3.
19 *Fourth*, Plaintiff argued that Defendant failed to properly incorporate all nondiscretionary
20 compensation in the calculations for overtime wages, sick pay, and meal/rest premium payments.
21 However, Defendant vehemently opposed these unpaid wage claims on the merits and as to the
22 propriety of class certification. On this point, Defendant raised several strong defenses (discussed
23 above). As a result, for mediation and settlement purposes, Plaintiff and Class Counsel applied
24 appropriate risk reductions from the maximum potential unpaid wages to account for risks of
25 defeat at class certification and on the merits.

26 31. Plaintiff also alleged meal and rest break claims against Defendant. Based on the
27 pre-mediation analysis and investigation, and when incorporating violation rates from expert
28 review of the timekeeping records and other evidence, Class Counsel estimated a 13.3%

1 violation rate for meal periods and a 15% violation rate for rest breaks. However, Defendant
2 raised numerous arguments in response to this claim, including that it maintained fully compliant
3 written policies and specifically authorized the Class Members to take meal and rest breaks,
4 meaning that no one had a reason or cause to miss a break or take a short/late break. Therefore,
5 Defendant asserted that a fact-finder would have to determine for each Class Member whether a
6 break was missed and why, and why a break was noncompliant or nonexistent, because if it was
7 by the employee's choice, no liability attaches to Defendant. These defenses are factored into
8 Plaintiff's analysis in two ways. First, these issues raise questions regarding whether the meal
9 and rest break claims could be certified. Second, these defenses also go toward the merits given
10 the evidentiary question of proving the number of meal and rest violations. As such, Plaintiff
11 and Class Counsel considered these risks and defenses, along with the relatively low violation
12 rates and, for purposes of mediation and settlement, applied appropriate risk reductions regarding
13 the risks of defeat at class certification and on the merits.

14 32. As to the claim for failure to reimburse business expenses, Plaintiff calculated
15 potential violations in approximately 140,000 workweeks. However, Defendant argued that,
16 generally, its hourly employees were not required to incur business expenses, and that it had an
17 expense reimbursement policy – and, to the extent that home-based employees needed to use
18 internet, such claim would fail on the merits, was low-value, and not certifiable. Defendant
19 argued that this claim was not appropriate for class certification because this required
20 individualized inquiries to determine which employees incurred unreimbursed expenses and
21 whether such expenses were reasonable and “necessary” and thus mandated reimbursement. As
22 above, Class Counsel considered these arguments and factored the risks and defenses into
23 mediation and settlement valuation.

24 33. Plaintiff also alleged claims for waiting time penalties and wage statement
25 violations, including failure to accurately state all applicable hourly rates and total hours worked.
26 Some of these claims were derivative of the claims above, meaning that they only had merit if
27 the claims for unpaid wages or meal/rest breaks were successful. But Defendant raised a variety
28 of defenses to these derivative claims that impacted the valuation. Namely, as to the wage

1 statement violations, Defendant argued that its wage statements did not violate Labor Code § 226
2 and even if there was a “technical” violation, that Plaintiff would be unable to prove the required
3 “knowing and intentional” and “injury” elements. Then, as to the waiting time penalty claim,
4 Plaintiff’s valuation had to account for the fact that this claim was derivative of the unpaid wage
5 and meal/rest break claims (*e.g.*, the unpaid wage premiums) and, if those claims failed at
6 certification or on the merits, there would be no waiting time penalties owed, so the same risks
7 for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest
8 claims succeeded at certification and on the merits, Plaintiff would have to prove that the
9 violations (if any existed) were “willful” under the meaning of Labor Code § 203. And, here,
10 Defendant argued that there could not be a finding of a “willful” violation since they had
11 compliant written policies, and any deviations therefrom were inadvertent and unintentional.

12 34. While the theoretical maximum potential damages may stretch into the 8-figures,
13 that figure fails to account for the various risks at class certification, on the merits, and the many
14 evidentiary issues present in a class action of this size. For that reason, the settlement presented
15 to the Court is fair, adequate, and reasonable when applying all risks and considering the
16 potential outcomes at class certification and trial.

17 35. And while the PAGA penalties had a maximum value in the eight figures, this
18 also fails to incorporate the risks above and, further, fails to acknowledge that courts have wide
19 latitude to reduce the civil penalties “based on the facts and circumstances of a particular case”
20 and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
21 confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendant argued against the merits of the
22 underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses
23 mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendant also
24 argued it is improper to stack civil penalty claims on top of underlying statutory claims. For
25 these reasons, the Parties submit that this settlement is fair and reasonable.

26 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

27 36. The settlement was the product of extensive arm’s length negotiations, facilitated
28 by an experienced mediator. Though cordial and professional, the settlement negotiations were

1 adversarial and non-collusive in nature. The settlement reached is the product of substantial
2 effort by the parties and their counsel. Although we believed that there was a possibility of
3 certifying the claims, we recognized the potential risk, expense, and complexity posed by
4 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
5 on the damages awarded, and/or on an appeal that can take several more years to litigate.

6 37. The settlement will result in a fair payment to each Class Member based on the
7 percentage of weeks worked during the Class Period and other factors as set forth in the
8 Settlement Agreement. As set forth hereinabove, Plaintiff and her counsel have diligently
9 investigated the claims and defenses on behalf of the Class Members and worked to achieve a
10 resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys'
11 fees and costs. After evaluating the significant risks attendant with further litigation described
12 above and weighing them against the benefits of a known compromise and settlement as set forth
13 in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best
14 interest of Plaintiff and the Class, and is a fair and reasonable resolution of the claims alleged.

15 38. My office brought to bear a great deal of experience in negotiating the settlement
16 of this case. As detailed herein, my office engaged in the necessary discovery and investigation,
17 making it possible to exercise informed judgment throughout the settlement process, including
18 significant document review (e.g. documents pertaining to Defendant's policies and procedures,
19 personnel documents, among others), and conducted an extensive analysis of the detailed class-
20 wide data provided by Defendant.

21 39. Based on my experience in other cases, including wage and hour matters, I
22 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
23 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
24 settlement at this time is in the best interests of the class. The settlement provides each class
25 member with compensation for the alleged violations when viewed in relation to the costs and
26 risks inherent in obtaining class certification and proceeding to trial.

27 40. Plaintiff's counsel, as well as Defendant's counsel, fully endorse the terms and
28 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

1 41. Of course, the settlement amount represents a compromise figure, taking into
2 account the various risks surrounding class certification and the merits of Defendant's asserted
3 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
4 members, with no reversion to Defendant.

5 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

6 42. Plaintiff seeks an enhancement payment of \$10,000 for her service to the class,
7 which I believe is fair and warranted. Plaintiff came forward in an effort to effectuate a policy
8 and practice change that benefitted all other Class Members, and to recover unpaid wages. She
9 assumed significant risk in bringing this litigation—namely, had she lost, she would have been
10 ordered to pay Defendant's costs.

11 43. Plaintiff provided invaluable assistance to my office and the Class in this case,
12 including providing factual background for the Class Complaint; reviewing the litigation
13 documents; providing information and documents about Defendant's policies and practices;
14 participating in phone calls to discuss litigation and settlement strategy; and reviewing the
15 settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal
16 benefit. At final approval, Plaintiff will submit a comprehensive declaration setting forth all of
17 the reasons why she believes that the service award should be approved.

18 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
19 **REQUESTED FEES AND COSTS**

20 44. As set forth above, I have handled over 250 class and representative actions, have
21 been appointed as class counsel and have successfully resolved over half of those cases, and
22 many others remain pending and will successfully resolve in the future.

23 45. When this case was taken on a contingency fee basis, with my firm agreeing to
24 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
25 course of this litigation, my firm paid all costs including filing fees, court costs, research fees,
26 and mediation costs. There was never a guarantee that we would recoup those expenditures.

27 46. It is my experience that attorney fee awards of one-third of a common fund
28 settlement is the standard in California. In this case, Plaintiff's counsel agreed to seek one-third

1 of the Settlement Amount for attorneys' fees. Defendant does not oppose this fee request. The
2 fee is further warranted because it is within the range of reasonableness typically awarded in
3 class actions. The costs are reasonably capped at \$30,000 and will be based on the actual amount
4 of costs incurred at the time of final approval.

5 **SETTLEMENT ADMINISTRATOR**

6 47. The parties request that the Court appoint Rust Consulting to serve as the
7 Settlement Administrator. Rust is experienced in administering class action settlements, and has
8 provided a proposal to administer this settlement for a total of \$50,500, which is attached hereto
9 as **Exhibit 3** and further attached to the declaration of Andrew Meyer of Rust Consulting.

10 **SUBMISSION TO THE LWDA**

11 48. Plaintiff has concurrently submitted the settlement and motion documents to the
12 LWDA in accordance with Labor Code § 2699(1)(2). The proof of submission is attached hereto
13 as **Exhibit 4**.

14 **EXHIBITS AND CONCLUSION**

15 49. The fully signed Settlement Agreement is attached as Exhibit "1."

16 50. The proposed Class Notice is attached hereto as Exhibit "2."

17 51. Rust Consulting's proposal to administer the Settlement is attached as Exhibit
18 "3."

19 52. The LWDA's confirmation of receipt of this Motion, Declarations and exhibits is
20 attached hereto as Exhibit "4."

21 53. For the foregoing reasons, it is respectfully requested that the Court grant
22 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
23 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
24 payment to the Class Representative.

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct. Executed on April 30, 2024, at Riverside, California.

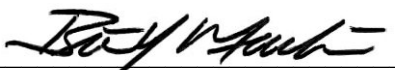
27
28 By: 
Brian J. Mankin, Esq.

EXHIBIT “1”

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U.S. BANK NATIONAL ASSOCIATION

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

MARLENE MOLINA, individually, on a
representative basis, and on behalf of all
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Plaintiff,

vs.

U.S. BANK NATIONAL ASSOCIATION;
and DOES 1 through 20, inclusive;

Defendants.

Case No. CIVSB2300344

*[Assigned to Hon. Jessica Morgan, Dept S26, for
all purposes]*

**CLASS AND PAGA ACTION SETTLEMENT
AGREEMENT AND RELEASE**

Complaint filed: January 24, 2023

1 This Class and PAGA Action Settlement Agreement and Release (“Agreement”) is made by
2 and between Plaintiff Marlene Molina (“Plaintiff”) and Defendant U.S. Bank National Association
3 (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or
4 individually as “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Action” means the class action wage and hour case entitled *Molina v. U.S. Bank*
7 *National Association, et al.*, San Bernardino County Superior Court Case No. CIVSB2300344 filed
8 on January 24, 2023 and the later-filed PAGA-only case entitled *Molina v. U.S. Bank National*
9 *Association*, San Bernardino County Superior Court Case No. CIVSB2302908 which was
10 consolidated with the initial Complaint filed on January 24, 2023.

11 1.2. “Administrator” means Rust Consulting, the neutral entity the Parties have agreed to
12 appoint to administer the Settlement.

13 1.3. “Administrator Expenses Payment” means the amount the Administrator will be paid
14 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with
15 the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary
16 Approval of the Settlement.

17 1.4. “Aggrieved Employee(s)” means all current and former nonexempt employees
18 employed by U.S. Bank in California who recorded hours worked during at least one PAGA Pay
19 Period during the PAGA Period.

20 1.5. “Class” means all current and former nonexempt employees employed by U.S. Bank
21 in California who recorded hours worked during at least one Workweek during the Class Period.

22 1.6. “Class Counsel” means Brian J. Mankin and Peter J. Carlson of Lauby, Mankin &
23 Lauby LLP.

24 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
25 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
26 expenses, respectively, incurred to prosecute the Action.

1.8. "Class Data" means Class Member identifying information in U.S. Bank's possession including the Class Member's name, last-known mailing address, Social Security number, and number of Workweeks and PAGA Pay Periods.

1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.10. "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. "Class Period" means the period from January 24, 2019 until the date the Court grants Preliminary Approval.

1.13. "Class Representative" means Marlene Molina.

1.14. "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action, providing services in support of the Action, and giving a general release.

1.15. "Complaint" means the Complaint on file in this Action, which incorporates the claims and facts in the complaint from the consolidated later-filed PAGA-only action.

1.16. "Court" means the Superior Court of California for the County of San Bernardino.

1.17. "Defendant" means U.S. Bank National Association.

1.18. "Defense Counsel" means Joan B. Tucker Fife and Emilie C. Woodhead of Winston & Strawn LLP.

1.19. "Effective Date" means the date on which the Court's order approving the Settlement and its entry of judgment become Final.

1 1.20. "Final" means the latest of: (i) if there is an appeal of the Court's judgment, the date
2 the order and judgment approving the Settlement are affirmed on appeal, the date of dismissal of such
3 appeal, or the expiration of the time to file a petition for writ of certiorari to the California Supreme
4 Court and/or United States Supreme Court (as applicable); (ii) if a petition for writ of certiorari is filed,
5 the date of denial of the petition for writ of certiorari, or the date the order and judgment approving
6 the Settlement are affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration date
7 of the time for filing or noticing any appeal of the order approving the Settlement and granting Final
8 Approval and/or entry of judgment.

9 1.21. "Final Approval" means the Court's order granting final approval of the Settlement.

10 1.22. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval
11 of the Settlement.

12 1.23. "Final Judgment" means the Judgment Entered by the Court upon Granting Final
13 Approval of the Settlement.

14 1.24. "Funding Date" means 15 days after the Effective Date.

15 1.25. "Gross Settlement Amount" means \$4,550,000, which is the total amount Defendant
16 agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual Class
17 Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment,
18 Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the
19 Administrator's Expenses.

20 1.26. "Individual Class Payment" means the Participating Class Member's share of the Net
21 Settlement Amount calculated in accordance with the formula set forth in Paragraph 3.2.4.

22 1.27. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25%
23 of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked for U.S.
24 Bank in a nonexempt position in California during the PAGA Period.

25 1.28. "Judgment" means the judgment entered by the Court based upon the Final Approval.

26 1.29. "LWDA" means the California Labor and Workforce Development Agency, the
27 agency entitled, under Labor Code section 2699, subdivision (i).
28

1.30. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i).

1.31. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administrator Expenses Payment. The Net Settlement Amount is to be paid to Participating Class Members as Individual Class Payments.

1.32. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.33. "PAGA Pay Period" means any pay period during which an Aggrieved Employee recorded hours worked in a nonexempt position in California while employed by U.S. Bank during the PAGA Period.

1.34. "PAGA Period" means the period from January 24, 2022 until the date the Court grants Preliminary Approval.

1.35. "PAGA" means the Private Attorneys General Act (Lab. Code, § 2698 et seq.).

1.36. "PAGA Notice" means Plaintiff's letter(s) to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subdivision (a).

1.37. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount (\$200,000), allocated 25% to the Aggrieved Employees (\$50,000) and the 75% to LWDA (\$150,000) in settlement of PAGA claims.

1.38. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the class action portion of the Settlement.

1.39. "Plaintiff" means Marlene Molina, the named plaintiff in the Action.

1.40. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.

1.41. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

1 1.42. “Released Class Claims” means any and all claims that were alleged, or that reasonably
2 could have been alleged, based upon the facts stated in the Complaint and/or in Plaintiff’s LWDA
3 Notice letter against any of the Released Parties, including claims pursuant to: California Labor Code
4 sections 200-204, 208, 210, 218.5, 218.6, 221-223, 226, 226.3, 226.7, 227.3, 246, 248.5, 256, 432,
5 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802; the California
6 Industrial Welfare Commission’s (“IWC”) Wage Orders; the California Code of Regulations;
7 California Code of Civil Procedure § 1021.5; the California Business & Professions Code; and the
8 Fair Labor Standards Act including claims premised upon: rest periods; meal periods, including on-
9 duty meal periods; unpaid wages; minimum wages; overtime wages; pay for all hours worked,
10 including but not limited to off-the-clock work; calculation of the regular rate, including non-inclusion
11 of all forms of compensation required to be included in such calculation; timeliness of wages; payment
12 of any wages due at separation of employment; vacation wages; the rate of payment for sick leave;
13 underpayment of sick leave; waiting time penalties; itemized wage statements, accuracy of wage
14 statements, and/or any potential violation of Labor Code § 226(a); reimbursement of expenses,
15 including but not limited to work-from-home expenses; recordkeeping; unfair competition; any unpaid
16 wages or compensation related to any or all of the foregoing; any premium payments related to any or
17 all the foregoing; whether the foregoing claims are known or unknown to the employees; restitution
18 for any or all of the foregoing; any penalties, including statutory and civil penalties, related to any or
19 all of the foregoing; attorneys’ fees or costs related to any or all of the foregoing; interest related to
20 any or all of the foregoing; and/or any other damages or amounts related to any or all of the foregoing.
21 The time period governing the Released Class Claims shall be the Class Period.

22 1.43. “Released PAGA Claims” means any and all claims for civil penalties under California
23 Labor Code section 2698 *et seq.* (PAGA) that were alleged, or that reasonably could have been alleged,
24 based upon the facts stated in the in the Complaint and/or in Plaintiff’s LWDA Notice letter against
25 any of the Released Parties, including claims for PAGA civil penalties premised on: California Labor
26 Code sections 200-204, 208, 210, 218.5, 218.6, 221-223, 226, 226.3, 226.7, 227.3, 246, 248.5, 256,
27 432, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802; the California
28 Industrial Welfare Commission’s (“IWC”) Wage Orders; and the California Code of Regulations,

1 including claims for PAGA civil penalties premised on: rest periods; meal periods, including on-duty
2 meal periods; unpaid wages; minimum wages; overtime wages; pay for all hours worked, including
3 but not limited to off-the-clock work; calculation of the regular rate, including non-inclusion of all
4 forms of compensation required to be included in such calculation; timeliness of wages; payment of
5 any wages due at separation of employment; vacation wages; the rate of payment for sick leave;
6 underpayment of sick leave; waiting time penalties; itemized wage statements, accuracy of wage
7 statements, and/or any potential violation of Labor Code § 226(a); reimbursement of expenses;
8 recordkeeping; any premium payments related to any or all the foregoing; any civil penalties related
9 to any or all of the foregoing; and attorneys' fees or costs related to any or all of the foregoing. The
10 time period governing the Released PAGA Claims shall be the PAGA Period.

11 1.44. "Released Parties" means: U.S. Bank National Association and U.S. Bancorp, and all
12 of their former, present or future parents, subsidiaries, affiliates/affiliated companies, related
13 companies/corporations, partnerships, divisions, assigns, and/or predecessors; and each of the
14 foregoing's present, former, or future owners, officers, directors, shareholders, partners, employees,
15 insurers, successors, predecessors, contractors, assigns, and managing agents; any and all agents, legal
16 representatives, and/or attorneys of all of the foregoing entities or individuals; and any potential or
17 alleged joint employers, dual employers, common law employers, and/or co-employers.

18 1.45. "Request for Exclusion" means a Class Member's submission of a written request to
19 be excluded from the Settlement signed by the Class Member.

20 1.46. "Response Deadline" means 30 days after the Administrator mails the Class Notice to
21 Class Members and Aggrieved Employees, and shall be the last date on which Class Members may:
22 (a) mail Requests for Exclusion from the Settlement, or (b) mail Objections to the Settlement. Class
23 Members to whom Class Notice is re-sent after having been returned as undeliverable to the
24 Administrator shall have an additional 14 calendar days beyond the Response Deadline.

25 1.47. "Settlement" means the disposition of the Action effected by this Agreement and the
26 Judgment.

27 1.48. "U.S. Bank" means Defendant U.S. Bank National Association and/or U.S. Bancorp.
28

1.49. “Workweek(s)” means any week during which a Class Member recorded hours worked in a non-exempt position in California while employed by U.S. Bank during the Class Period.

2. RECITALS.

2.1 On January 24, 2023, Plaintiff commenced this Action by filing the initial class action complaint entitled *Molina v. U.S. Bank National Association, et al.*, San Bernardino County Superior Court Case No. CIVSB2300344. On April 4, 2023, Plaintiff filed a PAGA-only case entitled *Molina v. U.S. Bank National Association*, San Bernardino County Superior Court Case No. CIVSB2302908, which was consolidated with the initial Complaint filed on January 24, 2023. Defendant denies the allegations in the Complaint, denies any failure to comply with the laws identified in the Complaint, and denies any and all liability for the causes of action alleged.

2.2 Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.3 On January 19, 2024, the Parties participated in an all-day mediation presided over by experienced wage and hour mediator Steve Rottman, Esq., which led to this Agreement to settle the Action.

2.4 Prior to mediation, Plaintiff, obtained, through informal discovery: (i) data regarding non-exempt employees in California, including a random sampling of available time and pay data for approximately 5% of the putative class members; (ii) document productions including relevant policies, Plaintiff’s personnel records, Plaintiff’s wage statements, and Plaintiff time records; (iii) a description of how shift premiums (including overtime) are calculated; and (iv) a description of how sick pay is calculated (including examples from Plaintiff’s pay statements). Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2.5 The Court has not granted class certification.

1 **3. MONETARY TERMS.**

2 3.1 Gross Settlement Amount. Except as otherwise provided by Escalator Clause
3 (Paragraph 9 below), Defendant promises to pay \$4,550,000 and no more as the Gross Settlement
4 Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions (as
5 defined below) of the Individual Class Payments. Defendant has no obligation to pay the Gross
6 Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this
7 Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or
8 requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of
9 payment. None of the Gross Settlement Amount will revert to Defendant.

10 3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct
11 the following payments from the Gross Settlement Amount, in the amounts specified by the Court in
12 the Final Approval:

13 3.2.1 To Plaintiff: Class Representative Service Payment to the Class Representative
14 of not more than \$10,000 in addition to any Individual Class Payment and any Individual PAGA
15 Payment the Class Representative is entitled to receive as a Participating Class Member. Defendant
16 will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed
17 this amount. If the Court approves a Class Representative Service Payment less than the amount
18 requested, the Administrator will retain the remainder in the Net Settlement Amount. The
19 Administrator will pay the Class Representative Service Payment using an IRS Form 1099. Plaintiff
20 assumes full responsibility and liability for taxes owed on the Class Representative Service Payment.

21 3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than one-third
22 (33.33%) of the Gross Settlement Amount, which is currently estimated to be \$1,516,666.67, and a
23 Class Counsel Litigation Expenses Payment of not more than \$30,000.00. Defendant will not oppose
24 requests for these payments provided that they do not exceed these amounts. If the Court approves a
25 Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the
26 amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
27 Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel for any
28 attorneys' fees or costs arising from any claim released in this Settlement beyond the Class Counsel

1 Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class
2 Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms.
3 Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees
4 Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and
5 indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of
6 these payments.

7 3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed
8 \$50,500 except for a showing of good cause and as approved by the Court. To the extent the
9 Administrator Expenses are less or the Court approves payment less than \$50,500, the Administrator
10 will retain the remainder of the Administrator Expenses Payment in the Net Settlement Amount. Class
11 Counsel, Plaintiff, Defendant and Defendant's Counsel are not responsible for paying the difference
12 between the Court approved Administrator Expenses Payment and the amount requested by the
13 Administrator.

14 3.2.4 To Each Participating Class Member: The Net Settlement Amount shall be
15 allocated as follows: First: (i) each Workweek that was covered by the previous settlement in
16 *Rodriguez v. U.S. Bank National Association*, Los Angeles Superior Court Case No. BC617356 (which
17 had added, by way of amendment, the plaintiffs and claims from two other cases: *Malik v. U.S. Bank*
18 *National Association*, Los Angeles Superior Court Case No. 19STCV17516; and *Yousefi v. U.S. Bank*
19 *National Association*, Southern District of California Case No. 3:20-cv-01770-BAS-AGS) shall be
20 given one (1) settlement point; (ii) all of the remaining Workweeks shall be given two (2) settlement
21 points; (iii) each Workweek worked by a Class Member while home-based (as determined by U.S.
22 Bank's HRIS records) shall be given one (1) additional settlement point; and (iv) each Workweek
23 worked by a Class Member who is no longer employed by U.S. Bank (as determined by U.S. Bank's
24 HRIS records) as of the date of Preliminary Approval shall be given one (1) additional settlement
25 point. The total number of settlement points for all Class Members will be added together and the Net
26 Settlement Amount shall be divided by that total to reach a dollar value per point. The resulting point
27 value will then be multiplied by each Class Member's number of settlement points to determine his or
28 her Individual Class Payment; provided, however, that each Class Member shall receive, at minimum,

1 the amount equivalent to one settlement point. The Individual Class Payments will be reduced by any
2 required deductions as specifically set forth herein, including by employee-side tax withholdings or
3 deductions. The entire Net Settlement Amount will be disbursed to Class Members who do not submit
4 timely and valid requests to be excluded from the Settlement. If there are timely and valid requests to
5 be excluded from the Settlement, the Administrator shall proportionately increase the Individual Class
6 Payment for each Participating Class Member according to the number of Workweeks (and
7 corresponding settlement points as set forth in this Paragraph) worked so that the entire amount of the
8 Net Settlement Amount is actually disbursed to Participating Class Members.

9 3.2.4.1 Tax Allocation of Individual Class Payments. One-third (1/3) of each
10 Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims
11 (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an
12 IRS W-2 Form. The remaining two-thirds (2/3) of each Participating Class Member's Individual Class
13 Payment will be allocated to settlement of claims for interest, penalties, and other non-wage amounts
14 (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be
15 reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for
16 any employee taxes owed on their Individual Class Payment.

17 3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual
18 Class Payments. Non-Participating Class Members will not receive any Individual Class Payments.
19 The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement
20 Amount for distribution to Participating Class Members in accordance with the formula set forth in
21 Paragraph 3.2.4.

22 3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
23 \$200,000 to be paid from the Gross Settlement Amount, with 75% (\$150,000) allocated to the LWDA
24 PAGA Payment and 25% (\$50,000) allocated to the Individual PAGA Payments.

25 3.2.5.1 The Administrator will calculate each Individual PAGA Payment by
26 (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$50,000) by the
27 total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and
28

(b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder of the PAGA Penalties to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Class Workweeks. Based on a review of its records U.S. Bank estimated that, as of the time of mediation, the Class Members collectively worked a total of 1,019,399 Workweeks.

4.2 Class Data. Not later than 21 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 15 days after the Effective Date (the "Funding Date").

4.4 Payments from the Gross Settlement Amount. Within 14 days after the Funding Date, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administrator Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment

1 and the Class Representative Service Payment shall not precede disbursement of Individual Class
2 Payments and Individual PAGA Payments.

3 4.4.1 The Administrator will issue checks for the Individual Class Payments and/or
4 Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage
5 prepaid. The face of each check shall prominently state the date (180 days after the date of mailing)
6 when the check will be voided. The Administrator will cancel all checks not cashed by the void date.
7 The Administrator will send checks for Individual Class Payments to all Participating Class Members
8 (including those for whom Class Notice was returned undelivered). The Administrator will send
9 checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class
10 Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned
11 undelivered). The Administrator may send Participating Class Members a single check combining the
12 Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the
13 Settlement Administrator must update the recipients' mailing addresses using the National Change of
14 Address Database.

15 4.4.2 The Administrator must conduct a Class Member Address Search for all other
16 Class Members whose checks are returned undelivered without a United States Postal Service
17 ("USPS") forwarding address. Within 7 days of receiving a returned check the Administrator must re-
18 mail checks to the USPS forwarding address provided or to an address ascertained through the Class
19 Member Address Search. The Administrator need not take further steps to deliver checks to Class
20 Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send
21 a replacement check to any Class Member whose original check was lost or misplaced, if requested
22 by the Class Member prior to the void date.

23 4.4.3 For any Class Member whose Individual Class Payment check or Individual
24 PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit
25 the funds represented by such checks to the California Controller's Unclaimed Property Fund in the
26 name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
27 California Code of Civil Procedure section 384, subdivision (b).
28

1 4.4.4 The payment of Individual Class Payments and Individual PAGA Payments
2 shall not obligate Defendant to confer any additional benefits or make any additional payments to
3 Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

4 **5. RELEASES OF CLAIMS.** Effective on the Funding Date, Plaintiff, Class Members and
5 Aggrieved Employees will release claims against all Released Parties as follows:

6 5.1 Plaintiff's General Release. Plaintiff and her respective former and present spouses,
7 representatives, agents, attorneys, heirs, administrators, successors and assigns, shall release the
8 Released Parties from the Released Class Claims and the Released PAGA Claims and, in addition,
9 shall make the following general release in favor of the Released Parties:

10 5.1.1 Plaintiff and her respective former and present spouses, representatives, agents,
11 attorneys, heirs, administrators, successors and assigns hereby unconditionally waive and forever
12 release the Released Parties from any and all demands, damages, debts, liabilities, actions, causes of
13 action and claims of every kind and nature whatsoever, whether now known or unknown, suspected
14 or unsuspected, contingent or non-contingent, whether or not concealed or hidden, arising or accruing
15 at any time prior to and/or on the Funding Date, which now exist, or heretofore have existed, upon any
16 theory of law or equity, including, without limitation, all claims under the Fair Employment and
17 Housing Act, Americans with Disabilities Act, Age Discrimination in Employment Act, and Title VII
18 of the Civil Rights Act of 1964. Plaintiff is deemed by operation of the order granting Final Approval
19 to have agreed not to sue or otherwise make a claim against any of the Released Parties for any claim.

20 5.1.2 Plaintiff acknowledges that she has had the opportunity to review, and has
21 reviewed, California Civil Code section 1542, which provides:

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

28 Being fully informed of this provision of the Civil Code and understanding its provisions, Plaintiff
agrees to waive any rights under that section (or any statute or common law principle of similar effect),
and acknowledges that the Settlement Agreement and the release contained herein extends to all claims

1 that she has or might have against the Released Parties, including those which are presently unknown
2 to her.

3 5.2 Release of Claims By Participating Class Members: Upon the Funding Date, each and
4 every Participating Class Member, on behalf of themselves and their heirs and assigns, shall release
5 the Released Parties from the Released Class Claims. The release shall include the Released Class
6 Claims through the Preliminary Approval Order.

7 5.2.1 Any Class Member who does not affirmatively opt-out of the Agreement by
8 submitting a timely and valid letter requesting exclusion from the Settlement, consistent with the terms
9 of the Agreement, shall be bound by all of its terms, including those pertaining to the Released Class
10 Claims as well as any judgment that may be entered by the Court after it grants Final Approval of the
11 Settlement.

12 5.3 Release of Claims By Aggrieved Employees: Upon the Funding Date, each and every
13 Aggrieved Employee, on behalf of themselves and their heirs and assigns, shall release the Released
14 Parties from the Released PAGA Claims. The release shall include the Released PAGA Claims
15 through the Preliminary Approval Order.

16 5.3.1 No Aggrieved Employee may opt out of or be excluded from
17 participating in the settlement of the Released PAGA Claims. All Aggrieved Employees shall be
18 bound by the judgment entered herein and will have released the Released PAGA Claims if/when the
19 Court grants Final Approval of this Settlement. If the Court grants Final Approval of the Settlement,
20 the occurrence of the Funding Date shall forever bar Plaintiff, the LWDA, and any other
21 representative, proxy, or agent thereof, including, but not limited to, any and all Aggrieved Employees,
22 from pursuing any action pursuant to PAGA against the Released Parties for the Released PAGA
23 Claims.

24 **6. MOTION FOR PRELIMINARY APPROVAL.** Plaintiff shall prepare and file a motion for
25 preliminary approval (“Motion for Preliminary Approval”).

26 6.1 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel a draft
27 of the Motion for Preliminary Approval, the Proposed Order and Administrator’s declaration 10 days
28

1 before the deadline to file the Motion. Defendants' counsel shall provide any proposed revisions 2
2 days before the filing deadline.

3 6.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible
4 for expeditiously finalizing and filing the Motion for Preliminary Approval as soon as practicable after
5 the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary
6 Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval.
7 Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

8 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
9 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense
10 Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone,
11 and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or
12 conditions Preliminary Approval on any material change to this Agreement, Class Counsel and
13 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by
14 telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

15 7. SETTLEMENT ADMINISTRATION.

16 7.1 Selection of Administrator. The Parties have jointly selected Rust Consulting to serve
17 as the Administrator and verified that, as a condition of appointment, Rust Consulting agrees to be
18 bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in
19 exchange for payment of Administrator Expenses Payment. The Parties and their Counsel represent
20 that they have no interest or relationship, financial or otherwise, with the Administrator other than a
21 professional relationship arising out of prior experiences administering settlements.

22 7.2 Employer Identification Number. The Administrator shall have and use its own
23 Employer Identification Number for purposes of calculating payroll tax withholdings and providing
24 reports state and federal tax authorities.

25 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that
26 meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section
27 468B-1.
28

1 7.4 Notice to Class Members.

2 7.4.1 No later than three (3) business days after receipt of the Class Data, the
3 Administrator shall notify Class Counsel that the list has been received and state the number of Class
4 Members, Aggrieved Employees, Workweeks and PAGA Pay Periods in the Class Data.

5 7.4.2 Using best efforts to perform as soon as possible, and in no event later than 10
6 days after receiving the Class Data, the Administrator will send to all Class Members and Aggrieved
7 Employees identified in the Class Data, via first-class USPS mail, the Class Notice substantially in the
8 form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently
9 estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment
10 payable to the Class Member and/or Aggrieved Employee, and the number of Workweeks and PAGA
11 Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the
12 Administrator shall update Class Member addresses using the National Change of Address database.

13 7.4.3 Not later than 3 business days after the Administrator's receipt of any Class
14 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using
15 any forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
16 the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the
17 most current address obtained. The Administrator has no obligation to make further attempts to locate
18 or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

19 7.4.4 The deadlines for Class Members' written objections, challenges to the number
20 of Workweeks and/or PAGA Pay Periods attributed to a Class Member and/or Aggrieved Employee
21 on the Class Notice, and Requests for Exclusion will be extended an additional 14 days beyond the
22 original Response Deadline otherwise provided in the Class Notice for all Class Members and/or
23 Aggrieved Employees whose notice is re-mailed. The Administrator will inform the Class Member
24 and/or Aggrieved Employee of the extended deadline with the re-mailed Class Notice.

25 7.4.5 If the Administrator, Defendant, or Class Counsel is contacted by or otherwise
26 discovers any persons who believe they should have been included in the Class Data and should have
27 received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and
28 in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree,

1 such persons will be Class Members entitled to the same rights as other Class Members, and the
2 Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise
3 options under this Agreement not later than 14 days after receipt of Class Notice, or the Response
4 Deadline, which ever is later.

5 7.5 Requests for Exclusion (Opt-Outs).

6 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Settlement
7 must send the Administrator, by mail, a signed written Request for Exclusion no later than the
8 Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed).
9 A Request for Exclusion is a letter from a Class Member or his/her/their representative that reasonably
10 communicates the Class Member's election to be excluded from the Settlement and includes the Class
11 Member's name, address and email address or telephone number, such as:

12 I WISH TO BE EXCLUDED FROM THE CLASS IN THE U.S. BANK LAWSUIT.

13 I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT
14 CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT FROM
15 THIS LAWSUIT

16 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it
17 fails to contain all the information specified in the Class Notice. The Administrator shall accept any
18 Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person
19 as a Class Member and the Class Member's desire to be excluded. The Administrator's determination
20 shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason
21 to question the authenticity of a Request for Exclusion, the Administrator may demand additional
22 proof of the Class Member's identity. The Administrator's determination of authenticity shall be final
23 and not appealable or otherwise susceptible to challenge.

24 7.5.3 Every Class Member who does not submit a timely and valid Request for
25 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits
26 and bound by all terms and conditions of the Settlement, including the releases under Paragraphs 5.2
27 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the
28 Class Notice or objects to the Settlement.

1 7.5.4 Every Class Member who submits a valid and timely Request for
2 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or
3 have the right to object to the Settlement. Because future PAGA claims are subject to claim preclusion
4 upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are
5 deemed to release the Released PAGA Claims and will receive an Individual PAGA Payment.

6 7.6 Challenges to Calculation of Workweeks. The Class Notice will inform Class Members
7 of their estimated Individual Class Payment and the number of Workweeks during the Class Period as
8 well as estimated Individual PAGA Payment and number of PAGA Pay Periods. Each Class Member
9 and/or Aggrieved Employee shall have until the Response Deadline (plus an additional 14 days for
10 Class Members and/or Aggrieved Employees whose Class Notice is re-mailed) to challenge the
11 number of Workweeks and PAGA Pay Periods (if any) allocated to the Class Member and/or
12 Aggrieved Employee in the Class Notice. The Class Member and/or Aggrieved Employee may
13 challenge the allocation by communicating with the Administrator via mail. The Administrator must
14 encourage the challenging Class Member and/or Aggrieved Employee to submit supporting
15 documentation. In the absence of any contrary documentation, the Administrator is entitled to presume
16 that the Workweeks and/or PAGA Pay Periods contained in the Class Notice are correct so long as
17 they are consistent with the Class Data. The Administrator's determination of each Class Member's
18 and/or Aggrieved Employee's allocation of Workweeks and/or PAGA Pay Periods shall be final and
19 not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies
20 of all challenges to the calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and
21 Class Counsel and the Administrator's determination of the challenges.

22 7.7 Objections to Settlement.

23 7.7.1 Only Participating Class Members may object to the class action components
24 of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or
25 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment
26 and/or Class Representative Service Payment.

27 7.7.2 To object, a Participating Class Member shall inform the Administrator, in
28 writing, of his or her objection which must be mailed and postmarked by the Response Deadline at the

1 address set forth in the Notice. Such objection shall include the objecting Class Member's full name,
2 address, telephone number, last four digits of the social security number or date of birth, signature,
3 and dates of employment with Defendants, in addition to the case name and number, the basis for the
4 objection, including any legal support and each specific reason in support of the objection, as well as
5 any documentation or evidence in support thereof, and, if the Objecting Class Member is represented
6 by counsel, the name and address of his or her counsel. The Administrator shall provide objections,
7 if any, to Class Counsel and Defense Counsel within three (3) calendar days of receipt, and the
8 Administrator shall attach the same to its declaration of due diligence and file with the Court prior to
9 the Final Approval Hearing. Any Participating Class Member who files an objection remains eligible
10 to receive monetary compensation from the settlement. If a Class Member files an objection *and*
11 submits a timely Request for Exclusion, the latter shall be honored and the Class Member's objection
12 shall be deemed invalid. Plaintiff and Defendants shall not be responsible for any fees, costs, or
13 expenses incurred by any Class Member and/or his or her counsel related to any objections to the
14 settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather,
15 the right to appeal is preserved by becoming a party of record by timely and properly intervening or
16 filing a motion to vacate the judgment under California Code of Civil Procedure § 663. Class Members
17 and Aggrieved Employees may not object to or opt-out of the Settlement with respect to the Released
18 PAGA Claims.

19 7.7.3 Non-Participating Class Members have no right to object to the Settlement.

20 7.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to
21 be performed or observed by the Administrator contained in this Agreement or otherwise.

22 7.8.1 Website and Toll-Free Number. The Administrator will establish and maintain
23 and use an internet website to post information of interest to Class Members and Aggrieved Employees
24 including the date, time and location for the Final Approval Hearing and copies of the Agreement,
25 Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final
26 Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment
27 and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator
28

1 will also maintain and monitor a toll-free telephone number to receive Class Member and Aggrieved
2 Employee calls and emails.

3 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
4 promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5
5 days after the Response Deadline, the Administrator shall email a list to Class Counsel and Defense
6 Counsel containing (a) the names and other identifying information of Class Members who have
7 timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying
8 information of Class Members who have submitted invalid Requests for Exclusion; and (c) copies of
9 all Requests for Exclusion from Settlement submitted (whether valid or invalid).

10 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written
11 reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class
12 Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether
13 valid or invalid) received, objections received, challenges to Workweeks and/or PAGA Pay Periods
14 received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA
15 Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of
16 the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections
17 received.

18 7.8.4 Workweek and/or PAGA Pay Period Challenges. The Administrator has the
19 authority to address and make final decisions consistent with the terms of this Agreement on all Class
20 Member and/or Aggrieved Employee challenges over the calculation of Workweeks and/or PAGA
21 Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible
22 to challenge.

23 7.8.5 Administrator’s Declaration. Not later than 14 days before the date by which
24 Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will
25 provide to Class Counsel and Defense Counsel a signed declaration suitable for filing in Court attesting
26 to its due diligence and compliance with all of its obligations under this Agreement, including, but not
27 limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of
28 Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from

1 Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion
2 List. The Administrator will supplement its declaration as needed or requested by the Parties and/or
3 the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

4 7.8.6 Final Report by Settlement Administrator. Within 10 days after the
5 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide
6 Class Counsel and Defense Counsel with a final report detailing its disbursements by employee
7 identification number only of all payments made under this Agreement. At least 15 days before any
8 deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense
9 Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments
10 required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration
11 in Court.

12 **8. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion
13 identified in the Exclusion List results in the exclusion of more than 5% of the total Workweeks,
14 Defendant may, but is not obligated to, elect to withdraw from the Settlement. The Parties agree that,
15 if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and
16 that neither Party will have any further obligation to perform under this Agreement; provided,
17 however, Defendant will remain responsible for paying all Settlement administration expenses
18 incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw
19 not later than 7 days after the Administrator sends the final Exclusion List to Defense Counsel; late
20 elections will have no effect.

21 **9. ESCALATOR CLAUSE.** For purposes of mediation and negotiations, U.S. Bank represented
22 there were an estimated 1,019,399 Workweeks as of the time of mediation. The total number of
23 Workweeks covered by this Settlement shall be no greater than 1,244,033, (i.e., 10% greater than the
24 estimated Workweeks extrapolated through April 31, 2024). If the Workweeks exceed 1,244,033,
25 Defendant, in its sole discretion, shall choose whether to: (a) cut off the end date for the Release as of
26 the date the Workweeks reach 1,244,033; or (b) increase the Net Settlement Amount on a proportional
27 basis equal to the increase in the number of Workweeks above the 10% buffer (e.g., an 11% increase
28 in Workweeks would result in a 1% increase in the Net Settlement Amount).

1 **10. MOTION FOR FINAL APPROVAL.** As set forth in the Preliminary Approval Order,
2 Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for
3 approval of the PAGA settlement under Labor Code section 2699, subdivision (l), a Proposed Final
4 Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall
5 provide drafts of these documents to Defense Counsel not later than 7 days prior to filing the Motion
6 for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person
7 or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final
8 Approval.

9 10.1 Response to Objections. Each Party retains the right to respond to any objection raised
10 by a Participating Class Member, including the right to file responsive documents in Court no later than
11 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

12 10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
13 Approval on any material change to the Settlement (including, but not limited to, the scope of releases
14 to be granted by Plaintiff, Class Members, and/or Aggrieved Employees), the Parties will expeditiously
15 work together in good faith to address the Court’s concerns by revising the Agreement as necessary to
16 obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class
17 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses
18 Payment and/or Administrator Expenses Payment shall not constitute a material modification to the
19 Agreement within the meaning of this paragraph.

20 10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment,
21 the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of
22 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and
23 (iii) addressing such post-Judgment matters as are permitted by law.

24 10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
25 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel
26 Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel, and all
27 Participating Class Members who did not object to the Settlement as provided in this Agreement or file
28 a motion to intervene, waive all rights to appeal from the Judgment, including all rights to post-

1 judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial,
2 extraordinary writs and appeals. The waiver of appeal does not include any waiver of the right to oppose
3 such motions, writs, or appeals. If an objector appeals the Judgment, the Parties' obligations to perform
4 under this Agreement will be suspended until such time as the appeal is finally resolved and the
5 Judgment becomes final.

6 10.5 Appellate Court Orders to Vacate, Reverse or Materially Modify Judgment. If the
7 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
8 modification of this Agreement (including, but not limited to, the scope of releases to be granted by
9 Plaintiff, Class Members, and/or Aggrieved Employees), this Agreement shall be null and void. The
10 Parties shall nevertheless expeditiously work together in good faith to address the appellate court's
11 concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional
12 administration expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse,
13 or modify the Court's award of the Class Representative Service Payment or any payments to Class
14 Counsel shall not constitute a material modification of the Judgment within the meaning of this
15 paragraph.

16 **11. AMENDED JUDGMENT.** If any amended judgment is required, the Parties will work
17 together in good faith to jointly submit a proposed amended judgment.

18 **12. ADDITIONAL PROVISIONS.**

19 12.1 No Admission of Liability, Class Certification or Representative Manageability for
20 Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims.
21 Nothing in this Agreement is intended or should be construed as an admission by Defendant that any
22 of the allegations in the Complaint have merit or that Defendant has any liability for any claims
23 asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses
24 in the Action have merit. The Parties agree that class certification and representative treatment is for
25 purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval,
26 Final Approval, or enter Judgment, Defendant reserves the right to contest certification of any class
27 for any reason, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff
28 reserves the right to move for class certification on any grounds available and to contest Defendant's

1 defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no
2 bearing on, and will not be admissible in connection with, any litigation (except for proceedings to
3 enforce or effectuate the Settlement and this Agreement).

4 12.2 Confidentiality Prior to Preliminary Approval. Excluding filings and communications
5 with the Court and LWDA, Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree
6 that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not
7 disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate
8 and/or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to
9 any person, corporation, association, government agency or other entity except: (1) to the Parties'
10 attorneys, accountants or spouses, all of whom will be instructed to keep this Agreement confidential;
11 (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing
12 authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena
13 issued by a state or federal government agency. Each Party agrees to immediately notify each other
14 Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class
15 Counsel, Defendant, and Defense Counsel separately agree not to, directly or indirectly, initiate any
16 conversation or other communication, before the filing of the Motion for Preliminary Approval, with
17 any third party regarding this Agreement or the matters giving rise to this Agreement except to respond
18 only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class
19 Counsel's communications with Class Members in accordance with Class Counsel's ethical
20 obligations owed to Class Members.

21 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and
22 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from
23 the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to
24 communicate with Class Members in accordance with Class Counsel's ethical obligations owed to
25 Class Members.

26 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
27 together with its attached exhibits shall constitute the entire agreement between the Parties relating to
28

1 the Settlement, superseding any and all oral representations, warranties, covenants or inducements
2 made to or by any Party.

3 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
4 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
5 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its
6 terms, and to execute any other documents reasonably required to effectuate the terms of this
7 Agreement including any amendments to this Agreement.

8 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their
9 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
10 Settlement Agreement, submitting supplemental evidence and supplementing points and authorities
11 as requested by the Court. In the event the Parties are unable to agree upon the form or content of any
12 document necessary to implement the Settlement, or on any modification of the Agreement that may
13 become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or
14 the Court for resolution.

15 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not
16 directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or encumber
17 to any person or entity any portion of any liability, claim, demand, action, cause of action or right
18 released and discharged by the Party in this Settlement.

19 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant, nor Defense Counsel are
20 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon
21 as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
22 amended) or otherwise.

23 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended,
24 modified, changed, or waived only by an express written instrument signed by all Parties or their
25 representatives and approved by the Court.

26 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to
27 the benefit of, the successors of each of the Parties.
28

1 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be
2 governed by and interpreted according to the internal laws of the State of California, without regard
3 to conflict of law principles.

4 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation
5 of this Agreement. This Agreement will not be construed against any Party on the basis that the Party
6 was the drafter or participated in the drafting.

7 12.13 Confidentiality. To the extent permitted by law, all agreements made and orders entered
8 during Action and in this Agreement relating to the confidentiality of information shall survive the
9 execution of this Agreement.

10 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to
11 California Evidence Code § 1152 and/or any other settlement or mediation privilege, and all copies
12 and summaries of the Class Data provided to Class Counsel by Defendant in connection with the
13 mediation, other settlement negotiations, or in connection with the Settlement, may be used only with
14 respect to this Settlement, and no other purpose, and may not be used in any way that violates any
15 existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the
16 Court discharges the Administrator's obligation to provide a declaration confirming the final pay out
17 of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Class Data received
18 from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant
19 makes a written request to Class Counsel for the return, rather than the destruction, of Class Data.

20 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is
21 inserted for convenience of reference only and does not constitute a part of this Agreement.

22 12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall
23 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend
24 or federal legal holiday, such date or deadline shall be on the first business day thereafter.

25 12.17 Notice. All notices, demands or other communications between the Parties in
26 connection with this Agreement will be in writing and deemed to have been duly given as of the third
27 business day after mailing by United States mail, or the day sent by email or messenger, addressed as
28 follows:

To Plaintiff's Counsel:
LAUBY, MANKIN & LAUBY LLP
Brian J. Mankin
Peter J. Carlson
5198 Arlington Avenue, PMB 513
Riverside, CA 92504

To Defendant's Counsel:
WINSTON & STRAWN LLP
Joan B. Tucker Fife
101 California Street, 35th Floor
San Francisco, CA 94111

WINSTON & STRAWN LLP
Emilie C. Woodhead
Jason S. Campbell
333 S. Grand Avenue, 38th Floor
Los Angeles, CA 90071

12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement.

12.20 Participating Class Member and Aggrieved Employee Signatories. It is agreed that because the Participating Class Members and Aggrieved Employees are numerous, it is impossible or impractical to have each Participating Class Member and Aggrieved Employee execute this Agreement. The Class Notice will advise all Class Members and Aggrieved Employees of the binding nature of the release and, upon Final Approval, such shall have the same force and effect as if this Agreement were executed by each Participating Class Member and Aggrieved Employee.

12.21 Plaintiff's Waiver of Right to be Excluded. Plaintiff agrees that by signing this Agreement, she is bound by the terms herein stated and further agrees not to request to be excluded from the Class or Settlement.

SIGNATURES ON THE FOLLOWING PAGE

1 Dated: April 30, 2024


Marlene Molina (Apr 30, 2024 08:44 PDT)

Plaintiff Marlene Molina

2
3
4 Dated: April 26, 2024

Defendant U.S. Bank National Association



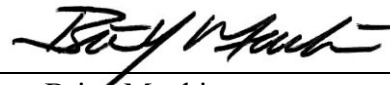
By: Jeffery Brockmann

Its: Vice President and Assistant General Counsel

9 **APPROVED AS TO FORM:**

10
11 Dated: April 30, 2024

LAUBY, MANKIN & LAUBY LLP



By: Brian Mankin

Peter Carlson

Attorneys for Plaintiff

15
16 Dated: April 29, 2024

WINSTON & STRAWN LLP



By: Joan B. Tucker Fife

Emilie C. Woodhead

Attorneys for Defendant

EXHIBIT “2”

COURT APPROVED NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

Molina v. U.S. Bank National Association

(San Bernardino County Superior Court, Case No. CIVSB2300344)

***The San Bernardino County Superior Court authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from the proposed Settlement of an employee class action and PAGA action lawsuit for alleged violations of the California Labor Code (the “Action”) filed against U.S. Bank National Association (“Defendant”).

The Action was filed by Marlene Molina (“Plaintiff” or “Class Representative”) and seeks payment of (1) unpaid wages, statutory damages and penalties, interest and attorneys’ fees on behalf of all Class Members, who are defined as all current and former nonexempt employees employed by U.S. Bank in California who recorded hours worked during at least one Workweek (as defined in the Settlement Agreement) during the Class Period (which is January 24, 2019, through **INSERT DATE**); and (2) penalties under the California Private Attorneys General Act (“PAGA”) on behalf of all Aggrieved Employees, who are defined as “all current and former nonexempt employees employed by U.S. Bank in California who recorded hours worked during at least one PAGA Pay Period (as defined in the Settlement Agreement) during the PAGA Period (which is January 24, 2022, through **INSERT DATE**). (Plaintiff and Defendant shall be collectively referred to as the “Parties.”)

This notice is being sent to all Class Members, as determined by U.S. Bank’s records. The fact that you are receiving this notice means that you are a Class Member pursuant to the proposed Settlement. You may also be an Aggrieved Employee, depending on when you worked as a non-exempt employee for U.S. Bank in California (see chart below).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments to Class Members, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments to Aggrieved Employees and pay penalties to the California Labor and Workforce Development Agency (“LWDA”). Based on Defendant’s records, and the Parties’ current assumptions, your estimated Individual Class Payment and PAGA Payment are shown in the charts below, along with the applicable data points from which these estimates are derived.

[CLASS MEMBER NAME] [ID/CONTROL NUMBER]

<i>Estimated Calculations and Data Points for Estimated Payments</i>			
Estimated Workweeks as a Class Member during Class Period	INSERT	<i>Estimated Individual Class Payment</i>	\$INSERT
Estimated Pay Periods as an Aggrieved Employee during PAGA Period	INSERT	<i>Estimated Individual PAGA Payment</i>	\$INSERT

A few important things to note about this chart:

1. The only Workweeks and Pay Periods that count are ones where you recorded hours worked as a non-exempt employee in California.
2. If no amount is stated for your Individual PAGA Payment, then according to U.S. Bank’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t record hours worked for U.S. Bank in California as a non-exempt employee during the PAGA Period.
3. The actual amount(s) you receive may be different from the above and will depend on several factors.

If you believe that you worked more time in California as a non-exempt employee during the Class Period and/or PAGA Period than as shown in the chart above, you can submit a challenge by **DATE, 2024** (“**Response Deadline**”). See **Section 4** of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

As a Class Member, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive a settlement payment if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims and Released PAGA Claims described in Section 3 .
EXCLUDE YOURSELF FROM SETTLEMENT OF RELEASED CLASS CLAIMS	If you do not wish to participate in the settlement of the Released Class Claims, you may “opt-out” of the settlement of the Released Class Claims. If you choose to opt-out, you must submit a Request for Exclusion by the Response Deadline (see Section 6 for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the Settlement. You <u>cannot</u> opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue the Released PAGA Claims. See Section 6 of this Notice.
OBJECT	If you decide to object to the Settlement with respect to the Class portion of the proposed Settlement because you find it unfair or unreasonable, you must submit an Objection to the Administrator stating why you object to the settlement by the Response Deadline (see Section 7 for more details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks and/or pay periods that you were credited with working in the chart above is incorrect, you may submit a written dispute to the Administrator (see Section 4 for more details on how to submit a Dispute). Defendant’s records will be presumed correct, but you may provide evidence to the Administrator showing how many weeks and/or pay periods you believe you should be credited.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT'S NOT REQUIRED	
DATE: DATE, 2024 TIME: 8:30 A.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You don't have to attend, but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendant. The Action accuses U.S. Bank of violating California labor laws by failing to pay minimum, regular and overtime wages (including but not limited to miscalculation of the regular rate, not paying computer boot up and shut down, off the clock work, etc.), failure to provide meal and rest breaks, failure to pay vested vacation wages and sick pay wages, failure to reimburse business expenses, failure to timely pay wages each period and upon separation of employment, and failure to provide accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under PAGA.

Defendant strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws throughout the Class and PAGA Periods. It further contends that employees were paid for computer boot-up/shut-down time, were paid all wages due at the correct rate (including minimum wages, regular wages, overtime, vacation and sick pay), reimbursed employees for all business expenses, provided meal/rest breaks or premiums for missed breaks at the correct rate, and timely paid all wages due both during employment and at separation, and provided accurate itemized wage statements.

Both Parties are represented by attorneys in the Action. See **Section 9** below for their contact information.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendant or Plaintiff are correct on the merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement” or “Settlement Agreement”), Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. U.S. Bank Will Pay \$4,550,000 as the Gross Settlement Amount. Defendant has agreed to pay a total Gross Settlement Amount of \$4,550,000 and will deposit the Gross Settlement Amount into an account controlled by the Administrator. The Administrator will use the Gross Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's fees and expenses, and PAGA Penalties to the LWDA. Assuming the Court grants Final Approval, Defendant will fund the Settlement 15 days after the Judgment entered by the Court becomes Final (as defined in the Settlement Agreement).

2. Court Approved Deductions from the Gross Settlement Amount. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

A. Up to one-third of the Gross Settlement Amount to Class Counsel for attorneys' fees (estimated to be \$1,516,666.67) and up to \$30,000 for their litigation expenses. To date, Class Counsel have been working the case for no fee and have invested considerable time into the case and incurred expenses on the Action without payment. Class Members are not personally responsible for paying attorney fees or costs, as these payments will be paid from the Gross Settlement Amount.

B. Up to \$10,000 to Marlene Molina as a Class Representative Service Payment for initiating the Action,

providing services in support of the Action, working with Class Counsel, giving a general release, and representing the Class.

C. \$50,500 to the Administrator for services administering the Settlement.

D. \$200,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment (i.e., \$150,000) and 25% in Individual PAGA Payments (i.e., \$50,000) to the Aggrieved Employees based on their share of PAGA Pay Periods worked during the PAGA Period.

E. Participating Class Members (defined as Class Members who do not opt out or exclude themselves from the Class portion of the Settlement) have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Amount Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the remainder of the funds (the “Net Settlement Amount”) by making Individual Class Payments to Participating Class Members based on their pro rata share of Workweeks during the Class Period.

4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of one-third (33.333%) of each Individual Class Payment to taxable wages (“Wage Portion”) and two-thirds (66.667%) to penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes they owe on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendant have agreed to these allocations, neither side is giving you any advice on whether these payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California State Controller’s Unclaimed Property Fund (the “Fund”) in your name. If the monies represented by your check is sent to the Controller’s Unclaimed Property Fund, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be a Participating Class Member, participating fully in the Settlement and releasing claims, unless you opt-out of the Settlement, not later than the Response Deadline. See **Section 6** of this Notice for details on how to Opt-Out.

7. The Proposed Settlement Will be Void If the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

8. Administrator. The Court has appointed a neutral company, Rust Consulting (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion (among other things). The Administrator will also decide any Disputes over weeks or pay periods worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in **Section 9** of this Notice.

9. Participating Class Members’ Release of the Released Class Claims. After the Judgment is Final and Defendant has fully funded the Settlement Amount and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class portion of the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for any of the following Released Class Claims.

The Participating Class Members will release the Released Parties (as defined below) from the Released Class Claims which include:

any and all claims that were alleged, or that reasonably could have been alleged, based upon the facts stated in the Complaint and/or in Plaintiff's LWDA Notice letter against any of the Released Parties, including claims pursuant to: California Labor Code sections 200-204, 208, 210, 218.5, 218.6, 221-223, 226, 226.3, 226.7, 227.3, 246, 248.5, 256, 432, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802; the California Industrial Welfare Commission's ("IWC") Wage Orders; the California Code of Regulations; California Code of Civil Procedure § 1021.5; the California Business & Professions Code; and the Fair Labor Standards Act including claims premised upon: rest periods; meal periods, including on-duty meal periods; unpaid wages; minimum wages; overtime wages; pay for all hours worked, including but not limited to off-the-clock work; calculation of the regular rate, including non-inclusion of all forms of compensation required to be included in such calculation; timeliness of wages; payment of any wages due at separation of employment; vacation wages; the rate of payment for sick leave; underpayment of sick leave; waiting time penalties; itemized wage statements, accuracy of wage statements, and/or any potential violation of Labor Code § 226(a); reimbursement of expenses, including but not limited to work-from-home expenses; recordkeeping; unfair competition; any unpaid wages or compensation related to any or all of the foregoing; any premium payments related to any or all the foregoing; whether the foregoing claims are known or unknown to the employees; restitution for any or all of the foregoing; any penalties, including statutory and civil penalties, related to any or all of the foregoing; attorneys' fees or costs related to any or all of the foregoing; interest related to any or all of the foregoing; and/or any other damages or amounts related to any or all of the foregoing. The operative release period for the Released Class Claims is the Class Period.

As used herein, "Released Parties" includes U.S. Bank National Association and U.S. Bancorp, and all of their former, present or future parents, subsidiaries, affiliates/affiliated companies, related companies/corporations, partnerships, divisions, assigns, and/or predecessors; and each of the foregoing's present, former, or future owners, officers, directors, shareholders, partners, employees, insurers, successors, predecessors, contractors, assigns, and managing agents; any and all agents, legal representatives, and/or attorneys of all of the foregoing entities or individuals; and any potential or alleged joint employers, dual employers, common law employers, and/or co-employers

10. Aggrieved Employees' Release of Released PAGA Claims. After the Court's judgment is final, and Defendant has paid the Settlement Amount (and separately paid the employer-side payroll taxes), you will be an Aggrieved Employee under the Settlement and shall release the Released Parties from the Released PAGA Claims which include:

any and all claims for civil penalties under California Labor Code section 2698 *et seq.* (PAGA) that were alleged, or that reasonably could have been alleged, based upon the facts stated in the in the Complaint and/or in Plaintiff's LWDA Notice letter against any of the Released Parties, including claims for PAGA civil penalties premised on: California Labor Code sections 200-204, 208, 210, 218.5, 218.6, 221-223, 226, 226.3, 226.7, 227.3, 246, 248.5, 256, 432, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802; the California IWC Wage Orders; and the California Code of Regulations, including claims for PAGA civil penalties premised on: rest periods; meal periods, including on-duty meal periods; unpaid wages; minimum wages; overtime wages; pay for all hours worked, including but not limited to off-the-clock work; calculation of the regular rate, including non-inclusion of all forms of compensation required to be included in such calculation; timeliness of wages; payment of any wages due at separation of employment; vacation wages; the rate of payment for sick leave; underpayment of sick leave; waiting time penalties; itemized wage statements, accuracy of wage statements, and/or any potential violation of Labor Code § 226(a); reimbursement of expenses; recordkeeping; any premium payments related to any or all the foregoing; any civil penalties related to any or all of the foregoing; and attorneys' fees or costs related to any or all of the foregoing.

The time period governing the Released PAGA Claims shall be the PAGA Period.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments as follows: First: (i) each Workweek that was covered by the previous settlement in *Rodriguez v. U.S. Bank National Association*, Los Angeles Superior Court Case No. BC617356 (which had added, by way of amendment, the plaintiffs and claims from two other cases: *Malik v. U.S. Bank National Association*, Los Angeles Superior Court Case No. 19STCV17516; and *Yousefi v. U.S. Bank National Association*, Southern District of California Case No. 3:20-cv-01770-BAS-AGS) shall be given one (1) settlement point; (ii) all of the remaining Workweeks shall be given two (2) settlement points; (iii) each Workweek worked by a Class Member while home-based (as determined by U.S. Bank's HRIS records) shall be given one (1) additional settlement point; and (iv) each Workweek worked by a Class Member who is no longer employed by U.S. Bank (as determined by U.S. Bank's HRIS records) as of the date of Preliminary Approval shall be given one (1) additional settlement point. The total number of settlement points for all Class Members will be added together and the Net Settlement Amount shall be divided by that total to reach a dollar value per point. The resulting point value will then be multiplied by each Class Member's number of settlement points to determine his or her Individual Class Payment; provided, however, that each Class Member shall receive, at minimum, the amount equivalent to one settlement point. The Individual Class Payments will be reduced by any required deductions as specifically set forth herein, including by employee-side tax withholdings or deductions. The entire Net Settlement Amount will be disbursed to Class Members who do not submit timely and valid requests to be excluded from the Settlement. If there are timely and valid requests to be excluded from the Settlement, the Administrator shall proportionately increase the Individual Class Payment for each Participating Class Member according to the number of Workweeks (and corresponding settlement points as set forth in this Paragraph) worked so that the entire amount of the Net Settlement Amount is actually disbursed to Participating Class Members.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$50,000 by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods.

3. Disputing Weeks Worked and/or Pay Periods. The number of weeks you worked during the Class Period and number of pay periods you worked during the PAGA Period, as recorded in Defendant's records, are stated in the tables on page 1 of this Notice. You have until the Response Deadline to dispute the number of Workweeks or Pay Periods credited to you by timely submitting evidence to the Administrator. **Section 9** of this Notice has the Administrator's contact information.

You need to support your dispute by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of weeks and/or pay periods worked based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve challenges based on your submission and on input from Class Counsel and Defendant's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (which includes every Class Member who does not opt-out) and Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment (to the extent applicable).

2. Aggrieved Employees Only. If you opted out of the Class portion of the Settlement, but are an Aggrieved Employee, then the Administrator will send, by U.S. mail, a single Individual PAGA Payment check to you even if you opt out of the Class portion of the Settlement and you will still release the Released Parties from the Released PAGA Claims.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement not later than the Response Deadline.

If you **do not** wish to take part in the release of the Released Class Claims in the Settlement, you may exclude yourself by sending to the Administrator a “Request for Exclusion” letter/card postmarked no later than [REDACTED], 2024 with your full name, address, telephone number, and signature. The Request for Exclusion should state the following (or words to a similar effect):

“I WISH TO BE EXCLUDED FROM THE CLASS IN THE U.S. BANK LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT FROM THIS LAWSUIT.”

Any person who submits a timely Request for Exclusion (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement or the Judgment.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class portion of the Settlement remain eligible to receive an Individual PAGA Payment.

If you do not want to participate in the Settlement, the Administrator will exclude you based on timely receipt of a writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as *Molina v. U.S. Bank National Association* and include your identifying information (full name, address, and telephone number). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Send your request to be excluded to the Administrator by the Response Deadline, or it will be invalid.** Section 9 of the Notice has the Administrator’s contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. **The deadline for sending written objections to the Administrator is the Response Deadline.**

If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, and the objection must include your full name, address, telephone number, last four digits of the social security number or date of birth, signature, and dates of employment with Defendant, in addition to the case name and number (*Molina v. U.S. Bank National Association*, Case No. CIVSB2300344), the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof. Additionally, if you are represented by an attorney, the objection must include the name and address of your attorney. This objection and all supporting information must be sent to the Administrator at the address listed in **Section 9**, **postmarked** on or before **the Response Deadline**.

If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the Settlement become Final even if you object to the settlement.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and facts that support your objection. See **Section 8** of this Notice for specifics regarding the Final Approval Hearing.

8. WHEN IS THE FINAL APPROVAL HEARING?

On [REDACTED], 2024, the Court will hold a public hearing in Department S26 of the Superior Court for the State of California, County of San Bernardino, 247 West 3rd Street, San Bernardino, CA 92415, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel's applications for attorneys' fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiff's request for the service award. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing. It's possible the Court will reschedule the Final Approval Hearing. You should check with the Administrator beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

If you have questions about this Notice, the process to Opt-Out or Object, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you may contact the Administrator for more information or to request that a copy of this Notice be sent to you in the mail. And you may also contact Class Counsel. Contact information for both the Administrator and Class Counsel is provided here:

Administrator	Class Counsel
Name Mailing Address Telephone Number	Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Peter Carlson, Esq. <i>peter@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444

You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Declaration of Brian Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on DATE, 2024 and available to be inspected at any time during regular business hours at the Office of the Clerk, San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

DO NOT TELEPHONE THE COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT “3”



Settlement Administration Estimate
Molina v. US Bank
January 31, 2024

Prepared by:
Andrew Meyer
Business Development Consultant
612-987-8835
ameyer@rustconsulting.com

EXPERIENCE

With experience on approximately 3,500 labor and employment cases, we are the nation's largest labor and employment settlement administrator. We have managed employment settlements with class sizes ranging from dozens to multi-million class members. In fact, we've been trusted to administer many of the nation's largest settlements, including the nation's top wage-and-hour cases in recent years.

DATA SECURITY

Rust's infrastructure and capabilities related to data processing and security ensure that your sensitive data will be protected. Our "unified compliance posture" includes a system certification and accreditation under FISMA from two federal agencies and an annual SSAE18 SOC 2 Type II Report audit of our data and system security controls and protocols.

DEDICATED SPECIALISTS

Our labor and employment case team is strictly dedicated to managing settlement administration for cases involving matters such as wage-and-hour, FLSA, discrimination and ERISA. They're specialists, not generalists, with an industry reputation for responsiveness and expertise in relevant areas such as the applicable banking and tax regulations. We are confident that Rust is the best choice for the administration of your settlement.

Project Summary

Estimated Class Size	14,000
Project Cost	
Mailed Notice	\$ 17,856
Processing and Administration	\$ 875
Telephone support	\$ 5,513
Website	\$ 300
Fund Distribution & Tax Reporting	\$ 17,312
Project Management	\$ 11,010
Other Out-of-pocket Expenses	\$ 400
Project Cost	\$ 53,266
Discount	\$ 3,196
Total Project Cost (assumes scope within)	\$ 50,070
TOTAL NOT TO EXCEED AMOUNT	\$ 50,500

Key Assumptions:
Notice mailing w/option to opt-out
Spanish translation
Case specific Telephone support included
Weekly Status Reports
Documents posted to Rust's website
W2/1099 Payments with 180 payment void date
Uncashed to CA Controller's Office
Preliminary, Final Approval and Final Payment
Declarations
Not Included: Website, Email, Claims processing,
Reminder postcards

Thank you for considering Rust Consulting, Inc. as your administrator -- we appreciate the opportunity to submit this estimate.



Settlement Administration Estimate
Molina v. US Bank
January 31, 2024

Prepared by:
Andrew Meyer
Business Development Consultant
612-987-8835
ameyer@rustconsulting.com

Key Assumptions Used to Prepare this Estimate

Class Size	14,000		Standard Hourly Rates*
Initial Mailed Notice:			SVP \$175-\$275
Mailed Notice	14,000	100.0%	Program Manager \$160-\$180
Forwarded Notices	350	2.5%	Project Manager \$100-\$140
Undeliverable Notices	2,100	15.0%	Technical Consultant \$110-\$180
Re-Mailed Notices after Trace	1,680	80.0%	Call Center Manager \$125
Telephone Support:			CSR \$ 43-\$ 50
Number of Telephone Contacts	1,750	12.5%	Processor \$ 43-\$ 50
Connect Minutes per Call - CSRs	5.0		Other \$ 43-\$125
Claimant Communications:			<i>*Subject to change</i>
Opt-outs / Correspondence received	70	0.5%	
Payments	13,930	100.0%	

Additional Administration Assumptions Used to Prepare this Estimate:

Database Development: Receive and Process Database assumes that the data provided is complete with respect to the data components needed to mail and calculate settlement payments. Data that includes multiple records for individuals or work history that needs to be accumulated and totaled by individual generally requires additional efforts to bring to a point where it is final settlement data. These additional efforts can take a significant amount of time and should be considered when setting key settlement dates, especially the mailed notice deadline. Data must be provided in a complete, consistent, standardized electronic format. Rust's standard format is ASCII fixed width complete with field layout. Other formats may be accepted at Rust's discretion. Resources used to enhance or further develop non-standardized data will be billed on a time and materials basis according to Rust's Current Standard Hourly Rates.

CASS/NCOA/LACS: CASS - Coding Accuracy Support System; NCOA - National Change of Address; LACS - Locatable Address Conversion System.

Notice Package: Print and Mail per unit price is estimated. Actual prices will be provided after form is finalized prior to mailing. Notice package includes notice.

Telephone Support is included.

Processing & Administration: Receipt and Process Forms includes open, date stamp, label and data capture a 1-page form with up to five fields.

Project Management: Project Management fees are estimated and will be billed on actual time expended based on the rates found in the Current Standard Hourly Rates section above. The rates included in the estimate are a blended estimate of the rates listed above.

Out of Pocket Expenses: Includes post office box rental, overnight shipments, postage, labels, travel, long distance and other miscellaneous charges and expenses.

Pricing good for 90 days.



Settlement Administration Estimate

Molina v. US Bank

January 31, 2024

Prepared by:
Andrew Meyer
 Business Development Consultant
 612-987-8835
 ameyer@rustconsulting.com

Administrative Task	Estimated Quantity		Per Unit	Task Amount	Total
Database Development					
Receive and Process Database	4	Hours @	\$ 175	\$ 700	\$ 700
Additional Efforts to Finalize Settlement Data				<i>As Incurred</i>	
Initial Mailed Notice					
CASS / NCOA / LACS Processing				\$ 500	
Spanish				\$ 1,000	
Print and Mail Notice Package	14,000	Notices @	\$ 0.25	\$ 3,500	
Postage - 1 Ounce First Class	14,000	Notices @	\$ 0.56	\$ 7,854	\$ 12,854
Follow-up to Initial Notice					
Receive Undeliverable Notices and Update Database	2,100	Notices @	\$ 0.45	\$ 945	
Address Trace	2,100	Traces @	\$ 0.40	\$ 840	
Remail Notice Package	2,030	Notices @	\$ 0.60	\$ 1,218	
Remail Postage - 1 Ounce First Class	2,030	Notices @	\$ 0.64	\$ 1,299	\$ 4,302
Telephone Support					
Telephone Support	1,750	Months @	2.50	\$ 4,375	
800# Charges	8,750	Minutes @	\$ 0.13	\$ 1,138	\$ 5,513
Website					
Documents posted to Rust website	1	Fee @	\$ 300	\$ 300	\$ 300
Processing and Administration					
Declarations - reviewed, signed/completion	3	Hours @	\$ 175	525	
Receipt, Process, and Validate Forms	70	Forms @	\$ 5.00	350	\$ 875
Additional Administrative Services Requested by Client					<i>As Incurred</i>
Fund Distribution					
Print and Mail Payments	13,930	Payments @	\$ 0.30	\$ 4,179	
Postage - 1 Ounce First Class	13,930	Payments @	\$ 0.56	\$ 7,815	
Check Processing	13,930	Payments @	\$ 0.17	\$ 2,368	
FDIC Fees				\$ 1,000	
Monthly Bank Account Fee (open - return to CA)	7	Months @	\$ 100	\$ 700	\$ 16,062
Tax Reporting					
Annual Fee -Qualified Settlement Fund	1	Year @	\$ 1,000	\$ 1,000	
Individual income Tax Reporting (W2/1099)	1	Year @	\$ 750	\$ 250	\$ 1,250
Project Management					
Director/Consultant	2	Hours @	\$ 225	Waived	
Project Management	46	Hours @	\$ 175	\$ 8,050	
Technical Consulting	16	Hours @	\$ 185	\$ 2,960	\$ 11,010
Other Charges and Out-of-pocket Costs					
					\$ 400
Total Settlement Administration Estimate					\$ 53,266



Settlement Administration Estimate

Molina v. US Bank

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Terms and Conditions

All administration services to be provided by Rust Consulting to you ("Customer") shall be subject to the following terms and conditions:

1. Services. Subject to the terms hereof, Rust Consulting agrees to provide the Customer with claims administration services (hereinafter, "Claims Services") as specified in the Proposal provided to Customer to which these Terms and Conditions are attached.
2. Term. The terms of this agreement will remain in effect until completion of the Claims Services, unless earlier terminated in accordance with Section 10 hereof.
3. Charges for Services. Charges to the Customer for Claims Services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Customer to Rust Consulting. Actual fees charged by Rust Consulting to Customer may be greater or less than such estimate, and Customer shall be responsible for the payment of all such charges and expenses in accordance with Section 4 hereof. Furthermore, Customer will be responsible for payment of all state and local sales and use taxes, if any, levied upon the charges payable by the Customer hereunder. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Customer to the extent that funds are received from the taxing authorities offset these charges. Rust Consulting may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.
4. Payment of Charges. Payment by Customer of Rust Consulting's monthly invoices shall be due upon receipt thereof. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Customer's liability to Rust Consulting for payment of Claims Services. **Claims Services are not provided on a contingency fee basis.**
5. Confidentiality. Rust Consulting agrees to implement and maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Customer data provided to Rust Consulting by Customer in connection herewith. Should Rust Consulting ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Customer, Rust Consulting will promptly notify the Customer, unless prohibited by applicable law. The Customer shall have the option to (1) provide legal representation at the Customer's expense to avoid such access or (2) promptly reimburse Rust Consulting for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If Rust Consulting is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, Rust Consulting will not be liable for breach of said obligation.
6. Standard Banking Procedures. In accordance with Rust Consulting's standard banking procedures, Rust Consulting will establish a demand deposit checking account (i.e. non-interest bearing) for funds received related to a distribution, unless directed otherwise in writing by the parties or unless the settlement agreement stipulates otherwise. In cases where funds are temporarily placed in interest bearing or investment accounts, funds will eventually be migrated to a demand deposit checking account prior to a fund distribution.
7. Rights in Data. Rust Consulting does not convey nor does the Customer obtain any right in the programs, system data, or materials utilized or provided by Rust Consulting in the ordinary course of business in the performance of this Agreement.
8. Document Retention. Unless directed otherwise in writing by Customer, Rust will maintain digitally scanned documents of undeliverable mail, claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Rust Consulting will retain all bank and tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
9. Limitation of Liability: Disclaimer of Warranty. Rust Consulting warrants that our services will be performed with reasonable care in a diligent and competent manner. Our sole obligation will be to correct any non-conformance with this warranty. Rust Consulting shall not be liable, whether under theories of contract, negligence or other tort, statutory duty or other theories of liability in an amount exceeding the total charges to the Customer for the specific work affected by the error or omission. Rust Consulting will not be liable for any incidental, special, indirect, consequential or exemplary damages of any kind; or for any lost profits, lost opportunities, business interruption or for any liability incurred by the Customer or others to any third party. THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE FOR PARTICULAR PURPOSE.
10. Termination. The Claims Services to be provided under this Agreement may be terminated, at will by the Customer upon at least 30 calendar days' prior written notice to Rust Consulting. The Customer's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. Rust Consulting may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Customer is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Customer.
11. Notice. Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of Rust Consulting or the Customer, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.
12. Force Majeure. To the extent performance by Rust Consulting of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond Rust Consulting's reasonable control, then such performance shall be excused and this Agreement, at Rust Consulting's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
13. Nonwaiver of Rights. No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.
14. Jurisdiction. The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in the Court.
15. Survival. All accrued payment obligations hereunder, any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 7 (Rights in Data); Section 5 (Confidentiality); Section 9 (Limitation of Liability; Disclaimer of Warranty); and Section 14 (Jurisdiction).
16. Entire Agreement. These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT “4”