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ELLE NGUYEN, ARDAVAN
MOVASSAGHI, and ETIENNE
BERNSTEIN, individually and on behalf of all
others similarly situated

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELLE NGUYEN, ARDAVAN
MOVASSAGHI, and ETIENNE BERNSTEIN,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No. 5:23-cv-04999-PCP

**JOINT STIPULATION OF
SETTLEMENT AND RELEASE**

1 **WHEREAS**, based upon their analysis and evaluation of a number of factors, and
2 recognizing the substantial risks of litigation, including the possibility that these claims, if not
3 settled now, may or may not be certified as collective or class actions, might not result in any
4 recovery or might result in a recovery less favorable, and that any recovery would not occur for
5 several years, Plaintiffs' Counsel are satisfied that the terms and conditions of this Agreement are
6 fair, reasonable, and adequate and that this Agreement is in the best interests of the Named
7 Plaintiffs and the Putative Class Members (as defined below);

8 **WHEREAS**, Bank of America has concluded that further litigation of the claims
9 encompassed by the Litigation would be protracted and expensive, and would also divert
10 management and employee time, and Bank of America also has taken into account the uncertainty
11 and risks inherent in litigation and has, therefore, concluded that it is desirable that the Litigation
12 be settled in the manner and upon the terms and conditions set forth in this Agreement; and

13 **WHEREAS**, the purpose of this Agreement is to settle fully and finally all Released
14 Claims (as defined below) that Named Plaintiffs and Putative Class Members may have against
15 Bank of America and/or the Bank of America Releasees (as defined herein).

16 **NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth in
17 this Agreement, as well as the good and valuable consideration provided for herein, the parties
18 hereto agree to a full and complete settlement of the Litigation on the following terms and
19 conditions (the "Settlement"):

20 Bank of America and the Named Plaintiffs (collectively the "Settling Parties") agree to do
21 all things and procedures reasonably necessary and appropriate to obtain approval of this
22 Agreement in consideration for: (a) payment by Bank of America of the Gross Settlement Value
23 ("GSV") as defined in this Agreement subject to the terms, conditions and limitations of this
24 Agreement; (b) the release and dismissal with prejudice of all claims of Putative Class Members
25 as set forth in this Agreement, and the dismissal without prejudice of the remainder of the
26 Litigation; and (c) other valuable monetary and non-monetary consideration as set forth in this
27 Agreement. This Agreement and the Settlement are contingent upon approval by the United
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1 States District Court for the Northern District of California ("Court") and are entered into
2 voluntarily by the Settling Parties for settlement purposes only.

3 **I. PUTATIVE CLASS MEMBERS, AND CONSENT TO COURT-FACILITATED**
4 **NOTICE**

5 1. **Putative Class Members.** "Putative Class Members" is defined as all individuals
6 formerly employed by Bank of America during the Covered Period who: (1) worked in
7 California, New York, and/or Illinois; (2) had a positive vacation balance at the time of separation
8 from employment (defined as a scenario where the sum of vacation accrued in the year of
9 separation plus vacation carried over from the prior year (if any), was greater than the amount of
10 vacation recorded in Workday as used by the employee in the year of separation); and (3) who did
11 not receive any payout for accrued but unused vacation at separation of employment; or any
12 Named Plaintiff to the extent otherwise not included

13 2. **California Putative Class Members.** "CA Putative Class Members" is defined as
14 Putative Class Members formerly employed by Bank of America in the State of California during
15 the Covered Period.

16 3. **Illinois Putative Class Members.** "IL Putative Class Members" is defined as
17 Putative Class Members formerly employed by Bank of America in the State of Illinois during the
18 Covered Period.

19 4. **New York Putative Class Members.** "NY Putative Class Members" is defined as
20 all Putative Class Members formerly employed by Bank of America in the State of New York
21 during the Covered Period.

22 5. **Covered Period.** The "Covered Period" is defined as: for CA Putative Class
23 Members, September 28, 2019, through the date of Preliminary Approval of this Settlement; for
24 IL Putative Class Members; September 28, 2013, through the date of Preliminary Approval of
25 this Settlement ; and for NY Putative Class Members, September 28, 2017, through the date of
26 Preliminary Approval of this Settlement.
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1 6. For settlement purposes only, and subject to Court approval and the provisions
2 herein, the Settling Parties also agree that the Putative Class Members, as represented by the
3 Named Plaintiffs, meet the relevant criteria under Federal Rule of Civil Procedure 23 to be
4 certified as a settlement class and that undersigned Plaintiffs' Counsel should be certified as class
5 counsel for settlement purposes.

6 7. The Settling Parties shall cooperate and present to the Court such information as
7 may be reasonably requested for its consideration in connection with approving this Agreement
8 and the anticipated Court-facilitated notice.

9 **II. SETTLEMENT APPROVAL PROCEDURE**

10 8. Within seven days of the final execution of Agreement, or as may otherwise be
11 agreed to between the Settling Parties and approved by the Court, the Named Plaintiffs shall file
12 in the Court an Unopposed Motion for Order Approving Settlement of Class Action and
13 Authorizing Notice of Settlement ("Approval Motion"), along with this Settlement Agreement
14 and all ancillary and supporting documents referenced herein.

15 9. Putative Class Members will first receive a Notice of Class Action Settlement and
16 an Adjustment Form ("Class Notice Materials" attached as Exhibit A), and any Putative Class
17 Members who do not opt out of the Settlement will subsequently receive a check assuming final
18 approval is granted.

19 10. The Settling Parties shall also submit a Proposed Preliminary Approval Order in a
20 form mutually agreeable to the Settling Parties.

21 **III. NOTICE TO PUTATIVE CLASS MEMBERS AND MODE, CALCULATION,**
22 **AND TIMING OF PAYMENT OF CLAIMS**

23 11. Data Disclosure. Within fifteen (15) business days of the Court's entry of a
24 Preliminary Approval Order, Bank of America shall, to the extent such information exists in its
25 electronic records, provide the Settlement Claims Administrator with an Excel chart providing the
26 following information for each Named Plaintiff and Putative Class Member: name; employee
27 identification number; last known personal address; last known telephone number; last known e-
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1 mail address; Social Security Number; dates of active employment during the Covered Period;
2 vacation balance at the time of separation from employment (defined as the sum of vacation
3 accrued in the year of separation plus vacation carried over from the prior year (if any), less the
4 amount of vacation recorded in Workday as used by the employee in the year of separation); and
5 the state(s) in which such employment occurred. Plaintiffs' Counsel shall also provide the
6 Settlement Claims Administrator with any updated addresses for the Named Plaintiffs. Prior to
7 the mailing of the notice materials to the Named Plaintiffs and Putative Class Members, the
8 Settlement Claims Administrator shall attempt to confirm the accuracy of the addresses through
9 the United States Post Office's National Change of Address database and shall mail the Notice
10 Packet to any updated address obtained therefrom.

11 12. The Settlement Claims Administrator shall document all efforts under this Section
12 III, and shall keep such documentation for a period of four (4) years from the date of the Court's
13 final approval of the settlement.

14 13. Within ten (10) business days after receipt of the information described in
15 Paragraph 11 of this Agreement, the Settlement Claims Administrator shall mail the Class Notice
16 Materials to all Putative Class Members. Each set of Class Notice Materials shall include a
17 unique number or other mark identifying the Putative Class Member to whom it was sent. This
18 mailing will be sent by first-class U.S. mail.

19 14. The Settlement Claims Administrator shall make such further efforts as are
20 possible and reasonable (if any), to provide the Class Notice Materials to Putative Class Members
21 whose original Class Notice Materials are returned as undeliverable, provided that all such efforts
22 shall be completed by the thirtieth (30th) calendar day after the Class Notice Materials are mailed.

23 15. Any Putative Class Member who does not want to participate in this Settlement
24 may "opt-out" of the Settlement by mailing a written Request for Exclusion to the Claims
25 Administrator. Requests for Exclusion must include the Putative Class Member's name, address,
26 and phone number, and the words "I opt out of the Bank of America vacation settlement" or
27 words substantially similar thereto. Requests for Exclusions must be post-marked no later than
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1 forty-five (45) calendar days after the Class Notice Materials are first mailed. For a Request for
2 Exclusion to be valid, it must be actually received by the Settlement Claims Administrator and
3 contain the name and signature of the Putative Class Member. The Class Notice Materials shall
4 inform Putative Class Members of the process for requesting exclusion from Settlement.

5 16. All Putative Class Members who have not returned a completed and timely
6 Request for Exclusion shall be bound by the dismissal with prejudice of the Litigation and the
7 release of claims set forth herein.

8 17. The Class Notice Materials sent to each Putative Class Member shall be
9 accompanied by a separate Adjustment Form in a form agreed to by the parties and approved by
10 the Court. The Adjustment Form shall be individualized for each Putative Class Member with
11 information reflecting how that Putative Class Member's estimated payment was calculated
12 pursuant to the data contained in the spreadsheet discussed in Paragraph 11 of this Agreement.
13 The Adjustment Form will explicitly state that the estimated payment disclosed is only an
14 estimate, and may increase or decrease. The Class Notice Materials shall inform each Putative
15 Class Member that they may submit a completed Adjustment Form, along with supporting
16 documentation, to the Settlement Claims Administrator to the extent the Putative Class Member
17 believes that any of the information used to calculate the estimated payment is incorrect, and that
18 the Settlement Claims Administrator will have sole and final, non-reviewable, discretion to
19 resolve any such disputes. The Class Notice Materials shall further inform each Putative Class
20 Member that, to be valid, the completed Adjustment Form must bear a postmark reflecting a date
21 within forty-five (45) calendar days from the date of first mailing of the Class Notice Materials.
22 Putative Class Members bear the responsibility of ensuring that information on the Adjustment
23 Form is correct and that any Adjustment Forms submitted to the Claims Administrator are
24 actually received by the Claims Administrator in compliance with this Agreement.

25 18. The Class Notice Materials shall contain the release and waiver of claims
26 discussed herein, and an easily understood statement alerting Putative Class Members that by
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1 failing to submit a Request for Exclusion the individual is executing a release and waiver of all
2 claims against Bank of American set out herein, whether or not they receive a payment.

3 19. If any Putative Class Member believes that the proposed Settlement should not be
4 approved by the Court for any reason, the Putative Class Member may object by: (1) filing a
5 signed written objection in which the Putative Class Member provides their name, address and
6 telephone number and states the basis for an objection with the Court and whether they are
7 represented by counsel; and (2) serving a copy of the objection on the Claims Administrator. The
8 Settlement Claims Administrator shall provide copies of any objections it receives to counsel for
9 all Settling Parties within five (5) days of receipt. Putative Class Members who submit timely
10 written objections may also appear at the hearing for Final Approval. Any such written objections
11 must be filed within forty-five (45) days from the date the Class Notice Materials are first mailed.
12 Putative Class Members will also be notified by the Class Notice Materials of the process for
13 objecting to the Settlement and that they may appear at the Court hearing scheduled for final
14 approval of the Settlement to have objections heard by the Court. Any attorney who represents an
15 individual objecting to the Settlement must file a Notice of Appearance with the Court and timely
16 serve counsel for all Settling Parties. All objections or other correspondence must state the name
17 and number of the case, which is *Nguyen et al. v. Bank of America, N.A.*, Case No. 5:23-cv-
18 04999-PCP (N.D. Cal.).

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

23 21. If a Putative Class Member submits both a timely and valid Adjustment Form and
24 a timely and valid Request for Exclusion, the latter-filed shall be determinative. If the two
25 documents are filed simultaneously, and both are timely and valid, the Claims Administrator shall
26 attempt to contact the individual and determine his or her intent. If this attempt is unsuccessful,
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1 the Request for Exclusion shall be deemed invalid, and the Putative Class Member shall be bound
2 by and have the right to receive a payment through this Settlement.

3 22. The Settlement Claims Administrator shall provide written notice to counsel for
4 the Settling Parties no later than five (5) days after the Notice Period Deadline with a complete
5 list of all Putative Class Members who have timely requested exclusion. Bank of America, in its
6 sole and independent discretion, shall have the right, but not the obligation, to revoke this
7 Agreement if Requests for Exclusion from the Settlement are filed by ten percent (10%) or more
8 of the Putative Class Members in one or more of those states, measured on either a headcount
9 basis or a share of the net settlement basis. In addition to this list, the Settlement Claims
10 Administrator shall stamp the date received on the original of any Request for Exclusion it
11 receives and serve copies of the Request(s) for Exclusion on Counsel for Bank of America within
12 three (3) days after receipt thereof.

13 23. Bank of America must exercise its option under Paragraph 22, if at all, within ten
14 (10) days after receipt of the list of all excluded Putative Class Members referenced in Paragraph
15 22.

16 24. In consideration for the dismissal of the Litigation, as set out herein, as well as the
17 release of claims effected by this Agreement and other good and valuable consideration, Bank of
18 America shall pay Four Million Two Hundred Eighty Thousand U.S. Dollars And Zero Cents
19 (\$4,280,000.00) to settle the Litigation (the "Gross Settlement Value" or "GSV").

20 25. Subject to the terms of this Agreement, the GSV is inclusive of payment for: (1)
21 all Putative Class Members, or their respective authorized legal representatives, to the extent they
22 do not exclude themselves from the Settlement; (2) the Service Payments (as defined herein) and
23 approved by the Court for the Named Plaintiffs; (3) all attorneys' fees, costs, and litigation
24 expenses approved by the Court, including those in connection with securing Court approval of
25 this Agreement, and implementing this Agreement, other than fees and costs awarded in
26 connection with any successful proceeding to enforce the terms of this Agreement ("Attorneys'
27 Fees and Costs"); (4) all taxes (inclusive of the employer's share of payroll taxes); (5) all costs
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1 incurred by the Settlement Claims Administrator and all costs in connection with the Settlement
2 Fund (as defined herein); and (6) Putative Class Members share of applicable federal, state, and
3 local taxes required to be withheld by the Settlement Fund. The GSV shall be all that Bank of
4 America shall pay to settle the Litigation.

5 26. Payment. The entirety of the GSV shall be paid into the Settlement Fund no later
6 than fifteen (15) business days after Bank of America receives notice that Preliminary Approval
7 has been granted. Payment will be by wire transfer to a depository bank chosen by the Settlement
8 Claims Administrator.

9 **IV. SETTLEMENT CLAIMS ADMINISTRATION**

10 27. Selection of Settlement Claims Administrator. The Settlement Claims
11 Administrator shall be agreed upon by the parties. Plaintiffs' Counsel will solicit a not-to-exceed
12 bid from potential settlement administrators and select one following that process, with input and
13 approval from Bank of America.

14 28. Settlement Claims Administrator Responsibilities. The Settlement Claims
15 Administrator shall be responsible for: (a) establishing a qualified settlement fund and non-
16 interest bearing qualified settlement fund account, and determining and finalizing the calculations
17 of the Potential Gross Settlement Payments and tax withholding amounts for the Named Plaintiffs
18 and Putative Class Members, as applicable; (b) creating a settlement website, phone line, and
19 email address to field and respond to class member inquiries; (c) preparing, printing, and
20 disseminating to the Named Plaintiffs and Putative Class Members all notice materials, checks,
21 and other documents discussed herein; (d) copying counsel for all Settling Parties on material
22 correspondence and promptly notifying all counsel for the Settling Parties of any material
23 requests or communications made by any Settling Party or Putative Class Member who receives a
24 Notice Packet; (e) determining the final Settlement Payment for each Named Plaintiff and
25 Putative Class Member in accordance with this Agreement, including resolving any disputes
26 arising from submitted Adjustment Forms; (f) mailing the settlement checks to Named Plaintiffs
27 and Putative Class Members; (g) wiring Plaintiffs' Counsel's attorneys' fees, expenses, and costs
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1 and mailing the Service Payment and Settlement Payments in accordance with this Agreement
2 and Order of the Court; (h) calculating tax obligations, remitting any and all tax obligations to the
3 appropriate taxing authorities, and paying all payroll tax obligations of Bank of America in
4 accordance with applicable law and this Agreement; (i) issuing W-2 and 1099 Forms for all
5 amounts paid to Named Plaintiffs and Putative Class Members; (j) ascertaining current address
6 and addressee information for each Notice Packet returned as undeliverable; (k) referring to
7 Plaintiffs' Counsel all inquiries by the Named Plaintiffs and Putative Class Members the
8 Settlement Claims Administrator cannot resolve and/or which involve matters not within the
9 Settlement Claim Administrator's duties specified herein; (l) responding to inquiries of Plaintiffs'
10 Counsel or Bank of America's Counsel; (m) promptly apprising counsel for the Settling Parties of
11 the activities of the Settlement Claims Administrator; (n) maintaining adequate records of its
12 activities, including the date of the mailing of the Notice Packets, returned mail and other
13 communications and attempted written or electronic communications with the Named Plaintiffs
14 and Putative Class Members; (o) confirming in writing to Plaintiffs' and Bank of America's
15 Counsel its completion of the administration of the settlement and retaining copies of all endorsed
16 settlement checks; (p) timely responding to communications from the Settling Parties or their
17 counsel; and (q) such other tasks as called for by this Agreement, ordered by the Court, or the
18 Settling Parties mutually agree.

19 29. Settlement Fund Fees and Expenses. All fees, expenses, and costs of the
20 Settlement Claims Administrator related directly or indirectly to the Settlement Fund (as defined
21 in Paragraph 31 below), including but not limited to all fees, expenses, and costs in connection
22 with the GSV and Settlement Fund (including, but not limited to, those related to notice, check
23 cutting and mailing, court filings, legal and accounting advice relating to the establishment of the
24 Settlement Fund and tax treatment and tax reporting of awards to Named Plaintiffs and Putative
25 Class Members, preparation of tax returns (and the taxes associated with such tax returns as
26 defined below) shall be paid from the Settlement Fund.

1 30. Reporting by Settlement Claims Administrator. Throughout the period of claims
2 administration, the Settlement Claims Administrator will provide such reports to the Settling
3 Parties upon request by either Settling Party, regarding the status of the mailing of the Class
4 Notice Materials, the number of requests for exclusion, the claims administration process, the
5 distribution of the Settlement Checks, and any other aspect of the claims administration process.

6 31. Establishing the Qualified Settlement Fund. The GSV will be deposited in an
7 account titled Bank of America Vacation Settlement Fund (the "Settlement Fund"), intended by
8 the Settling Parties to be a non-interest bearing "Qualified Settlement Fund" as described in
9 Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section
10 1.468B-1, *et seq.* The Settlement Fund shall be established as a Qualified Settlement Fund within
11 the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, the Treas. Reg.
12 Section 1.468B-1, *et seq.*, and shall be administered by the Settlement Claims Administrator,
13 subject to the ultimate authority of the Court. The payments to the Settlement Fund, and the
14 timing of the payments from the Settlement Fund are described in, *inter alia*, Paragraphs 24, 25,
15 37, 38, 39, 40, and 41.

16 32. Administering the Settlement Fund. The Settlement Claims Administrator shall
17 serve as Trustee of the Settlement Fund and shall act as a fiduciary with respect to the handling,
18 management, and distribution of the Settlement Fund, including the handling of tax-related issues
19 and payments. The Settlement Claims Administrator shall act in a manner necessary to qualify
20 the Settlement Fund as a Qualified Settlement Fund and to maintain that qualification. The
21 Settling Parties shall cooperate to ensure such treatment and shall not take a position in any filing
22 or before any tax authority inconsistent with such treatment. The Settling Parties agree to any
23 relation-back election required to treat the Settlement Fund as a Qualified Settlement Fund from
24 the earliest possible date.

25 33. Taxes. The Settlement Claims Administrator shall allocate fifty percent (50%) of
26 the total actually paid to each Putative Class Member to be treated as wages (to be reported on an
27 Internal Revenue Service ("IRS") Form W-2) and fifty percent (50%) to be treated as non-wage
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1 compensation (to be reported on an IRS Form 1099). One hundred percent (100%) of Service
2 Payments will be treated as non-wage compensation (to be reported on an IRS Form 1099). The
3 Settlement Claims Administrator shall be responsible for withholding and timely remitting and
4 reporting all taxes to the appropriate taxing authorities. The Settlement Claims Administrator
5 shall determine the proper tax reporting treatment for Court-approved Service Payments.

6 34. Fund Taxes. All taxes (including any estimated taxes or penalties) arising with
7 respect to the income earned by the Settlement Fund, if any, including any taxes or tax detriments
8 that may be imposed on Bank of America with respect to income earned for any period during
9 which the Settlement Fund does not qualify as a "Qualified Settlement Fund" for federal and state
10 income tax purposes (hereinafter "Settlement Fund Taxes"), and expenses and costs incurred in
11 connection with the operation and implementation of this paragraph (including, without
12 limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and
13 expenses relating to filing (or failing to file) any returns described herein or otherwise required to
14 be filed pursuant to applicable authorities) (hereinafter "Settlement Fund Tax Expenses") shall be
15 paid out of the Settlement Fund. Further, Settlement Fund Taxes and Settlement Fund Tax
16 Expenses shall be treated as a cost of the administration of the Settlement Fund. In no case shall
17 Bank of America bear any responsibility at all with respect to same. The Settling Parties agree to
18 cooperate with the Settlement Claims Administrator, each other, and their tax attorneys and
19 accountants to the extent reasonably necessary to carry out the provisions set forth in this Section
20 IV.

21 35. Other Payments and Indemnification. The Settlement Claims Administrator shall
22 satisfy from the Settlement Fund: all federal, state, local, and other reporting requirements
23 (including any applicable reporting with respect to attorneys' fees and other costs subject to
24 reporting) and any and all taxes, penalties, and other obligations with respect to the payments or
25 distributions not otherwise addressed in this Agreement. The Settlement Claims Administrator
26 shall indemnify the Settling Parties for any penalty or interest arising out of an incorrect
27 calculation or late deposit of the same.

1 36. Communication with Bank of America and Plaintiffs' Counsel. Bank of America,
2 Bank of America's Counsel, and Plaintiffs' Counsel are authorized to communicate directly with
3 the Settlement Claims Administrator to expedite the settlement administration process. All
4 Settling Parties shall have full access to all information relating to claims administration.

5 37. Net Settlement Value ("NSV"). The GSV less (1) the Service Payments (as
6 defined herein) and approved by the Court for the Named Plaintiffs; (2) Attorneys' Fees and
7 Costs approved by the Court; (3) all taxes (inclusive of the employer's share of payroll taxes); (4)
8 all costs incurred by the Settlement Claims Administrator and all costs in connection with the
9 Settlement Fund (as defined herein); and (5) all other costs incurred in the Settlement as
10 contemplated in this Agreement, shall be the "Net Settlement Value" or "NSV." The NSV
11 represents the amounts actually available for distribution to Putative Class Members.

12 38. Allocation of NSV. The NSV will be distributed to Putative Class Members in
13 accordance with the Plan of Allocation attached as Exhibit B.

14 39. Service Payment. From the GSV, Plaintiffs' Counsel shall seek a "Service
15 Payment" of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) for each of the Named
16 Plaintiffs, as payment for their involvement in commencing and litigating the claims represented
17 in this Litigation and their involvement in preparing for mediation for the benefit of all Putative
18 Class Members. Bank of America shall not oppose this request. The Settling Parties expressly
19 agree that the Court's approval or denial of any request for Service Payments is not a material
20 condition to this Agreement, and is to be considered by the Court separately from the fairness,
21 reasonableness, adequacy, and good faith of the settlement. Any order or proceeding relating to
22 the application by Plaintiffs' Counsel for Service Payments shall not operate to terminate or
23 cancel this agreement. Payments under this paragraph shall be made no earlier than the Effective
24 Date of Judgment, and no later than fourteen (14) days after the Effective Date of Judgment.

25 40. Attorneys' Fees and Costs Amounts. Plaintiffs' Counsel shall make an application
26 to the Court for an award of attorneys' fees of up to one third (1/3) of the GSV. In addition,
27 Plaintiffs' Counsel shall seek reimbursement of their litigation costs and expenses from the GSV.

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1 To the extent any amounts are sought but not awarded as attorneys' fees, expenses, or Service
2 Awards, those amounts will return to the Settlement Fund to be allocated to Putative Class
3 Members consistent with the allocation formula Plaintiffs' counsel will determine. Bank of
4 America will not oppose these requests provided they are consistent with the terms of this
5 Agreement. The settlement is not conditioned upon the Court's approval of Plaintiffs' Counsel's
6 petition for fees, expenses, and costs. Payment of such attorneys' fees, expenses, and costs to
7 Plaintiffs' Counsel shall be made in accordance with this Agreement and shall constitute full
8 satisfaction of any and all obligations by Bank of America to pay any person, attorney, or law
9 firm for attorneys' fees, expenses, or costs incurred on behalf of Named Plaintiff, and/or Putative
10 Class Members. The Settlement Claims Administrator shall report the payment of these fees,
11 expenses and costs to Plaintiffs' Counsel on an IRS Form 1099. The Settling Parties expressly
12 agree that the Court's approval or denial of any request for attorneys' fees and costs is not a
13 material condition to this Agreement, and is to be considered by the Court separately from the
14 fairness, reasonableness, adequacy, and good faith of the settlement. Any order or proceeding
15 relating to the application by Plaintiffs' Counsel for an award for fees and costs shall not operate
16 to terminate or cancel this agreement. Payments under this paragraph shall be made no earlier
17 than the Effective Date of Judgment, and no later than fourteen (14) days after the Effective Date
18 of Judgment.

19 41. Timing of Payments. Within twenty (20) calendar days after the Effective Date of
20 Judgment, but no earlier than the Effective Date of Judgment, the Settlement Claims
21 Administrator will transmit all payments to Putative Class Members (to the extent the latter do
22 not opt out) by First Class U.S. Mail to the last known address for each such individual, or such
23 other address provided to or obtained by the Settlement Claims Administrator.

24 42. Taxes on the Potential Gross Settlement Payments. The Potential Gross
25 Settlement Payments attributed to the Named Plaintiffs and Putative Class Members shall be fifty
26 percent (50%) to back wages and fifty percent (50%) to liquidated damages, interest, and
27 penalties. The back wages shall be subject to all required employee-paid payroll taxes (federal
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1 income taxes, state income taxes, employee's share of FICA and FUTA taxes, and other state or
2 local-specific statutory deductions) and other authorized or required deductions (garnishments,
3 tax liens, child support, etc.). The liquidated damages shall be treated as non-wage income. The
4 Settlement Claims Administrator shall report the back wage payments to the IRS on IRS Form
5 W-2 and shall report the liquidated damages on IRS Form 1099.

6 43. Tax Advice. Named Plaintiffs, on behalf of themselves and Putative Class
7 Members, acknowledge and agree that they have not relied upon any advice from Bank of
8 America or Plaintiffs' Counsel as to the taxability of the payments received pursuant to this
9 Agreement.

10 44. Negotiation of Settlement Checks. Named Plaintiffs and Putative Class Members
11 will have one hundred twenty (120) days after the date on the settlement checks (the "Check
12 Issuance Date") in which to negotiate the checks. If any such individual does not negotiate his or
13 her settlement check within one hundred twenty (120) days after the Check Issuance Date, the
14 settlement administrator will transfer the payment to the unclaimed property fund of the state in
15 which that individual worked for Bank of America. Sixty (60) days after the distribution of
16 settlement checks, the Settlement Claims Administrator shall send out reminder postcards via e-
17 mail (if available) and First Class U.S. Mail to Named Plaintiffs and Putative Class Members who
18 have not yet negotiated their checks reminding them to negotiate their checks prior to the one
19 hundred twenty (120) day deadline. The Settlement Claims Administrator will advise Plaintiffs'
20 Counsel of any uncashed checks thirty (30) days prior to the one hundred and twenty (120) day
21 deadline and will provide contact information for any Named Plaintiffs and Putative Class
22 Members who have not cashed their checks at that time.

23 **V. RELEASE**

24 45. Release By CA Putative Class Members. Conditioned upon the Court's entry of
25 the Final Approval Order, and in exchange for the monetary consideration recited in this
26 Agreement, and upon full payment of all monetary obligations by Bank of America, CA Putative
27 Class Members who do not opt out hereby release, discharge, and covenant not to sue, from and
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1 with respect to any and all wage and hour actions, causes of action, suits, liabilities, claims, and
2 demands whatsoever, whether known or unknown, during the Covered Period, which the CA
3 Putative Class Members has, or had, against the Bank of America Releasees, or any of them,
4 which are or were alleged in the Litigation or could have been alleged in the Litigation based on
5 the facts alleged in each of the operative complaints at the time of settlement, including without
6 limitation for failure to pay accrued but unused vacation upon termination from employment
7 under California Labor Code § 227.3, claims under the operative regulations and wage orders
8 related to the same, breach of contract, violation of California Labor Code §§ 201, 202, and 203,
9 and violation of the California Unfair Competition Law, and any additional claims for penalties,
10 wages, interest, liquidated damages, or other monies predicated on same (the “CA Class Released
11 Claims”).

12 46. The CA Class Released Claims include specifically, by way of further description,
13 but not by way of limitation, any and all claims arising out of or in any way related to any and all
14 attorneys’ fees, attorneys’ costs/expenses, fines, penalties, wages, interest, restitution, liquidated
15 damages, punitive damages, declaratory relief, and/or injunctive relief allegedly due and owing
16 by virtue of the allegations set out in the Litigation and/or the claims referenced in Paragraphs 45,
17 46, and 47, whether based on statutory, regulatory, or common law.

18 47. The CA Putative Class Members acknowledge and/or are deemed to acknowledge
19 that they may hereafter discover claims that arose during the Covered Period in addition to or
20 different from those which they now know or believe to exist with respect to the subject matter of
21 this Agreement and/or this release, and which, if known or suspected at the time of executing this
22 Agreement, may have materially affected this release. Nevertheless, CA Putative Class Members
23 hereby waive any right, claim, or cause of action that might arise as a result of such different or
24 additional claims or facts.

25 48. Release By NY Putative Class Members. Conditioned upon the Court’s entry of
26 the Final Approval Order, and in exchange for the monetary consideration recited in this
27 Agreement, and upon full payment of all monetary obligations by Bank of America, NY Putative
28

1 Class Members who do not opt out hereby release, discharge, and covenant not to sue, from and
2 with respect to any and all wage and hour actions, causes of action, suits, liabilities, claims, and
3 demands whatsoever, whether known or unknown, that accrued during the Covered Period while
4 employed by Bank of America, which the NY Putative Class Members has, or had, against the
5 Bank of America Releasees, or any of them, which are or were alleged in the Litigation or could
6 have been alleged in the Litigation based on the facts alleged in each of the operative complaints
7 at the time of settlement, including without limitation for failure to pay accrued but unused
8 vacation upon termination from employment under New York Labor Law § 191, claims under the
9 operative regulations and wage orders related to the same, breach of contract, and any additional
10 claims for penalties, wages, interest, liquidated damages, or other monies predicated on same (the
11 “NY Class Released Claims”).

12 49. The NY Class Released Claims include specifically, by way of further description,
13 but not by way of limitation, any and all claims arising out of or in any way related to any and all
14 attorneys’ fees, attorneys’ costs/expenses, fines, penalties, wages, interest, restitution, liquidated
15 damages, punitive damages, declaratory relief, and/or injunctive relief allegedly due and owing
16 by virtue of the allegations set out in the Litigation and/or the claims referenced in Paragraphs 48,
17 49, and 50, whether based on statutory, regulatory, or common law.

18 50. The NY Putative Class Members acknowledge and/or are deemed to acknowledge
19 that they may hereafter discover claims that arose during the Covered Period in addition to or
20 different from those which they now know or believe to exist with respect to the subject matter of
21 this Agreement and/or this release, and which, if known or suspected at the time of executing this
22 Agreement, may have materially affected this release. Nevertheless, the NY Putative Class
23 Members hereby waive any right, claim, or cause of action that might arise as a result of such
24 different or additional claims or facts.

25 51. Release By IL Putative Class Members. Conditioned upon the Court’s entry of the
26 Final Approval Order, and in exchange for the monetary consideration recited in this Agreement,
27 and upon full payment of all monetary obligations by Bank of America, IL Putative Class
28

1 Members who do not opt out hereby release, discharge, and covenant not to sue, from and with
2 respect to any and all wage and hour actions, causes of action, suits, liabilities, claims, and
3 demands whatsoever, whether known or unknown, that accrued during the Covered Period while
4 employed by Bank of America which the IL Putative Class Members has, or had, against the
5 Bank of America Releasees, or any of them, which are or were alleged in the Litigation or could
6 have been alleged in the Litigation based on the facts alleged in each of the operative complaints
7 at the time of settlement, including without limitation claims for failure to pay accrued but unused
8 vacation upon termination from employment under 820 Ill. Comp. Stat. Ann. 115/5, claims under
9 the operative regulations and wage orders related to the same, breach of contract, and any
10 additional claims for penalties, wages, interest, liquidated damages, or other monies predicated on
11 same (the "IL Class Released Claims").

12 52. The IL Class Released Claims include specifically, by way of further description,
13 but not by way of limitation, any and all claims arising out of or in any way related to any and all
14 attorneys' fees, attorneys' costs/expenses, fines, penalties, wages, interest, restitution, liquidated
15 damages, punitive damages, declaratory relief, and/or injunctive relief allegedly due and owing
16 by virtue of the allegations set out in the Litigation and/or the claims referenced in Paragraphs 51,
17 52, and 53, whether based on statutory, regulatory, or common law.

18 53. The IL Putative Class Members acknowledge and/or are deemed to acknowledge
19 that they may hereafter discover claims that arose during the Covered Period in addition to or
20 different from those which they now know or believe to exist with respect to the subject matter of
21 this Agreement and/or this release, and which, if known or suspected at the time of executing this
22 Agreement, may have materially affected this release. Nevertheless, the IL Putative Class
23 Members hereby waive any right, claim, or cause of action that might arise as a result of such
24 different or additional claims or facts.

25 54. Release By Named Plaintiffs Receiving Service Payments. In exchange for the
26 consideration, undertakings, and covenants undertaken by Bank of America in this Agreement, as
27 well as their receipt and acceptance of their service awards, provided that the amount awarded to
28

1 them is not less than Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), to the
2 extent permitted by applicable law, the Named Plaintiffs – in addition to any releases provided by
3 virtue of being a Putative Class Member– further hereby release, discharge, and covenant not to
4 sue the Bank of America Releasees with respect to and from any and all claims, charges of
5 discrimination, demands, liens, agreements, contracts, covenants, actions, suits, causes of action,
6 disputed wages, obligations, debts, expenses, attorneys’ fees, damages, penalties, interest,
7 judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, whether
8 now known or unknown, suspected or unsuspected, and whether or not concealed or hidden,
9 which they now own or hold or they have at any time heretofore owned or held, arising out of or
10 in any way connected with her employment, separation of employment, or any other relationship
11 with, the Bank of America Releasees, or any other transactions, occurrences, acts or omissions or
12 any loss, damage or injury whatever, known or unknown, suspected or unsuspected, resulting
13 from any act or omission by or on the part of said Bank of America Releasees, or any of them,
14 committed or omitted prior to the date of the Court’s order granting final approval; provided,
15 however, that claims under the Age Discrimination in Employment Act, as modified by the Older
16 Workers Benefits Protection Act are excluded (collectively, “Named Plaintiff Claims”). The
17 Settling Parties intend the Named Plaintiffs’ release to be general and comprehensive in nature
18 and to release all Named Plaintiffs’ Claims and potential Named Plaintiffs’ Claims against the
19 Bank of America Releasees to the maximum extent permitted at law. Named Plaintiffs’ Claims
20 being released include specifically, by way of description, but not by way of limitation, any and
21 all claims arising out of or in any way related to: (i) any interactions between Named Plaintiffs,
22 on the one hand, and the Bank of America Releasees on the other hand; (ii) Named Plaintiffs’
23 employment, separation of employment, contractual, and/or quasi-contractual relationship with
24 the Bank of America Releasees; (iii) the IL Class Released Claims; (iv) the CA Class Released
25 Claims; (v) the NY Class Released Claims; (vi) any allegations as to disputed wages,
26 remuneration, and/or other compensation, due by operation of any federal, state, or local statute
27 or ordinance, or any contract or quasi-contract; (vii) any federal, state, or local law prohibiting
28

1 discrimination or retaliation on the basis of age, race, color, ancestry, religion, disability, sex,
 2 national origin, or citizenship, or other protected category or classification, including, by way of
 3 example but not of limitation, claims under Title VII of the Civil Rights Act of 1964, the
 4 Employee Retirement Income Security Act, the Americans With Disabilities Act and any other
 5 similar statutes whatever the city, county, state, or country of enactment; (viii) any claims under
 6 the Family and Medical Leave Act of 1993 or any other similar statutes whatever the city, county,
 7 county, state, or country of enactment; (ix) any cause of action whatsoever under any federal,
 8 state, or local statute or ordinance, including, by way of example but not of limitation, the
 9 California Government Code, the California Business & Professions Code, the California Labor
 10 Code, the New York Labor Law, the Illinois Labor Law, and any other statutes of the federal
 11 government or these or any other states or localities governing or relating to employment; and (x)
 12 any transactions, occurrences, acts, statements, disclosures, or omissions occurring prior to the
 13 end of the Covered Period.

14 55. The Named Plaintiffs and participating Putative Class Members (*i.e.*, Putative
 15 Class Members who do not opt out) shall be deemed to have waived their rights as to any and all
 16 released Named Plaintiff Claims, IL Class Released Claims, NY Class Released Claims, and/or
 17 CA Class Released Claims (but only such claims) with respect to the Bank of America Releasees
 18 under Section 1542 of the California Civil Code (or any other similar statute of any other state),
 19 which states:

20 "A general release does not extend to claims which the creditor does not know or
 21 suspect to exist in his or her favor at the time of executing the release, which if
 22 known by him or her must have materially affected his or her settlement with the
 23 debtor."

24 56. The Named Plaintiffs, participating Putative Class Members shall be deemed to
 25 have acknowledged and agreed that: (1) their claims for unpaid accrued vacation, liquidated
 26 damages, and any other payments and/or penalties in the Litigation are disputed; and (2) the
 27 payments set forth herein constitute full payment of any amounts allegedly due to them. Such
 28

1 acknowledgements pertain only to effectuating this Agreement and, if this Agreement fails for
2 any reason, shall be of no effect whatsoever. In light of these acknowledgements for settlement
3 purposes only, Named Plaintiffs, the participating Putative Class Members shall be deemed to
4 have acknowledged and agreed that California Labor Code § 206.5, or any other similar statute of
5 any other state, is not applicable to the Settling Parties hereto. That section provides in pertinent
6 part as follows:

7 “An employer shall not require the execution of any release of a release of
8 a claim or right on account of wages due, or to become due, or made as an
9 advance on wages to be earned, unless payment of those wages has been
10 made.”

11 57. The “Bank of America Releasees” is defined as Bank of America, N.A., Bank of
12 America Corporation, and each of its and their former and present directors, officers,
13 shareholders, owners, attorneys, insurers, predecessors, successors, affiliates, parents,
14 subsidiaries, related companies, employees, assigns, agents, and any entity which could be jointly
15 liable with any of the foregoing entities as to the claims alleged in the Litigation.

16 **V. EFFECTIVE DATE OF JUDGMENT**

17 58. This Agreement shall become final and effective (the “Effective Date”) on the
18 occurrence of all of the following events described in this Section V.

19 59. Entry by the Court of an Order of Preliminary Approval and appointment of a
20 Settlement Claims Administrator.

21 60. Plaintiffs’ Counsel filing, at or before the Final Approval Hearing, a declaration
22 from the Settlement Claims Administrator: (i) certifying that Class Notice Materials to each
23 Putative Class Member were sent in accordance with this Agreement and the Preliminary
24 Approval Order; (ii) setting out the number of Class Notice Materials that were returned as
25 undeliverable, and any with regard to same; and (iii) delineating the number Putative Class
26 Members who submitted timely Requests for Exclusion, and providing participation metrics
27 measured by headcount on a percentage and absolute numbers basis.
28

61. Entry by the Court of an Order and Judgment Granting Final Approval and dismissing the Lawsuit with prejudice. The Settling Parties shall jointly prepare and lodge a proposed Order and Judgment to this effect in advance of the Final Approval Hearing, which shall reflect, *inter alia*: (i) the dismissal of the Litigation with prejudice; (ii) that the Settlement is effective as a release of all claims alleged in the Litigation as to all Putative Class Members who did not exclude themselves from the Settlement, including those who did not cash a check or receive a payment; (iii) that the Settlement is effective as a release of all claims alleged in the Litigation as to all Putative Class Members who cash a check, and (iii) the Court's approval of the Settlement pursuant to the terms of this Agreement, including but not limited to the releases set out herein.

62. The occurrence of the "Effective Date of Judgment," which shall be deemed to be the last to occur of the following: (i) if an appeal or other review is not sought from the Order and Judgment Granting Final Approval and Dismissing Lawsuit with Prejudice, the thirty-fifth (35th) calendar day after entry of the judgment; or (ii) if an appeal or other review is sought from the Order and Judgment Granting Final Approval and Dismissing Lawsuit with Prejudice by a Putative Class Member, the day after the trial court's judgment is affirmed or the appeal or other review is dismissed or denied and becomes final and non-appealable.

VI. EFFECT OF NON-APPROVAL, FAILURE OF THE EFFECTIVE DATE TO OCCUR, OPT-OUTS IN EXCESS OF FIVE PERCENT.

63. If the Court fails to approve of this Settlement, the Settling Parties will work together, diligently and in good faith, to remedy any issue(s) leading to such denial and to seek reconsideration of the ruling or order denying approval, and/or Court approval of a renegotiated settlement (without any change to the Gross Settlement Value). If, despite the Settling Parties' efforts, the Court continues to deny approval of the Settlement or any renegotiated settlement, or Bank of America exercises its rights pursuant to Paragraph 22, this Agreement shall be voidable at Bank of America's discretion, and any portion of the GSV previously deposited with the

1 Claims Administrator shall immediately be returned to Bank of America. In case of either event,
2 the following shall apply:

3 64. Nothing in this Agreement shall be construed as a determination, admission, or
4 concession of any substantive or procedural issue in the Litigation, and nothing in this Agreement
5 may be offered into evidence in any hearing or trial, or in any subsequent pleading or in any
6 subsequent judicial, arbitral, or administrative proceeding;

7 65. This Agreement shall be without force or effect, the Litigation will continue to be
8 litigated as if this Agreement never existed and shall proceed in the courts in which they were
9 pending, and with the pleadings that were operative, prior to the implementation of this
10 Agreement, and any settlement class or collective certified under this Agreement will be
11 immediately decertified; and

12 66. The Settling Parties expressly reserve their rights with respect to the prosecution
13 and defense of the Litigation as if this Agreement never existed; and

14 67. The Settling Parties shall each bear half (50%) of any costs for notice or claims
15 administration incurred by the Settlement Claims Administrator through that date.

16 **VII. NOTICES**

17 68. All notices, requests, demands and other communications required or permitted to
18 be given pursuant to this Agreement shall be in writing and shall be delivered personally or
19 mailed, postage prepaid, by first-class mail to the undersigned persons at their respective
20 addresses as set forth herein:

21
22 Counsel for Plaintiffs:

George A. Hanson
Stueve Siegel Hanson LLP
460 Nichols Road, Suite 200
Kansas City, Missouri 64112
Tel: (816) 714-7100
Fax: (816) 714-7101

25 Counsel for Bank of America:

Adam P. KohSweeney
O'Melveny & Myers LLP
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111-3823
Tel: (415) 984-8700
Fax: (415) 984-8701

1 **VIII. PROHIBITION ON PRESS AND PUBLICITY**

2 69. The Settling Parties shall keep the terms of this Agreement confidential until
3 Named Plaintiffs file a motion for settlement approval. Thereafter, the Settling Parties and their
4 counsel agree that they will not affirmatively issue any press releases related to the settlement. If
5 counsel for any Settling Party receives an inquiry about settlement from the media, counsel may
6 respond only by confirming the terms of the settlement to the extent the terms already are known
7 and stating that the settlement is fair and serves the interests of class members.

8 70. Notwithstanding the foregoing, the Settling Parties shall also have the right to
9 disclose this Agreement as may be required under federal or state tax and/or securities laws or
10 under generally accepted accounting principles, and may disclose in legal proceedings a summary
11 of the terms of this Agreement. Named Plaintiffs also shall have the right to disclose the
12 Settlement to their tax and legal advisors and spouses. The Settling Parties further agree and
13 acknowledge that nothing herein shall prevent Plaintiffs' Counsel from referring or citing to this
14 lawsuit and the pleadings and other papers filed in obtaining approval of this settlement in any
15 court filings and proceedings in other cases for the purposes of demonstrating their experience
16 and adequacy as class counsel.

17 **IX. REPRESENTATION BY COUNSEL**

18 71. All of the Settling Parties acknowledge that they have been represented by counsel
19 throughout all negotiations that preceded the execution of this Agreement and that this Agreement
20 has been executed with the consent and advice of counsel.

21 **X. NO ADMISSION OF LIABILITY**

22 72. Bank of America enters into this Agreement to avoid further expense and
23 disruption to its business. The Settling Parties acknowledge and agree that liability for the actions
24 that are the subject matter of the **Litigation** is disputed by Bank of America. Nothing herein shall
25 constitute any admission by Bank of America of wrongdoing or liability or of the truth of any
26 factual allegations in the Litigation. Nothing herein shall constitute an admission by Bank of
27 America that the Litigation was properly brought as a class, collective, or representative action
28

1 other than for settlement purposes. To the contrary, Bank of America has denied and continues to
 2 deny each and every material factual, procedural, and/or legal allegation and alleged claim
 3 asserted in the Litigation, and has contended throughout that its policies in place that meet or
 4 exceed the requirements of applicable law. To this end, the settlement of the Litigation, the
 5 negotiation and execution of this Agreement, and all acts performed or documents executed
 6 pursuant to or in furtherance of this Agreement or the settlement: are not, shall not be deemed to
 7 be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of
 8 Bank of America or of the truth of any of the factual allegations in the complaints in the
 9 Litigation; and are not, shall not be deemed to be, and may not be used as, an admission or
 10 evidence of any fault or omission on the part of Bank of America in any civil, criminal or
 11 administrative proceeding in any court, administrative agency or other tribunal.

12 **XI. MODIFICATION OF AGREEMENT**

13 73. This Agreement may not be modified or amended except in writing, signed by the
 14 affected Settling Parties or the respective counsel of record for the Settling Parties, and as
 15 approved by the Court with respect to material modifications or amendments.

16 **XII. CONSTRUCTION AND INTERPRETATION**

17 74. Entire Agreement. This Agreement constitutes the entire agreement between the
 18 Settling Parties with respect to the subject matter contained herein and shall supersede all prior
 19 and contemporaneous negotiations between the Settling Parties. This Agreement shall be
 20 construed as a whole according to its fair meaning and intent, and not strictly for or against any
 21 party, regardless of who drafted or who was principally responsible for drafting this Agreement,
 22 or any specific term or condition thereof. The Named Plaintiffs and Bank of America
 23 participated in the negotiation and drafting of this Agreement and had available to them the
 24 advice and assistance of independent counsel. As such, neither the Named Plaintiffs nor Bank of
 25 America may claim that any ambiguity in this Agreement should be construed against the other.

26 75. No Reliance on Representations or Extrinsic Evidence. Except as expressly
 27 provided herein, this Agreement has not been executed in reliance upon any other oral or written
 28

1 representations or terms, and no such extrinsic oral or written representations or terms shall
2 modify, vary or contradict its terms. In entering into this Agreement, the Settling Parties agree
3 that this Agreement is to be construed according to its terms and may not be varied or
4 contradicted by extrinsic evidence.

5 76. Controlling Law. This Agreement shall be subject to, governed by, construed,
6 enforced and administered in accordance with the laws of the State of California, both in its
7 procedural and substantive aspects, and without regard for the principle of conflict of laws, and
8 shall be subject to the continuing jurisdiction of the Court.

9 77. No Assignment. Plaintiffs' Counsel and the Named Plaintiffs represent and
10 warrant that they have not assigned or transferred, or purported to assign or transfer, to any
11 person or entity, any claim or any portion thereof or interest therein, including, but not limited to,
12 any interest in the Litigation, or any related action.

13 78. Severability. If any provision of this Agreement is held by a court of competent
14 jurisdiction to be void, voidable, unlawful or unenforceable, except the Release, the remaining
15 portions of this Agreement will remain in full force and effect to the extent that the effect of the
16 Agreement remains materially the same and the obligations of the Settling Parties remain
17 materially the same.

18 79. Calculation of Time. All references to "days" throughout this document refer to
19 court days unless explicitly stated to the contrary. To the extent any timeframe or time
20 calculation herein is ambiguous, said ambiguity shall be resolved by calculating time in
21 accordance with FRCP 6.

22 80. Class Action Fairness Act. Within fifteen (10) calendar days of the date this
23 Agreement is filed with the court, and to the extent the Settling Parties determine it to be
24 necessary, Bank of America will file and serve a notice indicating compliance with 28 U.S.C. §
25 1715(b). The Settling Parties agree that the final approval hearing will not be held prior to the
26 ninetieth (90th) calendar day after this notice is filed.

XIII COUNTERPARTS

81. This Agreement, any amendments or modifications to it, and any other documents required or contemplated to be executed in order to consummate this Agreement, may be executed in one or more counterparts, each of which shall be deemed an original of this Agreement. All counterparts of any such document together shall constitute one and the same instrument. A photocopy, facsimile, or digital image of an executed counterpart shall be enforceable and admissible as an original.

XIV. BINDING EFFECT

82. This Agreement is binding upon and shall inure to the benefit of the Settling Parties to this Agreement. Without limiting the foregoing, this Agreement specifically shall inure to the benefit of Bank of America as well as its present and former owners, stockholders, predecessors, successors, joint ventures, assigns, agents, directors, officers, board members, employees, representatives, insurers, attorneys, parents, subsidiaries, benefit plans, plan fiduciaries, affiliated divisions and companies, and all persons acting by, through, under, or in concert with any of them. Also without limiting the foregoing, this Agreement shall be binding upon the spouses, children, heirs, assigns, administrators, executors, beneficiaries, conservators, successors and offspring of all Named Plaintiffs and Putative Class Members. This Agreement is binding and effective if signed by Bank of America and any one Named Plaintiff.

XV. ATTORNEYS' FEES, COSTS AND EXPENSES

83. Except as otherwise specifically provided herein, the Settling Parties and all Putative Class Members shall bear responsibility for their own attorneys' fees, costs and expenses, taxable or otherwise, incurred by them or arising out of this litigation and shall not seek reimbursement thereof from any party to this Agreement. However, in the event of any dispute to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of their reasonable attorneys' fees and costs from the non-prevailing party.

1 **XVI. AUTHORITY OF COUNSEL**

2 84. Facsimile, Electronic, and E-mail Signatures. Any Settling Party may execute this
3 Agreement by signing or by causing its counsel to sign, or by e-signature on the designated
4 signature block below and transmitting that signature page *via* facsimile, e-mail, or other
5 electronic means to counsel for the other Settling Party. Any signature made and transmitted by
6 facsimile, e-signature, or e-mail for the purpose of executing this Agreement shall be deemed an
7 original signature for purposes of this Agreement and shall be binding upon the Settling Party
8 whose counsel transmits the signature page by facsimile, e-signature or e-mail.

9 85. Voluntary Signature. All Settling Parties agree that they have signed this
10 Agreement, or authorized their counsel to sign this Agreement on their behalf, knowingly,
11 voluntarily, with full knowledge of its significance, and without coercion.

12 86. Warranty of Counsel. Named Plaintiffs' Counsel warrant and represent that they
13 are expressly authorized by the Named Plaintiffs to take all appropriate action required or
14 permitted to be taken pursuant to this Agreement in order to effectuate its terms. Named
15 Plaintiffs' Counsel also represent that they will take all steps legally required to effectuate this
16 Settlement. Counsel for Bank of America warrant and represent that they are authorized to take
17 all appropriate action required or permitted to be taken by Bank of America pursuant to this
18 Agreement in order to effectuate its terms.

19 **XVII. CONTINUING JURISDICTION**

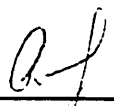
20 87. The Settling Parties hereto agree to move for the Court to retain continuing
21 jurisdiction to construe, interpret and enforce the provisions of this Agreement; to supervise the
22 administration and distribution of the resulting settlement funds; and to hear and adjudicate any
23 dispute or litigation arising from or related to this Agreement or the issues of law and facts
24 asserted in the collective action litigation.

25 **IN WITNESS WHEREOF**, the undersigned settling parties and their duly-authorized
26 representatives of accept and agree to the terms of this Agreement and hereby execute it
27 voluntarily and with a full understanding of its consequences.

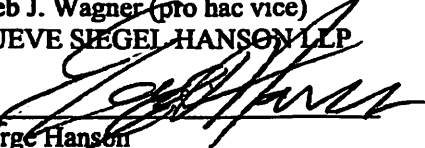
1  07/16/2026
 2 Elle Nguyen (Jul 16, 2026 12:40:18 PDT)
 3 Elle Nguyen
 4 Named Plaintiff Date

5  07/16/2026
 6 Ardavan Movassaghi (Jul 16, 2026 19:11:07 PDT)
 7 Ardavan Movassaghi
 8 Named Plaintiff Date

9 Etienne Bernstein 07/16/2026
 10 Etienne Bernstein (Jul 16, 2026 14:29:47 EDT)
 11 Etienne Bernstein
 12 Named Plaintiff Date

13  07/20/2026
 14 Aaron J. Longo
 15 Associate General Counsel & Managing
 16 Director, for and on behalf of Bank of
 17 America, N.A. Date

18 **APPROVED AS TO CONTENT AND FORM:**

19 George A. Hanson (pro hac vice)
 20 Alexander T. Ricke (pro hac vice)
 21 Caleb J. Wagner (pro hac vice)
 22 STUEVE SIEGEL HANSON LLP
 23 By: 
 24 George Hanson
 25 Attorney for Plaintiffs
 26 Elle Nguyen, Ardavan Movassaghi, and
 27 Etienne Bernstein

7/16/2026
 Date

28 Jason S. Hartley
 Jason M. Linder
 HARTLEY LLP

By: _____
 Jason S. Hartley
 Attorney for Plaintiffs
 Elle Nguyen, Ardavan Movassaghi, and
 Etienne Bernstein

 Date

1 ADAM P. KOHSWEENEY
2 CHELSEA ESPIRITU
3 O'MELVENY & MYERS LLP

4 By: 
5 Adam P. KohSweeney
6 Attorneys for Defendant
7 Bank of America, N.A.

7/20/2026

Date

JOINT STIPULATION OF SETTLEMENT
AND RELEASE
5:23-CV-04999-PCP

EXHIBIT A

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

Nguyen et al. v. Bank of America, N.A., Case No. 5:23-cv-04999-PCP

The United States District Court for the Northern District of California authorized this Notice.

Read it carefully! It's not junk mail, spam, an advertisement, or solicitation by a lawyer. This concerns your rights.

You may be eligible to receive money from the settlement of a class action lawsuit against Bank of America, N.A. ("Bank of America") if you are an individual who was formerly employed by Bank of America who: (1) worked in California, New York, and/or Illinois during the timeframes referenced below; (2) had a positive vacation balance at the time of separation from employment (defined as a scenario where the sum of vacation accrued in the year of separation plus vacation carried over from the prior year (if any), was greater than the amount of vacation recorded in Workday as used by you in the year of separation); and (3) who did not receive any payout for accrued but unused vacation at separation of employment; or any Named Plaintiff to the extent otherwise not included.

Former employees known as the "Plaintiffs" sued Bank of America in a lawsuit filed under California Labor Law and multiple state laws, asserting claims against Bank of America, N.A. ("Defendant" or "Bank of America"). The case is captioned as *Nguyen et al. v. Bank of America, N.A.*, Case No. 5:23-cv-04999-PCP (N.D. Cal.) (the "Litigation"). Plaintiffs asserted claims based on, *inter alia*: alleged failure to pay accrued, unused vacation upon termination from employment, alleged breach of contract for failure to pay accrued, unused vacation upon separation from employment, and alleged violation of the California Unfair Competition Law.

Bank of America denies the allegations in the Litigation and maintains that it at all times properly compensated its employees. The parties have entered into this settlement solely with the intention to avoid further disputes and litigation with the attendant inconvenience and expense. The Court has not made any ruling on the merits of the Plaintiffs' claims, and no party has prevailed in this Litigation.

Based on Bank of America's records, the proposed terms of the Settlement, and the Parties' current assumptions, under the allocation formula created by the settlement **your Individual Settlement Payment is estimated to be \$__**. The actual amount you may receive likely will be different and may increase or decrease based on a number of factors.

The Court has 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 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, how much of the Settlement will be paid to Plaintiffs, and Plaintiffs' attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Bank of America to make payments under the Settlement and requires Class Members give up their rights to assert certain claims against Bank of America.

You have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Settlement Payment. As a Participating Class Member, though, you will give up your right to assert certain claims against Bank of America as summarized herein and described in more detail in the Settlement papers on file with the Court.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement ("opt-out") by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Settlement Payment. You will, however, preserve your right to personally pursue certain claims against Bank of America if you so choose.

Bank of America will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Fully Participate in the Settlement	If you do nothing, you will be a Participating Class Member eligible for an Individual Settlement Payment. In exchange, you will give up your right to assert the claims against Bank of America that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement The Opt-out Deadline is _____	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Settlement Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 7 of this Notice.
Participating Class Members Can Object to the Class Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Class Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Litigation on behalf of the Class.
Participating Class Members Can Submit an Adjustment Form The deadline for Adjustment Forms is _____	This Notice is accompanied by an Adjustment Form that estimates your Individual Settlement Payment and provides the data underlying that calculation. If you believe the underlying data is incorrect, you may submit a completed form and supporting documentation to the Claims Administrator. Forms without supporting documentation will be rejected, and the Claims Administrator will have sole and final, non-reviewable, discretion to resolve your dispute.

You Can Participate in the _____ Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on _____. 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).
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1. WHAT IS THE LITIGATION ABOUT?

In this lawsuit, Plaintiffs allege that Bank of America failed to pay accrued, unused vacation to employees upon separation from employment with Bank of America and, as a result, violated California, New York, and Illinois statutes as well as contracts between Bank of America and these employees. Bank of America denies that it did anything wrong and contends that it has always had processes in place to ensure that accrued but unused vacation is paid out at separation. However, to avoid the burden, expense, and uncertainty of continuing litigation, the Parties have agreed to this settlement. The Court has not made any ruling on the merits of the Plaintiffs' claims, and no party has prevailed in this Litigation.

This case is filed in the United States District Court for the Northern District of California and is called *Nguyen et al. v. Bank of America, N.A.*, Case 5:23-cv-04999-PCP (N.D. Cal.). If the settlement is not approved, litigation will continue in this case and in this court.

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

Plaintiffs and Bank of America hired an experienced, neutral mediator in an effort to resolve the Litigation by negotiating an end to 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") and agreeing to jointly ask the Court to enter a judgment ending the Litigation and enforcing the Agreement, Plaintiffs and Bank of America 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, Bank of America does not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good result for you because they believe that: (1) Bank of America 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. 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. Bank of America Will Pay \$4,280,000.00 as the Gross Settlement Amount (Gross Settlement). Bank of America has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Settlement Payments, Class Representative Service Payments, Class Counsel's attorney's fees and expenses, all taxes (inclusive of the employer's share of payroll taxes), and the Administrator's expenses. Bank of America will fund the Gross Settlement not later than 15 business days after

Preliminary Approval has been granted. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Named Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to one-third (1/3) of the Gross Settlement to Class Counsel for attorneys' fees and approximately \$25,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Litigation without payment.
 - B. Up to \$10,000.00 as a Class Representative Award for filing the Litigation, working with Class Counsel, and representing the Class. A Class Representative Award will be the only monies Plaintiffs will receive other than Plaintiffs' Individual Settlement Payment.
 - C. Approximately \$25,000 to the Administrator for services administering the Settlement.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Time Period Covered. The "Covered Period" under the Settlement is: for California Putative Class Members, September 28, 2019, through [date of Preliminary Approval]; for Illinois Putative Class Members; September 28, 2013, through [date of Preliminary Approval]; and for New York Putative Class Members, September 28, 2017, through [date of Preliminary Approval].
4. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Settlement Payments to Participating Class Members.
5. Taxes Owed on Payments to Class Members. Fifty percent (50%) of each Individual Settlement Payment is subject to deductions for applicable taxes and withholdings like any other paycheck, and for which you will receive a W-2; and the remaining fifty percent (50%) will be reported on an IRS Form 1099.
6. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Settlement Payments will show the date when the check expires (the void date). If you don't cash it by the void date or negotiate the settlement check within 120 days after the date on the settlement check, the settlement administrator will transfer the payment to the unclaimed property fund of the state in which you worked for Bank of America. Participating Class Members will be bound by the releases in the Settlement regardless of whether or not they cash their check.

7. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, no later than **[date]** (forty-five (45) days after the date this Notice was mailed), that you wish to opt-out. This deadline may be extended if you received a re-mailed notice. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the **[date]** Response Deadline. The Request for Exclusion should be a letter from a Class Member setting forth a Class Member's name, present address, telephone number, and the statement "I opt out of the Bank of America vacation settlement" or words substantially similar thereto. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Settlement Payments but will preserve their rights to personally pursue wage and hour claims against Bank of America related to the facts of the Litigation.
8. 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. Plaintiffs and Bank of America have agreed that, in either case, the Settlement will be void: Bank of America will not pay any money and Class Members will not release any claims against Bank of America.
9. Administrator. The Court has appointed a neutral company, Analytics Consulting LLC (the "Administrator") to send this Notice, and make payments, and process Class Members' Requests for Exclusion. The Administrator will also 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.
10. Release for Participating Class Members. After the Judgment is final and Bank of America has fully funded the Gross Settlement, 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 Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Bank of America or related entities for claims based on the facts as alleged in the Litigation and resolved by this Settlement. A complete description of the claims being released by this settlement is provided in the Summary of Released Claims attached at the end of this Notice.

4. HOW WILL MY PAYMENT BE CALCULATED?

11. Individual Settlement Payments. The Administrator will calculate Individual Settlement Payments by a settlement allocation formula, which takes into account the individual amount of accrued vacation and the individual rate of pay according to Bank of America's records. The allocation formula also takes into account additional remedies and penalties available under the state laws of California, Illinois, and New York. Your estimated Individual Settlement Payment is disclosed in the accompanying Adjustment Form.

5. HOW WILL I GET PAID?

12. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) with the Individual Settlement Payment.

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?

Submit a written and signed letter with your name, present address, telephone number, and the words "I opt out of the Bank of America vacation settlement" or words substantially similar thereto. The Administrator will exclude you based on any writing communicating your request to be excluded. Be sure to personally sign your request, identify the Litigation as *Nguyen et al. v. Bank of America, N.A.*, and include your identifying information (full name, address, telephone number). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [date] (forty-five (45) days after the date this Notice was mailed), or it will be invalid.** This deadline may be extended if you received a re-mailed notice. 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. In advance of the Final Approval Hearing, Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses, and Service Awards stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as a Class Representative Service Award. You can also view these materials on the Administrator's Website, available at [INSERT URL].

A Participating Class Member who disagrees with any aspect of Settlement may object. The deadline for sending written objections to the Administrator is [date] (forty-five (45) days after the date this Notice was mailed). This deadline may be extended if you received a re-mailed notice. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Litigation, *Nguyen et al v. Bank of America, N.A.*, Case No. 5:23-cv-04999-PCP (N.D. Cal.) and include your name, current address, telephone number, and approximate dates of employment and sign the objection. Section 9 of this Notice has the Administrator's contact information.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on __ at __ (time) in Courtroom 8 of the United States District Court for the Northern District of California, San Jose, located at 280 South 1st Street, Room 2112, San Jose, CA 95113. At the Hearing, the judge will decide whether

to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs, and the Administrator. You can attend (or hire a lawyer to attend).

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website [\[INSERT URL\]](#) beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Bank of America and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment, or any other Settlement documents is to go to the case website at [\[INSERT URL\]](#). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below.

DO NOT TELEPHONE THE COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

George A. Hanson
Alexander T. Ricke
Caleb J. Wagner
Stueve Siegel Hanson LLP
460 Nichols Road, Suite 200
Kansas City, Missouri, 64112
Telephone: (816) 714-7100
Facsimile: (816) 714-7101
hanson@stuevesiegel.com
ricke@stuevesiegel.com
wagner@stuevesiegel.com

Settlement Administrator:

Analytics Consulting LLC
18675 Lake Drive East
Chanhassen, MN 55317
Telephone: 952.404.5703
Facsimile: 952.404.5750
info@analyticsllc.com

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 will have no way to recover the money.

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.

SUMMARY OF RELEASED CLAIMS

For putative class members in California: Conditioned upon the Court's entry of the Final Approval Order, and in exchange for the monetary consideration recited in this Agreement, and upon full payment of all monetary obligations by Bank of America, CA Putative Class Members who do not opt out hereby release, discharge, and covenant not to sue, from and with respect to any and all wage and hour actions, causes of action, suits, liabilities, claims, and demands whatsoever, whether known or unknown, during the Covered Period, which the CA Putative Class Members has, or had, against the Bank of America Releasees, or any of them, which are or were alleged in the Litigation or could have been alleged in the Litigation based on the facts alleged in each of the operative complaints at the time of settlement, including without limitation for failure to pay accrued but unused vacation upon termination from employment under California Labor Code § 227.3, claims under the operative regulations and wage orders related to the same, breach of contract, violation of California Labor Code §§ 201, 202, and 203, and violation of the California Unfair Competition Law, and any additional claims for penalties, wages, interest, liquidated damages, or other monies predicated on same (the "CA Class Released Claims").

1. The CA Class Released Claims include specifically, by way of further description, but not by way of limitation, any and all claims arising out of or in any way related to any and all attorneys' fees, attorneys' costs/expenses, fines, penalties, wages, interest, restitution, liquidated damages, punitive damages, declaratory relief, and/or injunctive relief allegedly due and owing by virtue of the allegations set out in the Litigation and/or the claims referenced in this Paragraph V(45), whether based on statutory, regulatory, or common law.

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

For putative class members in New York: Conditioned upon the Court's entry of the Final Approval Order, and in exchange for the monetary consideration recited in this Agreement, and upon full payment of all monetary obligations by Bank of America, NY Putative Class Members who do not opt out hereby release, discharge, and covenant not to sue, from and with respect to any and all wage and hour actions, causes of action, suits, liabilities, claims, and demands whatsoever, whether known or unknown, that accrued during the Covered Period while employed by Bank of America, which the NY Putative Class Members has, or had, against the Bank of America Releasees, or any of them, which are or were alleged in the Litigation or could have been alleged in the Litigation based on the facts alleged in each of the operative complaints at the time of settlement, including without limitation for failure to pay accrued but unused vacation upon termination from employment under New York Labor Law § 191, claims under the operative regulations and wage orders related to the same, breach of contract, and any additional claims for penalties, wages, interest, liquidated damages, or other monies predicated on same (the "NY Class Released Claims").

1. The NY Class Released Claims include specifically, by way of further description, but not by way of limitation, any and all claims arising out of or in any way related to any and all attorneys' fees, attorneys' costs/expenses, fines, penalties, wages, interest, restitution, liquidated damages, punitive damages, declaratory relief, and/or injunctive relief allegedly due and owing by virtue of the allegations set out in the Litigation and/or the claims referenced in this Paragraph V(48), whether based on statutory, regulatory, or common law.

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

For putative class members in Illinois: Conditioned upon the Court's entry of the Final Approval Order, and in exchange for the monetary consideration recited in this Agreement, and upon full payment of all monetary

obligations by Bank of America, IL Putative Class Members who do not opt out hereby release, discharge, and covenant not to sue, from and with respect to any and all wage and hour actions, causes of action, suits, liabilities, claims, and demands whatsoever, whether known or unknown, that accrued during the Covered Period while employed by Bank of America which the IL Putative Class Members has, or had, against the Bank of America Releasees, or any of them, which are or were alleged in the Litigation or could have been alleged in the Litigation based on the facts alleged in each of the operative complaints at the time of settlement, including without limitation claims for failure to pay accrued but unused vacation upon termination from employment under 820 Ill. Comp. Stat. Ann. 115/5, claims under the operative regulations and wage orders related to the same, breach of contract, and any additional claims for penalties, wages, interest, liquidated damages, or other monies predicated on same (the “IL Class Released Claims”).

1. The IL Class Released Claims include specifically, by way of further description, but not by way of limitation, any and all claims arising out of or in any way related to any and all attorneys’ fees, attorneys’ costs/expenses, fines, penalties, wages, interest, restitution, liquidated damages, punitive damages, declaratory relief, and/or injunctive relief allegedly due and owing by virtue of the allegations set out in the Litigation and/or the claims referenced in this Paragraph V(51), whether based on statutory, regulatory, or common law.

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

EXHIBIT B

PLAN OF ALLOCATION

The Net Settlement Fund (defined below) will be allocated amongst all Settlement Class Members, as defined as “Putative Class Member” in Paragraph I(1) of the Joint Stipulation of Settlement and Release, who did not submit a timely request for exclusion, subject to the exceptions listed in footnote 1 below.¹

FORMULA

Settlement Class Members will receive a share of the Settlement Fund less all court-approved costs, service awards, attorneys’ fees, and employer withholdings tax (“Net Settlement Fund”). **First**, each Settlement Class Member will be allocated a minimum per capita amount of \$200.00. **Next**, each Settlement Class member will be allocated their share of the remaining Net Settlement Fund according to the Formula set out below.

Each Settlement Class Member will be assigned an Individual Class Member Share, denoted as a percentage of the Fund. Settlement Class Members will be paid a corresponding percentage of the Fund. The processes for calculating the Individual Class Member Share is as follows:

Calculating Individual Class Member Share

1. Filter Bank of America’s Microsoft Excel spreadsheets to exclude all employees who received a vacation payout—that is, employees with a positive balance listed in the columns listed “Vacation Payout Amount (VAP)” or “Vacation Payout Hours (VAP)” (Columns N and O).
2. For the remaining employees who did not receive a vacation payout, determine the total number of Unpaid Vacation Hours by adding the figure listed in the column listed “Annual Accrual” (Column R) to the column listed “Carryover” (Column Q).
3. From this figure, subtract the number of hours listed in the column labeled “VAC Pay – EX” (Column P), which represents the amount of vacation actually used by the employee.
4. For each employee, multiply the resulting total number of Unpaid Vacation Hours by the “Hourly Rate of Pay” (Column S) to determine that employee’s Total Losses.
5. For Settlement Class Members who worked in California, multiply this figure by 1.4 to determine their Total Losses.
6. Determine the aggregate amount of Total Losses for the entire class. To do so, repeat steps 1-5 for each eligible Settlement Class Member and sum up the total.
7. For each Settlement Class Member, divide the individual Total Losses figure by the aggregate Total Losses for the entire class. The resulting percentage constitutes the Individual Class Member Share for each Settlement Class Member.

¹ Excluded from the Classes are Bank of America, any entity in which Bank of America has a controlling interest, any of the officers or directors of Bank of America, the legal representatives, heirs, successors, and assigns of Bank of America, anyone employed with Plaintiffs’ counsel’s firms, and any Judge to whom this case is assigned, and his or her immediate family.

8. Each Settlement Class Member will be allocated a percentage of the Fund corresponding to their Individual Class Member Share.

Formula for Distribution of the Settlement Fund:

1. The Net Settlement Fund shall be reduced to cover payroll taxes as defined by the Settlement Agreement.
2. All eligible Settlement Class Members shall be allocated a Minimum Payment of \$200.00.
3. All remaining funds shall be divided into Individual Class Member Shares as set forth above.
4. Each eligible Settlement Class Member shall receive a distribution equal to their Individual Class Member Share plus their Minimum Payment of \$200.00.

The relevant payroll and compensation data will be conclusively derived from Bank of America's data and determined by the Notice Administrator.

Payments to Settlement Class Members shall not be made until the Effective Date has passed and all objections, collateral challenges or appeals relating to the Settlement have been fully and finally resolved.

EMPLOYER TAX WITHHOLDINGS

The Settlement states that taxes shall be paid from the Settlement Fund. Payments to Settlement Class Members shall be reduced by any employee withholding amounts that the Settlement Administrator determines must be paid directly to the relevant taxing authorities.

REMAINING FUNDS

For Settlement Class Members who could not be located (after continuing diligent efforts by the Settlement Administrator) or who do not cash their checks by the stale date, the Settlement Administrator shall remit such payments to the relevant unclaimed property divisions. To the extent undistributed funds still remain after this process is complete, Plaintiffs will petition the Court for an order to dispose of the remaining funds. At this time, Plaintiffs anticipate the remaining Settlement amounts will be distributed pro rata to Settlement Class Members who deposited their settlement checks. In no event shall any of the remaining funds be returned to Bank of America.