

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between Bank of America, N.A. (“Defendant”), on the one hand, and Plaintiffs Maureen Clark and Sonya Alexander (“Named Plaintiffs”), individually and on behalf of themselves and all Opt-In Plaintiffs (as defined below), on the other hand. Named Plaintiffs and Defendant are referred to herein collectively as the “Parties.”

### RECITALS

WHEREAS, on or about September 21, 2016, Named Plaintiffs filed a Collective and Class Action Complaint against Defendant in the United States District Court for the District of Nevada (the “Court”), entitled *Maureen Clark, et al. v. Bank of America Corporation* (Case No. 2:16-cv-02228-GMN-VCF), in which they asserted individual, collective and class action claims against Defendant for alleged violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.* and Nev. Rev. Stat. Sections 608.016, 608.018, and 608.260 (NRS), arising out of their employment with Defendant (the “Civil Action”);

WHEREAS, on or about September 13, 2017, Named Plaintiffs filed a First Amended Collective Action Complaint in the Civil Action;

WHEREAS, on or about June 22, 2018, Named Plaintiffs filed a Second Amended Collective and Class Action Complaint in the Civil Action;

WHEREAS, on or about June 22, 2018, Named Plaintiffs filed a Pre-Discovery Motion for Conditional Certification and Court Authorized Notice to Potential Opt-In Plaintiffs;

WHEREAS, on or about July 5, 2018, Defendant filed an Answer to the Second Amended Collective and Class Action Complaint, in which it denied Named Plaintiffs’ allegations and claims and asserted various affirmative defenses;

WHEREAS, on or about March 31, 2019, the Court granted Named Plaintiffs’ Motion for Conditional Certification under the FLSA. The definition of the collective, as conditionally certified, includes “all current and former hourly call center agents who worked for Defendant since December 7, 2013 in Nevada and Delaware and since May 19, 2015 in any other state”;

WHEREAS, on or about May 16, 2019, with the assistance of a third-party claims administrator, Simpluris, the Parties sent each member of the conditionally certified collective a Court-approved notice notifying them of their right to join the Civil Action, along with a “Consent to Join Lawsuit” (collectively, the “Joinder Notice”);

WHEREAS, as a result of receiving the Joinder Notice, a total of 1,441 former and current employees of Defendant, including Named Plaintiffs, filed consents to join the Civil Action (the “Opt-In Plaintiffs”), as reflected in the docket for the Civil Action.

WHEREAS, the Parties thereafter engaged in arms-length mediated negotiations resulting in a resolution of the Civil Action in its entirety as set forth below;

WHEREAS, the purpose of this Agreement is to document the settlement terms for the final and complete disposition of the Civil Action as between and among the Parties and Opt-In Plaintiffs and, among other things, to settle fully and finally all Released Claims (as defined below) that the Named Plaintiffs and all other Opt-in Plaintiffs have or may have against the Released Parties (as defined below), including all those asserted in the various pleadings filed by Named Plaintiffs in the Civil Action, as described above (the "Settlement");

WHEREAS, counsel of record for the Parties in the Civil Action have analyzed and evaluated the merits of Named Plaintiffs' claims and Defendant's defenses to those claims, and based upon their analysis and evaluation, and recognizing the substantial risks of continued litigation, the Parties are satisfied that the terms and conditions of this Agreement are fair, adequate and reasonable and are in the best interests of all Parties and all Opt-In Plaintiffs.

NOW, THEREFORE, the Parties, intending to be legally bound, and in consideration of the mutual covenants and promises set forth in this Agreement, agree as follows:

## **TERMS OF AGREEMENT**

### **1. DEFINITIONS NOT SET FORTH ELSEWHERE IN THIS AGREEMENT**

The terms set forth below shall be defined as follows:

**1.1. Gross Fund.** "Gross Fund" means One Million Seven Hundred Fifty-Five Thousand Dollars and No Cents (\$1,755,000.00), which is the total amount Defendant agrees to pay in order to settle and dismiss the Civil Action in its entirety, except for Defendant's share of employer taxes on the wage portion of Individual Settlement Payments (as defined below) made to Opt-In Plaintiffs.

**1.2. Released Claims.**

a. For the "Release Period" (as defined below), and for the Opt-In Plaintiffs only, "Released Claims" means and refers to all claims, demands, rights, liabilities, and causes of action that were asserted or could have been asserted in the Civil Action and based on the facts alleged in the Civil Action. The Released Claims include, but are not limited to, all claims related to or arising out of the hours allegedly worked by Named Plaintiffs and the Opt-in Plaintiffs while employed by Defendant and all claims relating to the alleged failure to timely and properly pay all wages owed of any type, the alleged failure to timely and properly pay all overtime wages owed of any type, the alleged failure to timely and properly pay for all time worked, failure to provide or permit legally compliant meal and rest breaks, failure to provide legally compliant wage statements, failure to timely and properly pay all terminal wages owed, breach of contract, unjust enrichment, statutory damages, interest, liquidated damages, civil or other penalties (including without limitation that can be sought as a private attorney general) and attorneys' fees and costs. The Released Claims include without limitation all claims arising under federal, state and local laws, ordinances and regulations governing wages, and hours worked and wage payments, including the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, *et seq.*, Nev. Rev. Stat. Sections 608.016, 608.018, and 608.260 (NRS), and any other state or local law, ordinance or regulation governing wages and hours worked and wage payments, and their implementing regulations.

b. In addition to the Released Claims specified above in Subparagraph a, above, with respect to the Named Plaintiffs only, "Released Claims" also include for the Release Period all other complaints, claims, lawsuits, claims for relief, demands, suits, arbitrations, actions or causes of action of any type, whether in law, contract or equity, which the Named Plaintiffs have asserted or could have asserted at common law or under any statute, rule, regulation, order or law, whether federal, state, or local, or on any grounds whatsoever, including without limitation claims under the Fair Labor Standards Act ("FLSA"), the Age Discrimination in Employment Act (the "ADEA"), Title VII of the Civil Rights Act of 1964, the federal Equal Pay Act, the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Family and Medical Leave Act of 1993 (the "FMLA"), the Employee Retirement Income Security Act of 1974, the Racketeer Influenced and Corrupt Organizations Act, the Financial Reform Recovery and Enforcement Act of 1989, Section 1981 of Title 42 of the United States Code, the federal Worker Adjustment and Retraining Notification (WARN) Act, and any other federal, state, or local laws, ordinances and regulations concerning workplace rights or obligations or payment of wages, claims for violation of privacy rights, claims for violation of civil rights, claims for denial of equal rights, discrimination, wrongful termination, retaliation, breach of contract, equitable remedies, interference with actual and/or prospective contractual or economic advantage or relations, all tort claims, and all claims that were or could have been alleged by Named Plaintiffs in the Civil Action and which arose or accrued prior to and through the end of the Release Period.

**1.3. Released Parties.** "Released Parties" means and refers to Defendant and all of its current and former owners, directors, officers, shareholders, affiliates, agents, employee benefit plans, plan administrators, representatives, servants, employees, attorneys, subsidiaries, parents, divisions, branches, units, successors, predecessors, and assigns, including but not limited to Bank of America Corporation and Bank of America, N.A.

**1.4. Release Period.** "Release Period" means and refers to the period from September 21, 2013 through the date the Court approves this Agreement.

## **2. SETTLEMENT PAYMENTS**

**2.1. Distribution Of Gross Fund.** Subject to the terms of this Agreement, the Gross Fund shall be inclusive of all: (1) all Individual Settlement Payments to the Named Plaintiffs and all other Opt-In Plaintiffs, as approved by the Court; (2) the Service Payments (as defined below) for the Named Plaintiffs as approved by the Court; (3) all attorneys' fees, costs, and litigation expenses incurred by counsel for the Named Plaintiffs and Opt-In Plaintiffs in the Civil Action, as approved by the Court, including those in connection with securing Court approval of this Agreement, any appeals and in connection with any proceeding to enforce the terms of this Agreement; (4) all costs, expenses and fees incurred by the Settlement Administrator (as defined below) in connection with administering this settlement and as set forth below, as approved by the Court; and (5) Named Plaintiffs' and all Opt-In Plaintiffs' share of applicable federal, state and local employee payroll taxes required to be withheld on the wage portions of the Individual Settlement Payments.

**2.2. Funding Of Settlement.** Within ten (10) court days after the Approval Order (as defined below) has become a final and no longer appealable Order, Defendant shall submit the

Gross Fund by wire transfer to a Qualified Settlement Fund as established by the Settlement Administrator for purposes of effectuating the terms of this Settlement. Within seven (7) calendar days after receipt of the Gross Fund, the Settlement Administrator shall pay counsel for the Named Plaintiffs by wire transfer the amount of attorneys' fees, costs, and litigation expenses that have been approved and ordered by the Court, and shall transmit by First Class U.S. Mail the Service Payments to the Named Plaintiffs, as approved and ordered by the Court. Individual Settlement Payments shall be made in accordance with Paragraph 2.6(b), below. Although the Settlement Administrator shall not be required to set up an interest bearing account in which to place the Gross Fund while this Settlement is being administered, to the extent any interest accrues on the Gross Fund while this Settlement is being administered, it shall be paid to Defendant. If there is any appeal taken from the Approval Order, Defendant shall not be obligated to provide the Gross Fund unless and until the appeal is withdrawn or an appellate decision affirming the Approval Order is issued and the Approval Order becomes final and no longer subject to further appellate review. If the Approval Order is reversed on appeal, Defendant shall not be required to provide the Gross Fund and this Settlement shall be null and void *ab initio*.

### **2.3. Settlement Administration**

a. Selection of Settlement Administrator. The Settlement Administrator for the Settlement shall be *Simpluris*.

b. Settlement Administrator Responsibilities. The Settlement Administrator shall be responsible for: (a) establishing a "Qualified Settlement Fund" ("QSF"), as described below, and for calculating the Individual Settlement Payments and the associated employee and employer payroll tax withholding amounts; (b) communicating with counsel for the Parties and with Opt-In Plaintiffs regarding all aspects of settlement administration; (c) mailing the Individual Settlement Payments to the Named Plaintiffs and Opt-In Plaintiffs; (d) wiring Named Plaintiffs' counsel's attorneys' fees, expenses, and costs and mailing the Service Payments to the Named Plaintiffs; (e) remitting all payroll tax withholdings to the appropriate state and federal taxing authorities in accordance with applicable law and this Agreement; (f) issuing W-2 and 1099 Forms for all amounts paid to the Named Plaintiffs, Opt-In Plaintiffs and counsel for the Named Plaintiffs, performing all required tax reporting and preparing and filing all required tax returns in connection with this Settlement; (g) ascertaining current mailing addresses for Opt-In Plaintiffs to the extent needed, including if Individual Settlement Payments are returned as undeliverable; (h) referring to counsel for the Parties all inquiries made in connection with settlement administration that the Settlement Administrator cannot resolve and/or which involve matters not within the scope of the Settlement Administrator's duties specified herein; (i) responding to inquiries by counsel for the Parties; (j) promptly apprising counsel for the Parties of the activities of the Settlement Administrator; (k) maintaining adequate records of its settlement administration, including the date of submission of all payments made pursuant to this Agreement, returned mail and other communications and attempted written or electronic communications with the Named Plaintiffs and Opt-In Plaintiffs; (m) confirming in writing to

counsel for the Parties its completion of the administration of the Settlement and maintaining access to copies of all endorsed Individual Settlement Payment checks; (n) timely responding to communications from the Parties or their counsel; and (o) performing such other tasks as called for by this Agreement or needed to administer this Settlement, as ordered by the Court, or on which the Parties mutually agree.

c. Settlement Administration Fees, Costs and Expenses. All fees, expenses, and costs incurred by the Settlement Administrator in connection with administering the Settlement set forth in this Agreement shall not exceed \$15,000.00, and shall be paid from the Gross Fund.

#### **2.4. Creation And Implementation Of A Qualified Settlement Fund**

a. Establishing a Qualified Settlement Fund. The Settlement Administrator shall establish and deposit the Gross Fund in a QSF, as described in Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, *et seq.* The QSF shall be administered by the Settlement Administrator, subject to the authority of the Court.

b. Administering the QSF. The Settlement Administrator shall act as a fiduciary with respect to the handling, management, and distribution of the Gross Fund from the QSF, including the handling of all tax-related issues, remittances, filings and payments. The Settlement Administrator shall take all action necessary to qualify the Gross Fund as a QSF and to maintain that qualification. The Parties shall cooperate to ensure such treatment and shall not take a position in any filing or before any tax authority inconsistent with such treatment. The Parties agree to any relation-back election required to treat the Gross Fund as a QSF from the earliest possible date.

c. Tax Reporting. The Settlement Administrator shall allocate each Individual Settlement Payment twenty-five percent (25%) each to: (1) wages (to be reported on an Internal Revenue Service (“IRS”) Form W-2); and (2) statutory liquidated damages; (3) civil or other penalties; and (4) interest (to be reported on an IRS Form 1099). The Settlement Administrator shall be responsible for withholding and timely remitting and reporting all employer and employee payroll taxes to the appropriate taxing authorities.

d. QSF Taxes. All taxes (including any estimated taxes), interest, or penalties arising out of any income earned by the QSF, including any taxes or tax detriments that may be imposed on Defendant with respect to income earned for any period during which the QSF does not qualify as a “Qualified Settlement Fund” for federal and/or state income tax purposes (hereinafter “Settlement Fund Taxes”), and expenses and costs incurred in connection with the operation and implementation of this Paragraph (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) any returns described herein or otherwise required to be filed pursuant to applicable authorities) (hereinafter “Settlement Fund Tax Expenses”) shall be paid out of the QSF. Further, Settlement Fund Taxes and Settlement Fund Tax Expenses shall be treated as a

cost of the administration. The Parties agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Agreement.

e. Other Payments. The Settlement Administrator shall satisfy from the QSF all required federal, state, and local taxes, penalties, fees and other obligations not otherwise addressed in this Agreement.

f. Communication with Settlement Administrator. Counsel for the Parties are authorized and permitted to communicate directly with the Settlement Administrator in connection with the administration of this Settlement.

## **2.5. Allocation Of Gross Fund**

a. Net Fund. The amounts approved by the Court for Service Payments to the Named Plaintiffs, attorneys' fees, litigation expenses, and costs to counsel for the Named Plaintiffs and the fees, costs and expenses incurred by the Settlement Administrator in connection with administering this Settlement shall be deducted from the Gross Fund. The resulting amount shall be the "Net Fund." All payments from the Net Fund to the Named Plaintiffs and the Opt-In Plaintiffs, as referenced in this Agreement, shall be deemed the "Individual Settlement Payments."

b. Data on Opt-In Plaintiffs. Within ten (10) court days after the Approval Order becomes a final non-appealable Order, Defendant shall provide the Settlement Administrator in electronic format the names, last known addresses, last known telephone numbers, last known personal e-mail addresses, Social Security Numbers, and states of employment of all Opt-In Plaintiffs, as well as the total number of weeks each worked during the Release Period (the "Compensable Workweeks")(collectively, the "Opt-In Data"). Prior to the mailing of the Individual Settlement Payments, the Settlement Administrator shall attempt to confirm the accuracy of the current mailing addresses provided by Defendant for each Opt-In Plaintiff through the United States Postal Service's National Change of Address database and shall mail Individual Settlement Payments to any updated address obtained therefrom.

c. Allocation of Net Fund. The Named Plaintiffs and the Opt-In Plaintiffs shall be allocated a portion of the Net Fund pursuant to the following formula:

- 1) The Settlement Administrator shall divide the Net Fund by the number of Compensable Workweeks to arrive at a "Workweek Value" for each Compensable Workweek.
- 2) The Settlement Administrator shall then multiply the Compensable Workweeks attributed to each Named Plaintiff and each Opt-In Plaintiff by the Workweek Value to arrive at the gross amount of each Individual Settlement Payment.

- 3) The amount of all checks representing Individual Settlement Payments which are not timely negotiated/cashed shall revert to Defendant, and the Settlement Administrator shall seek reimbursement from the appropriate taxing authorities of all employer payroll taxes paid on such Individual Settlement Payments.

d. Service Payments. Counsel for the Named Plaintiffs shall seek Court approval for the payment of Five Thousand Dollars and No Cents (\$5,000.00) to each the Named Plaintiffs (“Service Payment”) for the Named Plaintiffs’ involvement in investigating, commencing and litigating the claims alleged in the Civil Action for the benefit of all Opt-In Plaintiffs and for Named Plaintiffs’ Released Claims. Defendant shall not oppose this request provided it is consistent with the terms of this Agreement. The Parties expressly agree that the Court’s approval or denial of any request for Service Payments shall not be considered a material condition to the approval of this Agreement, and it shall be considered by the Court separately from the fairness, reasonableness, adequacy, and good faith of the Settlement. Any order or proceeding relating to the request by counsel for the Named Plaintiffs for Service Payments shall not operate to terminate or cancel this Agreement. Any amount requested as a Service Payment that is not awarded by the Court shall be included in the Net Fund and shall be used to calculate Individual Settlement Payments to all Opt-In Plaintiffs. The Service Payments, as awarded by the Court, shall not be subject to payroll tax withholdings and the Settlement Administrator shall issue an IRS Form 1099 to the Named Plaintiffs for their Service Payments.

e. Named Plaintiffs’ Attorneys’ Fees, Litigation Expenses and Costs. Counsel for the Named Plaintiffs shall seek Court approval for an award of attorneys’ fees of up to one-third of the Gross Fund which amount equals Five Hundred Eighty-Five Thousand Dollars and No Cents (\$585,000.00), and for reimbursement of their reasonable costs and litigation expenses not to exceed Seventy Thousand Dollars and No Cents (\$70,000.00). Defendant shall not oppose such requests provided they are consistent with the terms of this Agreement. The Settlement shall not be conditioned upon the Court’s approval of the amount of attorneys’ fees, litigation expenses, and costs sought by counsel for the Named Plaintiffs. Payment of such attorneys’ fees, litigation expenses, and costs to counsel for the Named Plaintiffs shall be made in accordance with this Agreement and shall constitute full satisfaction of any and all obligations by Defendant to pay any person, attorney or law firm for the attorneys’ fees, litigation expenses and costs incurred in connection with the Civil Action and this Settlement. The Settlement Administrator shall report the payment of the attorneys’ fees, litigation expenses and costs to counsel for the Named Plaintiffs, as awarded by the Court, on IRS Forms 1099. Such payment shall not be subject to any tax withholding. The Parties expressly agree that the Court’s approval or denial of any request for attorneys’ fees, litigation expenses and costs shall not be considered a material condition to this Agreement, and the request shall be considered by the Court separately from the fairness, reasonableness, adequacy, and good faith of the Settlement. Any order or proceeding relating to the request by counsel for the Named Plaintiffs for an award of attorneys’ fees, litigation expenses and costs shall not operate to terminate or cancel this Agreement. Any amounts requested by counsel for the Named Plaintiffs for attorneys’ fees, litigation expenses and/or costs that are not awarded by the Court shall be included in the Net Fund and shall be used to calculate Individual Settlement Payments to all Opt-In Plaintiffs.

## **2.6. Transmittal Of Individual Settlement Payments**

a. Notification to Counsel for the Parties. Within ten (10) court days after receiving the Opt-In Data from Defendant pursuant to Paragraph 2.5b, the Settlement Administrator shall provide counsel for Named Plaintiffs and Defendant with the names of all Opt-In Plaintiffs along with gross and net amounts of their Individual Settlement Payments under the terms of this Agreement.

b. Timing of Individual Settlement Payments. Within seven (7) calendar days after counsel for the Parties receive the information described in Paragraph 2.6(a), above, the Settlement Administrator shall transmit all Individual Settlement Payments by First Class U.S. Mail to the last known address for each Opt-In Plaintiff, including the Named Plaintiffs. The Settlement Administrator also shall include with each Individual Settlement Payment a written notice (the "Payment Notice") to each Opt-In Plaintiff, substantially in the form attached hereto as Exhibit A, which explains the reason why the Opt-In Plaintiff is receiving the Individual Settlement Payment, sets forth the number of workweeks attributed to each Opt-In Plaintiff based on the provisions of this Agreement, specifies that, regardless of whether they cash, deposit or otherwise negotiate the check represented by the Individual Settlement Payment, the Opt-In Plaintiff is bound by this Agreement, including the provisions pertaining to Released Claims, and refers Opt-In Plaintiffs to the Court files in the Civil Action, including this Agreement, for their review to the extent they choose to do so.

c. Payroll Taxes on Individual Settlement Payments. The portion of the Individual Settlement Payments attributed to wages shall be subject to all required employee-paid payroll tax withholdings (including federal income taxes, state income taxes, employee's share of FICA and FUTA taxes, and other state or local-specific statutory deductions) and other authorized or required deductions (garnishments, tax liens, child support, etc.). The portion of the Individual Settlement Payments attributed to statutory or liquidated damages, interest and civil or other penalties shall be treated as non-wage income to Named Plaintiffs and the Opt-In Plaintiffs. The employer's share of payroll taxes on any wage portion of the Individual Settlement Payments shall be calculated by the Settlement Administrator and separately paid by Defendant. After the Settlement Administrator notifies Defendant of the amount of the employer payroll taxes that are owed, Defendant shall separately transmit that amount to the Settlement Administrator.

d. Tax Advice. The Named Plaintiffs, on behalf of themselves and all Opt-In Plaintiffs, acknowledge and agree that Defendant and its counsel have not made, and the Named Plaintiffs have not relied upon, any representations or advice from Defendant or its counsel as to the taxability of the payments to be made pursuant to this Agreement or in deciding whether to execute this Agreement. Named Plaintiffs also acknowledge and agree they have had sufficient opportunity to obtain independent advice from a tax professional before executing this Agreement.

e. Negotiation/Cashing/Depositing of Individual Settlement Payments. The Named Plaintiffs and all Opt-In Plaintiffs shall have one hundred eighty (180) calendar days after the date of the Payment Notice in which to negotiate/cash/deposit their checks representing their Individual Settlement Payments. If any Opt-In Plaintiff does not negotiate/cash/deposit his or her Individual Settlement Payment check within such time, the checks representing the Individual Settlement Payment shall be voided and the funds associated with such checks shall revert to Defendant. Thirty (30) calendar days prior to the 180-day deadline, the Settlement

Administrator shall advise counsel for the Parties of the names of any Opt-In Plaintiffs who have not yet negotiated/cashed/deposited their Individual Settlement Payment checks. However, regardless of whether an Opt-In Plaintiff cashes, deposits or otherwise negotiates the check represented by the Individual Settlement Payment by that deadline, the Opt-In Plaintiff is bound by this Agreement, including the provisions pertaining to Released Claims.

f. Return of Unclaimed Net Funds in QSF. Any funds remaining in the QSF after the provisions of this Agreement have been fully satisfied shall revert to Defendant.

## **2.7. Settlement Approval**

a. This Agreement shall not become effective, and Defendant shall have no obligation to provide the Gross Fund or make any other payments specified by this Agreement unless and until all of the following occurs: the Court enters an Approval Order approving without material modification the terms of this Agreement, including expressly binding the Parties and the Opt-In Plaintiffs to the terms hereof and finding that all applicable notice and timing requirements for approval and the releases herein to be fully valid and enforceable under applicable law have been satisfied, the Approval Order becomes final and is no longer appealable, and the Civil Action is dismissed with prejudice.

b. The Parties and their respective counsel shall take all steps that may be required by the Court relating to the approval and implementation of this Agreement and shall otherwise operate in good faith and use their respective best efforts to obtain Court approval of this Agreement. Within twenty-one (21) calendar days after this Agreement has been fully executed, and all notification requirements have been satisfied, the Parties shall move the Court jointly for an order approving the Settlement and this Agreement and dismissing the Civil Action with prejudice (the "Approval Order"), and comply with all applicable notice and timing requirements, if any, under the Class Action Fairness Act or other applicable laws. Counsel for Named Plaintiffs shall prepare the draft motion for the Approval Order ("Approval Motion") and the proposed Approval Order, and shall provide Defendant's counsel with drafts at least three (3) calendar days prior to the filing of the motion, so that Defendant may have a reasonable opportunity to review and provide comments and revisions prior to counsel for Named Plaintiffs filing them with the Court.

c. To the extent required by law, after entry of the Approval Order, the Court shall retain jurisdiction over the Parties for the purposes of managing and overseeing the Settlement and the distribution of all funds pursuant to the Agreement.

**2.8. No Effect On Benefit Plans.** The Named Plaintiffs and all Opt-in Plaintiffs understand and agree that the payments specified by the Agreement shall not be counted as earnings for purposes of any pension or 401(k) benefits plans, regular or supplemental.

## **3. RELEASES**

**3.1. Effect Of Claims Released By Named Plaintiffs And All Opt-In Plaintiffs.** In exchange for Defendant's agreement to and performance of its obligations set forth in this Agreement, and other valuable consideration set forth elsewhere in this Agreement, to which Named Plaintiffs and all Opt-In Plaintiffs acknowledge they are not otherwise entitled to receive,

Named Plaintiffs, on behalf of themselves and all Opt-in Plaintiffs, agree that, upon entry of the Approval Order, they hereby waive, release and forever discharge, and that they will not in any manner institute, prosecute or pursue at any time in the future, any Released Claims against any Released Parties, and the Approval Order will permanently enjoin them from doing so. It is further understood and agreed that, to the extent applicable, all right and benefits under the terms of California Civil Code Section 1542 (“Section 1542”), and any other similar state law, are hereby expressly waived by the Named Plaintiffs and Opt-In Plaintiffs to the fullest extent permitted. Section 1542 reads as follows: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

**3.2. No Other Obligations.** The Named Plaintiffs, on behalf of themselves and all Opt-In Plaintiffs, agree that: (1) this Agreement shall release Defendant and the other Released Parties from the Released Claims to the fullest extent permitted by law; (2) this Agreement is being entered into with the understanding that there are no unresolved claims of any nature that the Named Plaintiffs have against Defendant regarding the Released Claims; (3) except as specified in Paragraph 2, above, all compensation, benefits, and other obligations due the Named Plaintiffs and all other Opt-In Plaintiffs by Defendant with respect to the Released Claims, whether by contract, law or otherwise, have been paid or otherwise satisfied in full, including, but not limited to, payments under any severance plans or programs; and (4) the representations, understandings, and agreements set forth in this Paragraph 3 have been relied upon by Defendant and constitute material consideration for Defendant’s execution of this Agreement.

**3.3. Non-Admission of Liability.** By entering into this Agreement, neither Defendant nor any other Released Party admits in any way to any violation of law or to any liability whatsoever to Named Plaintiffs or any Opt-in Plaintiffs. All such alleged liability is expressly denied by Defendant and the Released Parties. Rather, Defendant enters into this Agreement to avoid further litigation and to resolve the Civil Action and the Released Claims. The Parties understand and agree that neither this Agreement, nor the negotiations that preceded it, shall be used as evidence with respect to the claims asserted in any other proceeding or dispute whatsoever.

**3.4. Acknowledgement.** The Parties agree that each provision in this Paragraph 3, without limitation, is a material provision of this Agreement.

#### **4. ~~CONFIDENTIALITY~~**

~~4.1. The Named Plaintiffs and their counsel represent and agree that, prior to the filing of a motion for approval of this Agreement, they have not issued and will not issue any press releases or press statements, post any internet disclosures, have any communications with the press or media about this Agreement, or otherwise publicize the terms of this Agreement in any medium, including, but not limited to, Internet blogs or chat rooms, Facebook, or a law firm website. If any of them receives an inquiry about this Settlement from the media, they may respond only after the motion for approval of the Settlement has been filed with the Court and only by confirming that the Civil Action has been resolved.~~

~~4.2.~~— Notwithstanding the foregoing, the Parties shall have the right to disclose the terms of this Agreement as may be required under federal or state tax and/or securities laws or under generally accepted accounting principles, and to the extent required in any legal proceedings.

~~4.3.~~— And notwithstanding the foregoing, Named Plaintiffs understand and acknowledge that nothing in this Agreement prohibits or limits Named Plaintiffs or their counsel from initiating communications directly with, responding to any inquiry from, volunteering information to, or providing testimony before, the Securities and Exchange Commission, the Department of Justice, FINRA, any other self-regulatory organization or any other governmental, law enforcement, or regulatory authority, regarding this Agreement and its underlying facts and circumstances, or any reporting of, investigation into, or proceeding regarding suspected violations of law, and that the Named Plaintiffs are not required to advise or seek permission from Defendant before engaging in any such activity. The Named Plaintiffs recognize that, in connection with any such activity, they must inform such authority that the information they are providing is confidential. Despite the foregoing, the Named Plaintiffs are not permitted to reveal to any third party, including any governmental, law enforcement, or regulatory authority, information the Named Plaintiffs came to learn during the alleged course of employment with Defendant that is protected from disclosure by any applicable privilege, including but not limited to the attorney-client privilege, attorney work-product doctrine and/or other applicable legal privileges. Defendant does not waive any applicable privileges or the right to continue to protect its privileged attorney-client information, attorney work-product, and other privileged information. Additionally, the Named Plaintiffs recognize that their ability to disclose information may be limited or prohibited by applicable law and the Defendant does not consent to disclosures that would violate applicable law. Such applicable laws include, without limitation, laws and regulations restricting disclosure of confidential supervisory information or disclosures subject to the Bank Secrecy Act (31 U.S.C. §§ 5311-5330), including information that would reveal the existence or contemplated filing of a suspicious activity report.

## 5. ADDITIONAL PROVISIONS

**5.1. Binding Effect.** This Agreement shall inure to the benefit of the Parties and shall be binding upon each of the Parties and their assigns, successors, heirs, and representatives. The Named Plaintiffs and their undersigned counsel represent and warrant to Defendant and the other Released Parties that they are fully authorized by the Opt-In Plaintiffs to bind them to the Settlement as set forth in this Agreement and in the Approval Order.

**5.2. Arm's Length Transaction; Materiality Of Terms.** The Parties have negotiated the terms and conditions of this Agreement at arm's length, through mediated negotiations while represented by authorized legal counsel. No term of this Agreement shall be construed against any Party. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement.

**5.3. Fair, Adequate And Reasonable Settlement.** The Parties agree that this Agreement and the payments called for by it are fair, adequate and reasonable to all Parties, and to all Opt-In Plaintiffs, and that the payments specified in this Agreement and the other terms of this Agreement constitute a fair, adequate and reasonable settlement of the Released Claims. The

Parties also agree that there was no undue influence, duress, overreaching, collusion or intimidation in reaching this Agreement, and that all Parties have sought and received the advice of competent counsel as to the meaning and effect of each of the terms of this Agreement before signing it.

**5.4. Captions.** The captions or headings of the Sections and Paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

**5.5. Governing Law.** This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the United States, without regard to any choice of law principles, to create a full and complete settlement and release of the Released Claims.

**5.6. Amendment.** This Agreement may not be amended orally. Rather, it may only be amended by a writing executed by the Parties or their authorized representatives. Defendant's failure to enforce any provisions of this Agreement shall not constitute waiver of its rights under this Agreement.

**5.7. Effective Date.** This Agreement shall become effective following its execution by the Parties and their counsel, and following entry of the Approval Order by the Court.

**5.8. Attorneys' Fees And Costs.** Neither the Named Plaintiffs nor Defendant shall be considered a prevailing party in the Civil Action. Except as expressly provided in this Agreement, each Party shall bear its own attorneys' fees, expenses and costs, and each Party agrees that, unless otherwise specified in this Agreement, no Party shall seek from any other Party reimbursement for attorneys' fees, expenses and/or costs incurred in connection with the Civil Action or this Agreement.

**5.9. Assignments.** The Named Plaintiffs represent and warrant that they have not assigned or transferred to any person or entity any of their rights which are or could be covered by this Agreement, including, but not limited to, any covenant not to sue and the waivers and releases contained in this Agreement.

**5.10. Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, when possible and consistent with the purpose of this Agreement, any such invalid provision may be reformed, and as reformed, it shall be enforced.

**5.11. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties shall execute this Agreement only by hand. The executed signature pages may be delivered by the Parties by any reasonable means, including, without limitation, by U.S. mail, facsimile or electronic means.

**5.12. Entire Agreement.** The Parties represent that they are not relying upon any representation, understanding, undertaking, or agreement relating to the subject matter of this Agreement which is not set forth in this Agreement, and each Party expressly disclaims any reliance on any such representation, understanding, undertaking, or agreement. This Agreement constitutes the entire Agreement between the Parties. All prior and contemporaneous

negotiations and understandings between the Parties regarding the subject matter set forth in the Agreement shall be deemed merged into and superseded by this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall negate or otherwise limit Named Plaintiffs' confidentiality, restrictive covenant, or other post-employment obligations to Defendant, if any.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily execute this Agreement as of the date(s) set forth below:

**NAMED PLAINTIFFS AND PLAINTIFFS' COUNSEL:**

\_\_\_\_\_  
Maureen Clark

Dated: \_\_\_\_\_

\_\_\_\_\_  
Sonya Alexander

Dated: \_\_\_\_\_

Sommers Schwartz, PC

By: \_\_\_\_\_  
Kevin J. Stoops  
Attorneys for Plaintiffs

Brown, LLC

By: \_\_\_\_\_  
Jason T. Brown  
Attorneys for Plaintiffs

**DEFENDANT AND ITS COUNSEL**

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

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**McGuireWoods LLP**

\_\_\_\_\_  
Matthew C. Kane  
Attorneys for Defendant