IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE: **BANK OF AMERICA WAGE AND HOUR EMPLOYMENT PRACTICES LITIGATION** **(This document relates to all cases)**	**MDL DOCKET NO. 2138** **Case No. 10-md-2138-JWL-KGS**

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT, along with all exhibits hereto (collectively, the "Agreement" or "Settlement"), resolves the multidistrict litigation matter captioned ***In re: Bank of America Wage and Hour Employment Practices Litigation,*** **Case No. 10-md-2138-JWL-KGS (D. Kan.)** and all cases transferred and coordinated as described further below ("the Lawsuit" or "MDL") and is entered into between (a) Amanda Brawner and Curtis Schreiber, Named Plaintiffs in the MDL Consolidated Complaint, who represent the individuals who submitted consent to join forms prior to the execution of this Agreement ("FLSA Class Members") and who will represent any individuals who have not yet opted-in to this action but who may elect to do so as part of the procedure contemplated by this Agreement ("Eligible Class Members") (the FLSA Class Members and Eligible Class Members are referred to herein collectively as "the Class" or "Class Members"), and (b) Andrew Gordillo, John Paulino and Nathan Aubin (referred to herein as the "Additional Plaintiffs"), who are named plaintiffs in certain transferred actions being coordinated in the MDL as identified on Exhibit A attached

hereto (the Named Plaintiffs and the Additional Plaintiffs are referred to herein collectively as "Plaintiffs"), on the one hand, and Bank of America Corporation, Bank of America, N.A., and their respective predecessors, successors and assigns, their current and former direct and indirect parents, affiliates, subsidiaries, divisions, and related business entities (collectively "Defendants"), on the other hand.

FACTUAL BACKGROUND AND RECITALS

1. On February 13, 2009, Amanda Brawner and Gynon Hamilton filed a putative collective action lawsuit against Defendants in the United States District Court for the District of Kansas, asserting claims under the Fair Labor Standards Act (FLSA), seeking to represent a collective group consisting of all bank tellers employed by Defendants in the United States. (D.Kan. Case No. 09-2073, Doc. 1).

2. Thereafter, between March 2009 and November 2009, 12 other putative class/collective actions were filed against Defendants throughout the country alleging violations of the FLSA and/or California and Washington state law on behalf of non-exempt employees working in Defendants' retail banking centers and call centers.

3. Defendants moved for transfer and consolidation of these cases for pretrial purposes pursuant to 28 U.S.C. § 1407, and, on April 14, 2010, the Judicial Panel on Multidistrict Litigation ("JPML") ordered that these 12 actions be transferred to the District of Kansas and assigned to the Honorable John W. Lungstrum for coordinated or consolidated pretrial proceedings as this MDL 2138, Case No. 10-md-2138-JWL-KGS, *In re: Bank of America Employment Practices Litigation*. (Doc. 145). At page 1 (third paragraph) of its Transfer Order, the JPML stated: "As we explain below more specifically, we believe that centralization under Section 1407 will eliminate duplicative discovery; prevent inconsistent

pretrial rulings, including with respect to class certification; and conserve the resources of the Parties, their counsel, and the judiciary."

4. Thereafter, 16 more actions (or portions of actions) were ordered transferred by the JPML to the MDL for coordinated or consolidated pretrial proceedings. All the actions currently coordinated in this MDL are listed in attached Exhibit A.

5. On June 4, 2010, the Plaintiffs filed a Consolidated Complaint in the MDL alleging 15 claims for relief: (1) Violation of the FLSA for willful failure to pay all required overtime premium pay; (2) Violation of California Labor Code §§ 204 and 218 for failure to pay all straight time wages; (3) Violation of California Labor Code §§ 204, 210, 510, 515, 558, and 1194 for failure to pay and/or properly calculate all overtime wages; (4) Violation of California Labor Code § 201-203 for failure to timely pay all wages due and owing at the time of termination; (5) Violation of California Labor Code § 226 for failure to provide accurate itemized wage statements; (6) Violation of California Labor Code §§ 226.7 and 512 for failure to provide rest and meal breaks; (7) Violation of California Business and Professions Code § 17200, et seq. for unlawful and unfair business practices; (8) Civil Penalties under the California Labor Code Private Attorney General's Act ("PAGA"), California Labor Code § 2698, et seq.; (9) Violation of California Labor Code § 227.3 for alleged forfeiture of accrued, unused vacation pay; (10) Violation of Wash. Rev. Code. 49.46.130 for failure to pay overtime; (11) Violation of Wash. Rev. Code. 49.46.090 for failure to pay minimum wage; (12) Violation of Wash. Rev. Code 49.12.020 and Wash. Adm. Code 296-126-092 for failure to provide rest and meal breaks; (13) Violation of Wash. Rev. Code 49.48.010 for failure to pay wages owed; (14) Violation of Wash Rev. Code 49.52.050 for willful refusal to pay wages; and (15) Violation of the

Washington Consumer Protection Act, Wash. Rev. Code 19.86.010 - .920. (MDL 2138 Doc. 42).

6. The Consolidated Complaint sought to certify an FLSA collective action consisting of all current and former non-exempt employees of Defendants who had worked in the United States at a retail branch at any time during the past three years, plus periods of applicable tolling (the "FLSA Retail Branch Class"). (MDL 2138 Doc. 42, ¶ 70).

7. The Consolidated Complaint sought to certify an FLSA collective action consisting of all current and former non-exempt employees of Defendants who had worked in the United States at included call centers at any time during the past three years, plus periods of applicable tolling (the "FLSA Call Center Class"). (MDL 2138 Doc. 42, ¶ 71).

8. The Consolidated Complaint sought to certify a Rule 23 class consisting of all current and former non-exempt employees of Defendants who had worked in California at a retail branch at any time since February 13, 2005 (the "California Retail Branch Class"). (MDL 2138 Doc. 42, ¶ 74).

9. The Consolidated Complaint sought to certify a Rule 23 class consisting of all current and former non-exempt employees of Defendants who had worked in California at included call centers at any time since November 23, 2005 (the "California Call Center Class"). (MDL 2138 Doc. 42, ¶ 75).

10. The Consolidated Complaint sought to certify a Rule 23 class consisting of all current and former non-exempt employees of Defendant who had worked in Washington State at a retail branch at any time since September 15, 2005 (the "Washington Retail Branch Class"). (MDL 2138 Doc. 42, ¶ 78).

11. On October 20, 2010, the Court issued an order continuing the equitable tolling of the statute of limitations for FLSA claims through the provision of Court-authorized notice or an order denying the provision of notice, which had been granted prior to the creation of the MDL by the Southern District of Texas in *Fortner v. Bank of America, N.A.,* Case No. H-09-2651, one of the actions ultimately transferred by the JPML to the MDL. (Doc. 106).

12. On November 3, 2010, Defendants filed an Answer denying liability under any of Plaintiffs' claims. (Doc. 119).

13. On October 26, 2011, pursuant to a stipulation of the Parties, the Court entered a modified scheduling order bifurcating class and collective action certification between the retail banking center employee classes and the call center employee classes. (Doc. 298).

14. During the two years following the creation of the MDL, the Parties conducted significant written and deposition discovery, directed to both the retail banking center class claims and the call center class claims. This included the Plaintiffs taking 24 depositions, the Defendants taking 40 depositions, Defendants producing almost one million pages of documents and a significant quantity of electronically stored information (ESI). Both Parties retained highly qualified experts to assist in the collection, review and analysis of ESI and other relevant data.

15. On April 20, 2012, Plaintiffs filed a motion for class and collective action certification of the retail banking center claims. (Docs. 448-449).

16. On September 19, 2012, Plaintiffs filed a motion for class and collective action certification of the call center claims. (Docs. 558-559).

17. On September 27, 2012, the Court issued an order denying Plaintiffs' motion for Rule 23 class certification of the retail banking center claims, but granting Plaintiffs' motion for collective action certification of the retail banking center FLSA claims. The Court ordered

Defendants to provide to Plaintiffs the names, last known address and telephone number, and dates and locations of employment for all putative class members to facilitate Plaintiffs sending notice to them of the lawsuit. (Doc. 568).

18. Defendants thereafter moved the Court to certify the portion of its September 27, 2012 ruling granting collective action certification for immediate appeal to the Tenth Circuit Court of Appeals. (Doc. 580). The Court granted Defendants' motion to stay that portion of the ruling until the Court ruled on that motion. (Doc. 582). Based on said order staying the FLSA certification, Notice of the FLSA certification was also stayed, and has not yet been disseminated.

19. The Parties subsequently agreed to discuss settlement and, ultimately, to mediate a possible global resolution of the MDL and, on November 15, 2012, the Court granted the Parties' joint motion to stay the case while the Parties pursued settlement. (Doc. 613).

20. In advance of the agreed mediation, Defendants provided Plaintiffs with additional documents and data pertaining to Class Members' claims, including the number of total Class Members known to the Defendants, their dates of employment, weeks worked in the relevant time period, compensation data, and information regarding the impact of other class settlements.

21. The Parties attended three full days of mediation in San Francisco on March 5, March 6, and May 3, 2013, with David Rotman, a well-respected mediator experienced in complex wage and hour class and collective actions. At the conclusion of the third day of mediation, the Parties signed a Settlement Term Sheet setting forth the basic terms of this settlement, which are being effectuated by this formal Settlement Agreement. During formal discovery and prior to the mediation, the Parties exchanged voluminous information, data and

documents necessary to fully and fairly evaluate the Class Members' claims. Named Plaintiffs and their counsel have conducted a comprehensive investigation and evaluation of the facts and law relating to the claims asserted in the Lawsuit. In light of the costs, risks, and delay of continued litigation balanced against the benefits of settlement to the Class, Plaintiffs and their counsel believe that the settlement as provided in this Agreement is in the best interests of the Class and represents a fair, reasonable, and adequate resolution of the claims in the Lawsuit for those who choose to participate.

22. Defendants deny and continue to deny all of Plaintiffs' allegations in the Lawsuit. Nonetheless, without admitting or conceding any liability or responsibility for damages or any other legal or equitable relief, Defendants have agreed to settle the Lawsuit on the terms and conditions set forth in this Agreement to avoid the burden, expense and uncertainty of continuing litigation.

TERMS OF THE AGREEMENT

In consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions Used in this Agreement:

A. **"Administrative Costs"** means (a) the amount to be paid to a third-party settlement administrator for all costs in connection with consummating the terms of this Agreement as set forth in Paragraph 5 and (b) the sum of $50,000 held in trust as a reserve fund in order to make corrections to allocations, for other errors and omissions in the claims process, or to satisfy any claim for relief allowed pursuant to Fed. R. Civ. P. 60(b)(1) or 60(d) (the "Reserve Fund").

B. **"Approval"** means the date the Court enters an Order approving this Settlement, including the procedure for notifying Class Members of their eligibility to participate in the Settlement. Approval of this Settlement shall be deemed final and effective thirty (30) days after the Court enters an Order approving this Settlement ("Effective Date").

C. **"Attorneys' Fees and Costs"** means the amount paid to Class Counsel from the Gross Settlement Fund pursuant to Paragraph 2(D).

D. **"Class Counsel" or "Plaintiffs' Counsel"** means Stueve Siegel Hanson LLP, Marlin & Saltzman LLP, and Donelon, P.C.

E. **"Class Members"** means the approximately 240 FLSA Class Members (individuals who opted-in to the Lawsuit prior to the execution of this Agreement) as well as the approximately 185,000 individuals who have not yet opted in, but who worked in one of the positions identified on Exhibit B at any time during the Relevant Time Period and are therefore eligible to participate in the Settlement.

F. **"Defendants"** means all Defendants named as Parties in the Lawsuit, including Bank of America Corporation and Bank of America, N.A., and their respective predecessors, successors and assigns, their current and former direct and indirect parents, affiliates, subsidiaries, divisions, and related business entities.

G. **"Effective Date"** means thirty days (30) after the Court enters an Order approving this Settlement.

H. **"Eligible Class Members"** means any and all individuals who have not yet opted-in to this action but who may elect to do so as part of the procedure contemplated by this Agreement.

I. **"FLSA Class Members"** means the individuals who submitted consent to join forms prior to the execution of this Agreement.

J. **"Gross Settlement Fund**" means the maximum amount of Seventy-Three Million Dollars ($73,000,000.00). This fund will cover the settlement allocations to all Eligible and FLSA Class Members, attorneys' fees and costs, all applicable payroll taxes, the total amount of service payments to certain plaintiffs, a payment to the California Labor and Workforce Development Agency and all allegedly aggrieved employees in California for settlement of claims under the California Labor Code Private Attorney General Act, Cal. Lab. Code § 2698, et seq., and Administrative Costs, such that Defendants' maximum total settlement liability shall not exceed $73,000,000.00.

K. **"Named Plaintiffs"** means Amanda Brawner and Curtis Schreiber.

L. **"Net Settlement Fund"** means the Gross Settlement Fund less Administrative Costs, all applicable payroll taxes, Attorneys' Fees and Costs, the total amount of service payments to certain plaintiffs, and payments to the California Labor and Workforce Development Agency and all allegedly aggrieved employees in California for settlement of claims under the California Labor Code Private Attorney General Act, Cal. Lab. Code § 2698, et seq.

M. **"Non-Released Weeks"** means weeks during the Relevant Time Period (defined below) during which, according to the Bank's records, Class Members were actively employed (i.e., not on a leave of absence) for at least one day during the work week, and the weeks are not subject to a prior Court-approved settlement by which the Class Member is bound, or, for weeks in California or Washington, the weeks are not subject to a prior settlement or severance agreement by which a Class Member is bound. The total number of Class Member

Non-Released Weeks is approximately 21 million. Released weeks include, but are not limited to, weeks covered by the class-action settlements in *Dunlap v. Bank of America Corp.,* Los Angeles County Superior Court Case No. BC328934 (class period runs through January 31, 2007), *Contreras v. Bank of America, N.A.,* San Francisco County Superior Court Case No. CGC-07-467749 (class period runs through February 10, 2010), *Johnson v. Bank of America, N.A.*, San Diego County Superior Court Case No. GIC 857397 (class period runs through October 3, 2008), and *Freeman v. Bank of America, N.A.,* San Francisco County Superior Court Case No. CGC-08-471710 (class period runs through October 30, 2009).

N. **"Released Claims"** means any and all claims against any of the Released Parties arising out of or related to employment in an overtime-eligible position in a retail banking center in the United States or in an overtime-eligible position in an included call center in the United States, that were alleged in the Consolidated Complaint, or that relate to the claims alleged in the Consolidated Complaint and thus could have been asserted therein, based on alleged violations of any federal, state, or local wage-hour laws based on events that occurred or are alleged to have occurred at any point from December 31, 2003 through the later of the date of Approval or the date the individual signs his or her consent form expressing his or her intent to join this settlement, including without limitation claims under the federal Fair Labor Standards Act, the California Labor Code, any applicable California Industrial Welfare Commission Wage Order, the California Unfair Competition Law (Cal. Bus. & Prof. Code Section 17200 et seq.), the California Labor Code Private Attorney General Act (Cal. Labor Code Section 2699 et seq.), the Washington Revised Code, and the Washington Administrative Code, except that claims under Cal. Lab. Code § 203 and § 226 are not included in this release to the extent alleged in the pending actions *Pineda v. Bank of America, N.A.,* San Francisco County Superior Court, Case

No. CGC-07-468417, and *Lopez v. Bank of America, N.A.,* U.S. District Court, Northern District of California, Case No. 3-10-CV-01207-JL (transferred Case No. 2:10-cv-02590-JWL-KGS) ("the *Lopez* Action").

O. **"Released Parties"** means Defendants, as defined above, and their current and former officers, directors, shareholders, owners, employees, agents, attorneys and representatives.

P. **"Relevant Time Period"** means from October 19, 2006 through the date of Approval, with four exceptions: (1) the Relevant Time Period for Eligible Class Members who opted into the case (or any of the transferred cases) prior to October 19, 2009 begins three years prior to the date that they opted in to the case; (2) the Relevant Time Period for Eligible Class Members for weeks they worked in California begins February 13, 2005; (3) the Relevant Time Period for Eligible Class Members who are alleged to be aggrieved employees under PAGA for weeks they worked in California begins March 12, 2008; and (4) the Relevant Time Period for Eligible Class Members for weeks they worked in Washington begins September 15, 2005.

Q. **"Spreadsheet"** means an electronic spreadsheet that includes the name, Person ID, social security number, state of employment, last known address, the number of Non-Released Weeks worked for Defendants while in a covered position from the start of the applicable limitations period through the date of Approval, and the most recent base hourly compensation rate for each Class Member while in a covered position.

2. Settlement Fund and Allocation.

A. Settlement Fund Allocation. Each Class Member shall be allocated a proportionate share of the Net Settlement Fund. The individual allocations from the Net

Settlement Fund for each Class Member will be calculated pursuant to the principles set forth below.

B. Allocation Formula

(i) Each Class Member shall be allocated a minimum of $20.00 from the Net Settlement Fund ("Minimum Class Member Payment") plus their "Individual Class Member Share" (together, the "Individual Class Member Allocation").

(ii) The "Individual Class Member Share" shall be determined using the following formula:

1. **Calculate Each Class Member's Points**. For each Class Member, multiply the Class Member's most recent base hourly compensation rate during employment by the Class Member's total number of Non-Released Weeks during the Relevant Time Period. The result is the "Class Member's Points." This calculation shall be subject to the following modifications:

- Non-Released Weeks in the earliest or third year of the FLSA's limitations period (accounting for tolling) shall be multiplied by .25
- Non-Released Weeks worked by Class Members outside of California where Class Member was not scheduled for 35 hours or more ("Part-Time Weeks") shall be multiplied by .25
- Non-Released Weeks worked by Class Members in the State of California shall be multiplied by 1.4
- Non-Released Weeks worked by Class Members in the State of Washington shall be multiplied by 1.2
- Non-Released Weeks worked by current opt-in FLSA Class Members not otherwise receiving service payments (as described in ¶ 2C *infra*) shall be multiplied by 1.3

Note – where applicable, the multipliers will be added together, e.g., weeks eligible for both a 1.3 and 1.4 multiplier will receive a 1.7 total multiplier. Where a multiplier is less than 1, it will be subtracted from other multipliers. For example, a part-time week (0.25 multiplier) worked in California (1.4 multiplier) will receive a total aggregate multiplier of 1.15 (1.4 – 0.25).

2. **Calculate "Net Share Per Point."** Add up each of the "Class Member's Points" to determine the "Total Class Member Points."

Divide the Net Settlement Fund by the "Total Class Member Points." The result is the "Net Share Per Point."

3. **Calculate Each Class Member's Gross Share.** For each Class Member, multiply the "Class Member's Points" by the "Net Share Per Point" to determine the "Individual Gross Class Member Share."

4. **Calculate Each Class Member's Payroll Taxes.** The Settlement Administrator will then make appropriate adjustments to the portion of each Individual Gross Class Member Share for the payment of all applicable payroll taxes and deductions required or permitted by applicable law in connection with the payment of wages to the Class Member. The Settlement Administrator will coordinate the calculations of such taxes and deductions with Defendants to ensure compliance with the requirements of all government taxing authorities and timely remit those sums to the appropriate government taxing authorities. The remaining balance of the Class Member's Gross Share after such adjustments and deductions are made is the "Class Member's Net Share."

C. Service Payments to Plaintiffs. In order for this Agreement to become subject to presentation to the Court for approval, it must be signed by all of the Named Plaintiffs and the Additional Plaintiffs. Subject to Court approval and expressly conditioned upon the execution of this Settlement Agreement by the Named Plaintiffs and the Additional Plaintiffs prior to its submission to the Court for approval, the Named Plaintiffs, the Additional Plaintiffs and the named plaintiffs and/or class representatives in any of the transferred and coordinated actions in the MDL who timely return a Consent Form indicating their acceptance of their Individual Class Member Allocation will be eligible to receive a service payment in an amount not to exceed $3,000.00. Subject to Court approval and their acceptance of their Class Member Allocation, Plaintiffs who gave a deposition will receive a service payment of $1,000.00, Plaintiffs who responded to interrogatories will receive a service payment of $500.00, and Plaintiffs who provided a declaration or responded to document requests will receive a service payment of $300.00, provided, however, that if any Plaintiff qualifies for more than one of the

foregoing types of service payments, the Plaintiff will receive only one such service payment in the highest qualifying amount. The total amount of all service payments provided by this paragraph shall not exceed $200,000. These service payments are being sought in recognition of efforts to pursue the claims raised in this Lawsuit on behalf of the Class, including providing factual information and otherwise assisting with the prosecution of the litigation. The service payments will be made at the same time and in addition to the payment allocated from the Net Settlement Fund. Any amounts allocated as service payments under this Agreement, but not approved by the Court, shall be added to the Net Settlement Fund, to be proportionally distributed to the Class as set forth herein.

D. Attorneys' Fees and Costs. Subject to Court approval, Class Counsel will receive Twenty-Five Percent (25%) of the Gross Settlement Fund, or $18,250,000.00, as attorneys' fees, plus a separate award for costs and expenses not to exceed $900,000.00. Subject to Court approval, Class Counsel shall be responsible for the distribution and payment of any fees claimed by any attorneys of record in the cases transferred to the MDL and whose cases are resolved by this settlement. Attorneys of record in the cases transferred to the MDL in which any of the Plaintiffs do not sign this Settlement Agreement and/or timely submit a Consent Form to accept the terms of this settlement shall not be entitled to any distribution or payment of any fees from this settlement. Any amounts allocated as attorneys' fees and costs under this paragraph, but not approved by the Court, shall be added to the Net Settlement Fund. The Parties expressly agree that the Court's approval or denial of any request for attorneys' fees and costs is not a material condition to this agreement, and is to be considered by the Court separately from the fairness, reasonableness, adequacy, and good faith of the settlement. Any

order or proceeding relating to the application by Class Counsel of an award for fees and costs shall not operate to terminate or cancel this agreement.

E. PAGA Representative Action Settlement Amount. The Parties agree to allocate One Million Dollars ($1,000,000.00) of the Gross Settlement Fund (the "PAGA Representative Action Gross Settlement Amount") to the settlement of the representative, non-class action PAGA claims alleged in the Lawsuit on behalf of all Class Members who were actively employed by Defendants in California at any time from March 12, 2008 through the date of Approval of this Settlement (the "PAGA Settlement Period") and are alleged to be purportedly aggrieved employees under PAGA including current or former employees against whom one or more alleged violations was committed (the "PAGA Employees"). The PAGA Representative Action Gross Settlement Amount shall be allocated pro rata by the number of PAGA Employees assigned to each of Defendants' retail banking centers and call centers in California during the PAGA Settlement Period at issue in this MDL proceeding, which is an amount the Parties believe in good faith is a fair and reasonable apportionment of the Gross Settlement Fund. The Settlement Administrator shall pay Seventy-Five percent (75%) of the PAGA Representative Action Gross Settlement amount ($750,000.00) allocated to each such retail banking center or call center to the California Labor and Workforce Development Agency (the "LWDA") (this amount paid to the LWDA shall be referred to herein as the "LWDA PAGA Settlement Amount"), and shall allocate the remaining Twenty-Five percent (25%) of the PAGA Representative Action Gross Settlement amount ($250,000.00) (the "PAGA Representative Action Net Settlement Amount") to each such retail banking center or call center and distribute it to the PAGA Employees as follows:

(i) Every PAGA Employee, regardless of whether they submit a Consent Form to otherwise join this Settlement, shall be allocated a minimum payment of $5.00 from the PAGA Representative Action Net Settlement Amount (the sum total of all such minimum payment allocations is referred to herein as the "Total PAGA Minimum Payment Allocation").

(ii) The remainder of the PAGA Representative Action Net Settlement Amount allocated to each retail banking center or call center, after deducting the Total PAGA Minimum Payment Allocation, will then be allocated among the center's PAGA Employees on a pro rata basis based upon the number of weeks they were actively employed by Defendants in California during the PAGA Settlement Period.

(iii) For PAGA Employees who submit timely and properly-completed Consent Forms, their allocated portion of the PAGA Representative Action Net Settlement Amount allocated to their retail banking center or call center shall be added to their Individual Class Member Share and distributed to them as set forth in Paragraph 5(D)(ii), below.

(iv) For PAGA Employees who do not submit a Consent Form to join this settlement (referred to herein as "Non-Joining PAGA Employees"), they shall be sent a check for their allocated portion of the PAGA Representative Action Net Settlement Amount allocated to their retail banking center or call center as set forth in Paragraph 5(D)(iii), below.

(v) Pursuant to Cal. Labor Code § 2699(e) and (l), the foregoing manner of allocation of the PAGA Representative Action Gross Settlement Amount and of the PAGA Representative Action Net Settlement Amount is subject to the Court's review and approval, including adjustments thereof to the extent permitted or required under applicable law.

Any such allocation adjustment shall not affect any of the Parties' other obligations under this Agreement.

3. Release. In accordance with the terms of this Agreement, Class Members who elect to join and participate in this Settlement (collectively, the "Releasing Parties") shall be deemed to have irrevocably and unconditionally released and discharged the Released Parties with respect to the Released Claims when the Approval becomes final and no longer appealable. This release is intended to and shall be effective as a release of and bar to all Released Claims, including claims that the Releasing Parties know about or suspect, as well as those that the Releasing Parties do not know about or do not suspect. The Releasing Parties shall be deemed to understand the significance of this release of unknown and unsuspected claims and their waiver of statutory protection against a release of unknown and/or unsuspected claims. The Releasing Parties expressly waive all rights afforded by any statute which limits the effect of a release with respect to unknown or unsuspected claims.

Further, to the extent it is otherwise applicable, the Releasing Parties in California expressly waive the protection of Section 1542 of the Civil Code of the State of California which states as follows:

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

Further, to the extent it is otherwise applicable, with respect to the Released Claims, the Releasing Parties shall be deemed to acknowledge and agree that California Labor Code Section 206.5 is not applicable to the settlement of the Released Claims. That section provides in pertinent part as follows:

> "No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wage has been made."

The Releasing Parties shall be deemed to acknowledge, agree, represent and warrant to the Released Parties, and each of them, that at all times relevant to their employment with any of the Released Parties, there is and has at all times been a genuine, reasonable and good faith dispute between the Releasing Parties and the Released Parties with respect to whether the Releasing Parties have been fully and properly paid all monies owed relating to their employment with Released Parties and received all required breaks in accordance with federal, state and local laws through and including the later of (a) the date of Approval or (b) the date of electing to join and participate in this Settlement.

Upon payment of the LWDA PAGA Settlement Amount to the LWDA, all PAGA Employees shall be deemed to have irrevocably and unconditionally released and discharged the Released Parties with respect to any claim for civil penalties, attorneys' fees, or any other remedy or right pursuant to PAGA with respect to the Released Claims when the Approval becomes final and no longer appealable. This release is intended to and shall be effective as a release of and bar to all PAGA penalties (and other rights and remedies) arising out of or related to the Released Claims, including claims that the Releasing Parties know about or suspect, as well as those that the Releasing Parties do not know about or do not suspect.

4. Approval of Settlement.

A. Court Approval of Settlement. Within fifteen (15) business days of execution of this Agreement, Plaintiffs will seek the Court's approval of the terms of this Agreement, by filing an Unopposed Motion for Approval of Settlement ("Approval Motion"). Plaintiffs will notify Defendants five business days in advance of seeking approval of the terms

of this Agreement so that Defendants may, at their option, seek to have the Approval Motion and related documents filed under seal. Plaintiffs agree not to oppose any such motion by Defendants. Notwithstanding the foregoing, the Agreement may be filed publicly if ultimately necessary to obtain Court approval of the Settlement due to the Court not allowing the Agreement and the Approval Motion (and related documents) to be filed under seal or if otherwise required by process of law. If the Court does not enter an Approval Order, or decides to do so only with material modifications to the terms of this Agreement, or if the Approval Order is reversed or vacated by an appellate Court, then this Agreement shall become null and void, unless the Parties agree in writing to modify this Agreement and the Court approves the modified Agreement. Notwithstanding the foregoing, if the Court approves the gross amount of the Settlement Fund but determines there should be a reallocation of the Net Settlement Member Fund, and/or a reduction of the amount paid to Class Counsel, and/or a reduction of the amount of service payments, the Agreement as so modified and approved by the Court shall remain fully binding on the Parties.

B. Vacating of Tolling Order. As part of the settlement approval process, the Parties will request that the MDL Court vacate the tolling order originally entered by the Southern District of Texas in the matter of *Fortner v. Bank of America, N.A.,* Case No. H-09-2651 on January 5, 2010, and extended by the MDL Court on October 20, 2010 (Doc. 106) (the "Tolling Order"), as to any individual who does not participate in this settlement, effective immediately upon expiration of the deadline for Class Members to submit their consent form to participate in this settlement. In connection with this request, Class Counsel will request that the MDL Court approve language in the settlement notice to be sent to Class Members advising them that if they do not participate in this settlement by the Court-approved deadline to submit

their consent form, or they do not commence an individual (non-collective) action to pursue individual claims for relief under the FLSA by that deadline, they will not be able to claim any tolling of the applicable statute of limitations (including under the Tolling Order) based on this MDL proceeding or any of the actions listed in attached Exhibit A in any future FLSA action commenced after the Court-approved deadline to submit consent forms for this settlement. The Court's vacating the Tolling Order as set forth above is an express condition precedent to Defendants' settlement obligations. If the MDL Court does not vacate the Tolling Order in the manner specified herein (or in a substantially-similar manner), then the Parties agree that the terms of this settlement agreement shall not become final, and the Parties shall attempt to further negotiate the terms of a settlement.

C. Return of Documents. Within 10 business days after the Effective Date, Plaintiffs' Counsel will return to Defendants' counsel, without any waiver of any privilege or other protection from disclosure related thereto, the originals of any and all documents identified in Defendants' claw-back notice of August 22, 2012, and otherwise destroy any and all copies of the documents identified in Defendants' claw-back notice of August 22, 2012. Plaintiffs' Counsel shall certify in writing and under oath that all such originals have been returned, all copies have been destroyed, and that no copies have been retained or otherwise disseminated in any form. Plaintiffs' filings of any such documents with the Court under seal (including, but not limited to, Docs. #533, 559, and 561) shall remain under seal as a material term of this settlement.

D. Dismissal and/or Remand of Related Actions And Permanent Injunction. The Parties hereby stipulate and jointly request the Court to dismiss with prejudice all actions transferred to this MDL that are resolved by this settlement by the Plaintiffs therein signing this

Agreement and/or submitting a Consent Form. The Parties will stipulate and jointly request the Court make a suggestion of remand to the JPML to remand to their original transferor Court for individual proceedings all cases transferred to and part of this MDL in which any of the Plaintiffs in those cases do not participate in this Settlement. The Parties hereby stipulate and jointly request the Court include language in its Approval Order as follows: "In order to protect the integrity of this multidistrict litigation proceeding, any Plaintiffs who do not participate in this settlement and whose cases are remanded by the JPML to their transferor Courts may pursue their claims, which would have been Released Claims if they had participated in this settlement, only individually and not as a representative (including class and/or collective) action and are hereby permanently enjoined from pursuing their claims other than on an individual, non-representative action basis." Within 30-days of the completion of the settlement administration process, the Parties will move the MDL Court and/or the JPML for termination of this MDL proceeding except that the Parties request that the MDL Court maintain continuing jurisdiction for purposes enforcing this Agreement as provided in ¶ 7 *infra*.

E. Covenant Not To Sue And Permanent Injunction. The Parties hereby stipulate and jointly request that, as part of its Approval Order, the Court order that all Class Members who submitted Consent Forms shall be deemed to have covenanted not to sue the Released Parties with respect to, and to have waived and released, the Released Claims, and that, in order to protect the integrity of this multidistrict litigation proceeding, they shall be permanently barred and enjoined from instituting, commencing, prosecuting or asserting any such Released Claims against the Released Parties. The Parties hereby also stipulate and jointly request that, as part of its Approval Order, the Court order that, upon payment of the LWDA PAGA Settlement Amount to the LWDA, the State of California, LWDA, and all PAGA

Employees shall be deemed to have covenanted not to sue the Released Parties with respect to, and to have waived and released, any claim for civil penalties, attorneys' fees, or any other remedy or right pursuant to PAGA with respect to, arising out of or related to the Released Claims, and that, in order to protect the integrity of this multidistrict litigation proceeding, they shall be permanently barred and enjoined from instituting, commencing, prosecuting or asserting any such claims under PAGA against the Released Parties.

F. Remand of the *Lopez* Action. Upon execution of this Agreement, the Parties' will jointly request that the Court make a suggestion of remand to the JPML of the *Lopez* Action, for that action to be transferred back to the United States District Court for the Northern District of California, but subject to the provisions of Paragraphs 4.D and 4.E, above.

G. Posting of Consolidated Complaint and Approval Order on Court's MDL Webpage. The Parties hereby stipulate and request that, consistent with the references in the proposed notice and consent form, the Court's Order approving this Agreement provide that the Clerk immediately post on the Court's webpage for this MDL proceeding (http://www.ksd.uscourts.gov/10-md-2138/) copies of the Consolidated Complaint (Doc. 42) and the entered Order Approving Settlement Agreement for access by the Class Members. The Settlement Administrator (as defined below) shall obtain a website domain name to be mutually agreed upon by Class Counsel and Defendants' counsel that will be set up to automatically redirect users to the above-described URL of the Court's webpage for this MDL proceeding.

5. Settlement Administration and Payments.

A. Settlement Administrator. The Settlement will be administered by third-party administrator Kurtzman Carlson Consultants, LLC ("Settlement Administrator"). Reasonable fees and expenses of the Settlement Administrator, not to exceed $595,000.00, shall

be deducted from the Gross Settlement Fund. The Settlement Administrator shall be required to agree to the foregoing "not to exceed" cap for all fees and expenses for claims administration work. If the Court does not grant the Parties' request to post copies of the Consolidated Complaint and the entered Order Approving Settlement Agreement on its webpage for this MDL proceeding, then the Settlement Administrator shall obtain a website domain name to be mutually agreed upon by Class Counsel and Defendants' counsel for, and shall establish, a website to make those documents accessible to Class Members. All other content of such a website shall be subject to the mutual approval and agreement of Class Counsel and Defendant's counsel.

B. Procedure For Sending Notice of Settlement and Consent Forms.

(i) Within forty-five (45) calendar days of the Effective Date, Defendants will provide the Spreadsheet to the Settlement Administrator. The Settlement Administrator will keep all information confidential in accordance with the Stipulated Protective Order entered in this Lawsuit (Doc. 150). The Parties shall provide the Settlement Administrator with all necessary cooperation, including but not limited to the execution of all documents necessary to administer the Settlement. Defendants will provide any other information to the Settlement Administrator reasonably necessary to enable it to perform the calculations described in Paragraphs 2(A)-2(B) and to obtain current contact information.

(ii) Within twenty (20) calendar days of receipt of the Spreadsheet and any other information identified in the previous subparagraph, the Settlement Administrator shall calculate the approximate amount that each Class Member will receive if he or she participates in the settlement pursuant to the formulas provided in Paragraphs 2(A)-2(B) of this Agreement, and the Settlement Administrator shall provide the calculations to Class Counsel and Defendants'

Counsel. Class Counsel and Defendants' Counsel will review the calculations for accuracy and cooperate in good faith to resolve any calculation errors within twenty (20) calendar days.

(iii) Within ten (10) calendar days of receipt of approval of the calculations of the estimated amount of payment for each Class Member described in the paragraph above, the Settlement Administrator shall mail the Notice of Settlement and Consent Form (in substantially the form reflected in Exhibits C and D, respectively) by first-class United States mail, postage prepaid, to the last known address of each Class Member (after conducting a NCOA ("National Change of Address") database search). The Notice of Settlement shall advise each Class Member of the claims asserted in the litigation, the approximate amount they can anticipate receiving if they participate in the settlement, and the scope of claims they will release by participating in the settlement. In addition, the Notice of Settlement will advise the Class Members that if they do not participate in the settlement or file their own individual (non-collective) lawsuit within the Court-ordered deadlines, they will not be able to claim any tolling of the applicable statute of limitations pursuant to the Tolling Order and that, if they are PAGA Employees, they will still be deemed to have waived and released any PAGA claims arising out of or related to the Released Claims.

(iv) With respect to those Class Members whose envelope containing the Notice of Settlement and Consent Form is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by use of additional reasonable address search methods (using social security numbers as necessary). If another address is identified, the Settlement Administrator shall immediately thereafter send the Notice of Settlement and Consent Form to the new address.

(v) The Settlement Administrator shall send one (1) reminder postcard to all Class Members who have not submitted a Consent Form. These reminder postcards shall be in the form attached to this Agreement as Exhibit E. The postcards shall be sent forty-five (45) calendar days after the mailing of the Notice of Settlement and Consent Form. Such postcards shall be sent by first-class United States mail, postage prepaid, to the last known address of each Class Member.

(vi) For a Class Member to share in disbursements from the Settlement, the Consent Form must be signed by the Class Member (or their authorized representative or attorney of record) and post-marked for return to the Settlement Administrator no later than ninety (90) calendar days after the date the Settlement Administrator first mails the Notice of Settlement and Consent Form to Class Members (the "Consent Deadline"). The Settlement Administrator shall provide a self-addressed, postage-paid envelope to each Class Member for this purpose. Any completed Consent Form that is returned to the Settlement Administrator and is postmarked after the Consent Deadline will only be accepted with express approval of Defendants.

(vii) The Settlement Administrator shall provide the Parties with a weekly update as to the number of Consent Forms it has received from Class Members. Upon completion of the ninety (90) calendar-day time period in which Class Members can timely submit a Consent Form, the Settlement Administrator shall inform the Parties as to the total number of Class Members who submitted a Consent Form.

(viii) All costs of preparing and sending the Notice of Settlement and Consent Form, whether foreseen or not, shall be paid from the Administration Costs, subject to the Settlement Administrator's "not to exceed" agreement for such costs.

C. Payment of Attorneys' Fees and Service Payments.

(i) Within fifteen (15) calendar days after the Effective Date, Defendants shall wire the total amount of the Court-approved Attorneys' Fees and Costs to the Settlement Administrator, which will in turn distribute such amounts by wire to Class Counsel. The Settlement Administrator will issue Class Counsel one or more IRS Forms 1099 for the attorneys' fees and costs paid under this Agreement consistent with the Court's approval.

(ii) Within fifteen (15) calendar days after the Effective Date, Defendants shall wire the total amount of the Court-approved service payments to the Settlement Administrator, which in turn shall distribute such amounts to the Class Members for whom the Court has approved such awards and who have either signed the Settlement Agreement or submitted a Consent Form. If there are any individuals for whom the Court has approved a service payment but who have not signed the Settlement Agreement or submitted a Consent Form, the Settlement Administrator shall not issue them a service payment until they have done so. The Settlement Administrator will issue an IRS Form 1099 to all individuals receiving service payments.

D. Funding of Settlement and Distribution of Settlement Payments.

(i) Within twenty (20) calendar days after the Consent Deadline, the Settlement Administrator shall calculate and provide to Defendants' Counsel and Class Counsel a register listing all Class Members who have submitted Consent Forms and the proposed Individual Settlement Allocations for verification, along with the sum of the Individual Class Member Allocations for those Class Members who submitted consent forms on or before the Consent Deadline or whose late consent forms were accepted by Defendants (the "Allocated Class Member Fund"). Class Counsel and Defendants' Counsel will review the calculations of

the Allocated Class Member Fund for accuracy and cooperate in good faith to resolve any calculation errors within twenty (20) calendar days of receipt of this information from the Settlement Administrator. Within ten (10) calendar days thereafter, Defendants shall wire the Allocated Class Member Fund to the Settlement Administrator, as well as the PAGA Representative Action Gross Settlement Amount.

(ii) Within twenty (20) calendar days after Defendants have wired the Allocated Class Member Fund to the Settlement Administrator, the Settlement Administrator shall issue the settlement checks to the Class Members who timely submitted Consent Forms, or whose untimely Consent Forms were accepted by Defendants. The balance of the Class Member Fund allocated to Class Members who do not opt in to the Settlement shall be retained by Defendants.

(iii) Within twenty (20) calendar days after Defendants have wired the PAGA Representative Action Gross Settlement Amount to the Settlement Administrator, the Settlement Administrator shall issue settlement checks for the allocated amounts of the PAGA Representative Action Net Settlement Amount that is distributable to the Non-Joining PAGA Employees who did not timely submit Consent Forms, or whose untimely Consent Forms were not accepted by Defendants.

(iv) Within twenty (20) calendar days after Defendants have wired the PAGA Representative Action Gross Settlement Amount to the Settlement Administrator, the Settlement Administrator shall issue a payment to the LWDA for the LWDA PAGA Settlement Amount.

(v) If a Class Member submits a consent-to-join form after the Allocated Class Member Fund has been established, Defendants may, in their discretion, accept the untimely consent form and pay the Class Member from the Reserve Fund.

E. Unclaimed Monies. Funds allocated to Class Members who do not elect to participate in the settlement by submitting a Consent Form will not be funded by Defendants. Checks to Class Members and Non-Joining PAGA Employees shall remain negotiable for 180 days. Class Members and Non-Joining PAGA Employees who do not cash their checks within 180 days of issuance will have their checks cancelled and their check amounts sent to the unclaimed property division of the state in which each such Class Member or Non-Joining PAGA Employees last worked for Defendants. Checks shall be re-issued by the Defendants if such requests are received from class members prior to the date when the transfer to the unclaimed property divisions has occurred. Half of any amounts remaining in the Reserve Fund more than 300 days after the Settlement Administrator has disbursed the Allocated Class Member Fund shall be provided to legal aid organizations designated by Class Counsel. The other half of any amounts remaining in the Reserve Fund more than 300 days after the Settlement Administrator has disbursed the Allocated Class Member Fund shall be provided to the United Way.

F. Notice and Consent Documents. Upon completion of the administration of the settlement under this Agreement, the Settlement Administrator shall provide to Defendants' counsel the following in hard copy and PDF file format: (a) specimens of all form documents sent to Class Members, including notices of settlement, consent forms, reminder notifications, etc.; (b) to the extent maintained by the Settlement Administrator, copies of all

non-privileged documents actually sent to Class Members, including without limitation those itemized in (a), *supra*; and (c) the originals of all consent forms returned by Class Members.

6. Tax Treatment of Payments. For Individual Settlement Allocations as set forth in Paragraphs 2(A)-2(B) above, fifty percent (50%) of the amount(s) paid to each Class Member under this Agreement shall be reported by the Settlement Administrator as wages to the appropriate taxing authorities on a Form W-2 issued to the Class Member with his or her taxpayer identification number, and shall be subject to adjustments and deductions for applicable taxes and withholdings as required by federal, state, and local law. The remaining fifty percent (50%) of the amount(s) paid to each Class Member will be allocated to liquidated damages, interest and/or penalties and reported by the Settlement Administrator as non-wage income to the appropriate taxing authorities on a Form 1099 issued to the Class Member. Service payments will be treated as non-wage income and reported by the Settlement Administrator to the appropriate taxing authorities on a Form 1099 issued to the Class Member. PAGA representative action settlement payments will be treated as non-wage income and reported by the Settlement Administrator to the appropriate taxing authorities on a Form 1099 issued to the Class Member or Non-Joining PAGA Employee. The Settlement Administrator will coordinate its adjustments and deductions for applicable taxes and withholdings with Defendants to ensure that they are in compliance with the requirements of state taxation agencies.

7. Court Retains Jurisdiction To Enforce Agreement. The Parties will request that the Court retain jurisdiction with respect to the implementation and enforcement of the terms of the Agreement, to the extent permitted by law, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the

Agreement. The Parties request that any action to enforce this Agreement shall be commenced and maintained only in this Court.

8. Cooperation Clause. The Parties agree to cooperate in good faith to effectuate the Settlement of the Lawsuit, including securing the Court's approval of the Agreement, assisting with the administration of the Settlement in accordance with the terms of this Agreement, and obtaining a final judgment.

9. No Statements to the Media; Confidentiality. Plaintiffs, Plaintiffs' Counsel, Defendants, and Defendants' Counsel shall not, directly or indirectly, on their own or through a third party, make any statement, publish any statement, respond to any press or media inquiries, or issue any communication, written or otherwise to or in the media, including but not limited to, print, television, radio and the internet, that refers to this Lawsuit or Plaintiffs' claims, or that discloses or communicates the Settlement Payment (including the individual allocations thereof) or other terms of this Agreement. Plaintiffs' counsel may respond to any press or media inquiries concerning the settlement to state only that the matter was fairly resolved to the mutual satisfaction of the Parties. In the event the Court declines Defendants' request for confidentiality and requires the settlement to be filed in the public record, Class Counsel are permitted to reference the settlement on their respective websites with neutral, factually accurate language.

10. Severability. Should any clause, sentence, provision, paragraph, or part of this Agreement be adjudged by any Court of competent jurisdiction, or be held by any other competent governmental authority having jurisdiction, to be illegal, invalid, or unenforceable, such judgment or holding shall not affect, impair, or invalidate the remainder of this Agreement, but shall be confined in its operation to the clause, sentence, provision, paragraph, or part of the

Agreement directly involved, and the remainder of the Agreement shall remain in full force and effect.

11. No Waiver. The failure to enforce at any time, or for any period of time, any one or more of the terms of this Agreement shall not be a waiver of such terms or conditions. Moreover, it shall not be a waiver of such party's right thereafter to enforce each and every term and condition of this Agreement.

12. Authority. Each signatory on behalf of Plaintiffs and Defendants represents and warrants that such party has full authority and power to make the releases and agreements contained in this Agreement. Each signatory further represents and warrants that such party has not assigned, encumbered, or in any manner transferred all or a portion of the claims covered by the releases and agreements contained herein.

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or other electronic means will constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means will be deemed to be their original signatures for any purpose whatsoever.

ON BEHALF OF ALL DEFENDANTS

Date: 11/12/2013

By: _____

Printed Name: Jay J. Price

Title: Associate General Counsel & SVP
Bank of America Corporation, N.A.

NAMED PLAINTIFFS

Named Plaintiff

Date: 11-7-13

By: Amanda Brawner
Printed Name: Amanda Brawner

Named Plaintiff

Date: _____

By: _____
Printed Name: Curtis Schreiber

ADDITIONAL PLAINTIFFS

Named Plaintiff

Date: _____

By: _____
Printed Name: Andrew Gordillo

Named Plaintiff

Date: _____

By: _____
Printed Name: John Paulino

Named Plaintiff

Date: _____

By: _____
Printed Name: Nathan Aubin

Reviewed and approved by counsel:

Stueve Siegel Hanson LLP

Date: _____

By: _____
Printed Name: George Hanson
MDL Lead Counsel

Marlin & Saltzman LLP

Date: _____

By: _____
Printed Name: Stanley Saltzman
MDL Lead Counsel

NAMED PLAINTIFFS

Named Plaintiff

Date: _____ By: _____
Printed Name: Amanda Brawner

Named Plaintiff

Date: 11. 8. 13 By: Curtis L. Schreiber
Printed Name: Curtis Schreiber

ADDITIONAL PLAINTIFFS

Named Plaintiff

Date: _____ By: _____
Printed Name: Andrew Gordillo

Named Plaintiff

Date: _____ By: _____
Printed Name: John Paulino

Named Plaintiff

Date: _____ By: _____
Printed Name: Nathan Aubin

Reviewed and approved by counsel:

Stueve Siegel Hanson LLP

Date: _____ By: _____
Printed Name: George Hanson
MDL Lead Counsel

Marlin & Saltzman LLP

Date: _____ By: _____
Printed Name: Stanley Saltzman
MDL Lead Counsel

NAMED PLAINTIFFS

Named Plaintiff

Date: _____ By: _____
Printed Name: Amanda Brawner

Named Plaintiff

Date: _____ By: _____
Printed Name: Curtis Schreiber

ADDITIONAL PLAINTIFFS

Named Plaintiff

Date: 11/11/13 By: _____
Printed Name: Andrew Gordillo

Named Plaintiff

Date: _____ By: _____
Printed Name: John Paulino

Named Plaintiff

Date: _____ By: _____
Printed Name: Nathan Aubin

Reviewed and approved by counsel:

Stueve Siegel Hanson LLP

Date: _____ By: _____
Printed Name: George Hanson
MDL Lead Counsel

Marlin & Saltzman LLP

Date: _____ By: _____
Printed Name: Stanley Saltzman
MDL Lead Counsel

NAMED PLAINTIFFS

Named Plaintiff

Date: _____ By: _____
Printed Name: Amanda Brawner

Named Plaintiff

Date: _____ By: _____
Printed Name: Curtis Schreiber

ADDITIONAL PLAINTIFFS

Named Plaintiff

Date: _____ By: _____
Printed Name: Andrew Gordillo

Named Plaintiff

Date: 11/15/13 By: _____
Printed Name: John Paulino

Named Plaintiff

Date: _____ By: _____
Printed Name: Nathan Aubin

Reviewed and approved by counsel:

Stueve Siegel Hanson LLP

Date: _____ By: _____
Printed Name: George Hanson
MDL Lead Counsel

Marlin & Saltzman LLP

Date: _____ By: _____
Printed Name: Stanley Saltzman
MDL Lead Counsel

NAMED PLAINTIFFS

Named Plaintiff

Date: _____ By: _____
Printed Name: Amanda Brawner

Named Plaintiff

Date: _____ By: _____
Printed Name: Curtis Schreiber

ADDITIONAL PLAINTIFFS

Named Plaintiff

Date: _____ By: _____
Printed Name: Andrew Gordillo

Named Plaintiff

Date: _____ By: _____
Printed Name: John Paulino

Named Plaintiff

Date: 11/11/13 By: _____
Printed Name: Nathan Aubin

Reviewed and approved by counsel:

Stueve Siegel Hanson LLP

Date: _____ By: _____
Printed Name: George Hanson
MDL Lead Counsel

Marlin & Saltzman LLP

Date: _____ By: _____
Printed Name: Stanley Saltzman
MDL Lead Counsel

NAMED PLAINTIFFS

Named Plaintiff

Date: _____ By: _____
Printed Name: Amanda Brawner

Named Plaintiff

Date: _____ By: _____
Printed Name: Curtis Schreiber

ADDITIONAL PLAINTIFFS

Named Plaintiff

Date: _____ By: _____
Printed Name: Andrew Gordillo

Named Plaintiff

Date: _____ By: _____
Printed Name: John Paulino

Named Plaintiff

Date: _____ By: _____
Printed Name: Nathan Aubin

Reviewed and approved by counsel:

Stueve Siegel Hanson LLP

Date: 11/15/13 By: _____
Printed Name: George Hanson
MDL Lead Counsel

Marlin & Saltzman LLP

Date: _____ By: _____
Printed Name: Stanley Saltzman
MDL Lead Counsel

NAMED PLAINTIFFS

Named Plaintiff

Date: _____ By: _____
Printed Name: Amanda Brawner

Named Plaintiff

Date: _____ By: _____
Printed Name: Curtis Schreiber

ADDITIONAL PLAINTIFFS

Named Plaintiff

Date: _____ By: _____
Printed Name: Andrew Gordillo

Named Plaintiff

Date: _____ By: _____
Printed Name: John Paulino

Named Plaintiff

Date: _____ By: _____
Printed Name: Nathan Aubin

Reviewed and approved by counsel:

Stueve Siegel Hanson LLP

Date: _____ By: _____
Printed Name: George Hanson
MDL Lead Counsel

Marlin & Saltzman LLP

Date: 11-14-13 By: _____
Printed Name: Stanley Saltzman
MDL Lead Counsel

Donelon, P.C.

Date: 11-8-13

By: _____

Printed Name: Brendan Donelon
MDL Lead Counsel

EXHIBIT A

List of All Actions Currently Coordinated in MDL No. 2138

Name	**Jurisdiction**	**Case No.**	**Date Filed**
Lopez v. Bank of America, N.A.	N.D. California	3-10-cv-01207-JL	12/31/2007
Brawner, et al. v. Bank of America, N.A.	D. Kansas	2:09-cv-02073-JWL	2/13/2009
Groehler v. Bank of America, N.A.	N.D. California	3:10-CV-03841-JCS	3/12/2009
E. Franco v. Bank of America, N.A.	M.D. Florida	2:09-cv-00274-JES-SPC	5/5/2009
Carrero, et al. v. Bank of America, N.A.	M.D. Florida	6:09-cv-00862-MSS-DAB	5/21/2009
Kauffman, et al. v. Bank of America N.A.	N.D. California	3:09-CV-04114-WHA	6/15/2009
J. Franco v. Bank of America	S.D. California	3:09-cv-01364-LAB-BLM	6/24/2009
Fortner, et al. v. Bank of America, N.A.	S.D. Texas	4:09-cv-02651-KMH	8/19/2009
Masourian, et al. v. Bank of America, N.A.	W.D. Washington	2:09-cv-01312-JCC	9/15/2009
Paulino et al. v. Bank of	C.D. California	8:09-cv-1168-CJC-RNB	10/9/2009

America, N.A. and Bank of America Corp.			
Brito v. Bank of America, N.A.	S.D. California	3:10-cv-03814-JCS	10/27/2009
Schreiber, et al. v. Bank of America, N.A.	D. Kansas	6:09-cv-01336-JWL-KGS	10/29/2009
Gold, et al. v. Bank of America, N.A.	C.D. California	2:09-cv-08169-CJC-RNB 1:09-cv-01954-AWI-GSA	11/6/2009
Gordillo v. Bank of America, N.A.	E.D. California	1:09-cv-01954-AWI-GSA	11/23/2009
Alexander v. Bank of America Corporation	C.D. California	2:10-cv-00256-CJC-RNB	12/3/2009
Del Rosario v. Bank of America, Inc.	C.D. California	2:10-cv-02057-R-VBK	3/10/2010
Leon v. Bank of America, N.A.	C.D. California	2:10-cv-04289-CJC-RNB	4/5/2010
Aubin v. Bank of America, N.A.	E.D. California	1:10-cv-00679-AWI-GSA	4/16/2010
Khoshnood v. Bank of America, et al.	C.D. California	11-cv-04551	6/15/2010
Rutherford v. Bank of America Corp.	S.D. Florida	10-cv-61118-WPD	6/30/2010
Bazif v. Bank of America Corporation	S.D. Florida	10-61374	8/3/2010

Howard v. Bank of America, Inc.	E.D. California	1:11−at−00315	12/15/2010
Anderson v. Bank of America	C.D. California	2:11-cv-06293-PSG -CW	6/20/2011
Dagobert v. Bank of America, N.A.	S.D. Florida	11-cv-60726-WPD	8/9/2011
Salas v. Bank of America N.A.	S.D. New York	11-CV-7080	11/7/2011
Jackson v. Bank of America, N.A.	D. Nevada	2:11-cv-02117-KJD -RJJ	12/30/2011
Gidden v. Bank of America Corp.	S.D. Florida	12-60294	2/17/2012

EXHIBIT B

List of Positions Eligible to Participate in Settlement

Banking Centers

Non-exempt employees with a hierarchy code beginning with "HA" and are in the following job codes:

Job Code	Job Title
RM019	ASSISTANT MANAGER
RM024	ASSISTANT MANAGER ASSOCIATE
RM601	LEADER ASSOCIATE
RS002	UNIVERSAL BANKER
RS600	PERSONAL BANKER
RS601	SENIOR PERSONAL BANKER
RS609	BANKING CTR SMALL BUS SPEC
RS613	PERSONAL BANKER ASSOCIATE
RS860	SALES & SERVICE SPECIALIST
RT008	TELLER OPERATIONS SPECIALIST
RT600	TELLER
RT601	SENIOR TELLER
RT602	TELLER COORDINATOR
RT603	TELLER MANAGER
AA602	ADMINISTRATIVE ASSISTANT III
RS225	ASSOCIATE SM BUSINESS BANKER
OA028	OPERATIONS ANALYST
KU006	BUSINESS CONTROL SPECIALIST
KO006	OPERATIONAL RISK SPECIALIST
RS026	PERSONAL FINANCIAL SPECIALIST
RT605	CUSTOMER SERVICE SPECIALIST
RS015	SR BANKING CTR SMALL BUS SPEC
DU141	CONSUMER SENIOR LENDER
AA601	ADMINISTRATIVE ASSISTANT II
AA613	EXECUTIVE ASSISTANT
AA600	ADMINISTRATIVE ASSISTANT I
CA600	SR CUSTOMER SERVICE REP
CA601	CUSTOMER SERVICE REP II
CA602	CUST SERV REP I
OA025	SENIOR OPERATIONS ANALYST
OA601	OPERATIONS REPRESENTATIVE
SG008	SALES OFFICER
SM164	GROUPBANKRELOFFICER
AZ007	INTERN

CD002	CUST SVC & SALES SPECIALIST I
DC602	COLLECTOR I
OA603	LEAD OPERATIONS REPRESENTATIVE
SM012	MORTGAGE LOAN COORDINATOR
TE027	CNSLT SYS ENG-ARCHANL CALI
BW600	PRIV BANK RELATIONSHIP ASSOC
JC037	MAINTENANCE SPECIALIST
OA602	SR OPERATIONS REPRESENTATIVE
OC600	CASH SERVICES REP I
OD600	ACCOUNTING SPECIALIST I
OL602	MLO- SR LOAN SPECIALIST
OL603	MLO- LOAN SPECIALIST
TA021	ANALYST I - APPS PROG
BC057	SALES SUPPORT ASSOCIATE - GCB
OA015	RESEARCH & ADJUSTMENTS REP II
OC601	CASH SERVICES REP II
OD601	ACCOUNTING SPECIALIST II
SZ004	SALES & SERVICE ASSISTANT
TA019	SR ANLY-APPS PROG-CALIFORNIA
AC600	SUPPORT SPECIALIST I
AC603	RECRUITING COORDINATOR
AO014	BUSINESS SUPPORT LEAD I
AO015	BUSINESS SUPPORT LEAD II
AZ013	PRIME TIME/HOURLY PROFESSIONAL
BB015	BUSINESS BKG SUPPORT ASSOCIATE
BK037	PMD TRAINEE / FINL ADVISOR
BP010	PRC SPECIALIST
BP019	PREMIER CLIENT MGR CANDIDATE
BP020	PREMIER GROWTH CLIENT MANAGER
CD021	CUST SEV SALES SPECLST
CD026	SR CS SPEC PRC/BBCS
CQ601	QUALITY MONITORING REP
DU163	SR CREDIT SUPPORT ASSOCIATE
DU164	CREDIT SUPPORT ASSOCIATE
DU602	CONSUMER CREDIT TRAINEE
EC017	COMMUNICATIONS SPECIALIST II
EC018	COMMUNICATIONS SPECIALIST I
HR034	INSTRUCTOR II
KU007	BUSINESS CONTROL ANALYST
NA101	SENIOR CHANGE ANALYST
ND005	PROCESS DESIGN ANALYST
OA017	ASSOCIATE OPERATIONS ANALYST
OA600	ASSOCIATE OPERATIONS REP
OC001	LEAD CASH SERVICES REP
OD602	ACCOUNTING SPECIALIST III

OK112	WORKOUT SPECIALIST
OL012	SUPPORT SERVICES SPECIALIST I
OL102	WORK FLOW COORDINATOR
OP600	PROOF OPERATOR
OQ001	LOCKBOX EXTRACTION SPECIALIST
RS011	SENIOR UNIVERSAL BANKER
SG025	CUSTOMER SALES ASSOCIATE
SG600	SALES SUPPORT ASSOCIATE
SI600	SALES ASSISTANT
SM600	MTG RTL- SALES SUPPORT ASST
ST017	TELEPHONE SALES ASSOCIATE I

Call Centers

Non-exempt associates in one of the three following hierarchies:

a. Hierarchy code beginning with "HC" in the following jobs:

Job Code	Job Title
CA017	RELATIONSHIP REPRESENTATIVE
CA600	SR CUSTOMER SERVICE REP
CA601	CUSTOMER SERVICE REP II
CA602	CUST SERV REP I
CD001	CUST SVC & SALES SPECIALIST II
CD002	CUST SVC & SALES SPECIALIST I
CD008	SR CUST SERV SPECIALIST/NS&S
CD009	CUST SERV SPECIALIST/NS&S
CD018	SBB CUST SEV SALES SPECLST
CD021	CUST SEV SALES SPECLST
CD026	SR CS SPEC PRC/BBCS
CD027	CUSTOMER SOLUTIONS ADVOCATE
OA025	SENIOR OPERATIONS ANALYST
OA028	OPERATIONS ANALYST
SG025	CUSTOMER SALES ASSOCIATE
SG026	CUSTOMER SALES ASSOCIATE II
SG035	CUSTOMER SALES ASSOCIATE III
SG036	SR CUSTOMER SALES ASSOCIATE
ST004	TELEPHONE SALES ASSOCIATE II
ST005	SR TELEPHONE SALES ASSOCIATE
ST017	TELEPHONE SALES ASSOCIATE I
ST019	SB RELATIONSHIP SPECIALIST

b. Hierarchy code beginning with "QAS" in cost center 00001-5790463 in the following jobs:

Job Code	Job Title
CD001	CUST SVC & SALES SPECIALIST II
CD002	CUST SVC & SALES SPECIALIST I
CD021	CUST SEV SALES SPECLST

c. Hierarchy code beginning with "QPS" in the following jobs at the following locations:

Jobs:

Job Code	Job Title
CA601	CUSTOMER SERVICE REP II
CD008	SR CUST SERV SPECIALIST/NS&S
OA025	SENIOR OPERATIONS ANALYST
OA028	OPERATIONS ANALYST
SR007	MORTGAGE LOAN OFFICER CS
SR016	HOME EQUITY LOAN OFFICER CS
SR027	CORP RELO RELATIONSHIP MGR I
SR030	SR MTG LOAN OFFICER CS
SR041	CORP RELO RELATIONSHIP MGR I
ST004	TELEPHONE SALES ASSOCIATE II
ST005	SR TELEPHONE SALES ASSOCIATE
ST017	TELEPHONE SALES ASSOCIATE I

Locations:

Location Code	Work Address	Work City	Work State
AZ1800	2565 W CHANDLER BLVD	CHANDLER	AZ
AZ1801	2555 W. CHANDLER BLVD.	CHANDLER	AZ
AZ1804	2595 W. CHANDLER BLVD.	CHANDLER	AZ
AZ1805	2505 W. CHANDLER BLVD.	CHANDLER	AZ
CA7701	275 VALENCIA	BREA	CA
CA7901	1900 S STATE COLLEGE BLVD	ANAHEIM	CA
CA7903	2500 E IMPERIAL HWY	BREA	CA
FL9300	9000 SOUTHSIDE BLVD BLDG 300	JACKSONVILLE	FL
FL9400	9000 SOUTHSIDE BLVD BLDG 400	JACKSONVILLE	FL
NC2110	13520 BALLANTYNE CORPORATE PL	CHARLOTTE	NC

OR1504	21000 NW EVERGREEN PKWY	HILLSBORO	OR
TX2972	6400 LEGACY DR	PLANO	TX
TX2973	7105 CORPORATE DR	PLANO	TX
TX2979	4500 AMON CARTER BLVD	FORT WORTH	TX
TX2980	4200 AMON CARTER BLVD	FORT WORTH	TX
TX2981	7105 CORPORATE DR	PLANO	TX
TX2982	7105 CORPORATE DR	PLANO	TX
TX2983	2375 GLENVILLE DR	RICHARDSON	TX
TX2984	2380 PERFORMANCE DR	RICHARDSON	TX
TX2985	2370 PERFORMANCE DR	RICHARDSON	TX
TX6420	4201 BRIDGEVIEW DE	FORT WORTH	TX
VA2125	8011 VILLA PARK DR	RICHMOND	VA
VA2400	1400 BEST PLZ	RICHMOND	VA

EXHIBIT C

California and Nationwide Notices

[Settlement Administrator Letterhead]

[_____, 2013]

[Employee]

Re: ***In Re Bank of America Wage and Hour Employment Practices Litigation***
U.S. District Court, District of Kansas, Case No. 10-md-2138-JWL-KGS
Notice of Multidistrict Litigation Settlement

Dear **[Employee]**:

You are receiving this correspondence because you are eligible to join in a settlement with Bank of America regarding current and former employees. If you choose to participate in this settlement, you will receive a payment of approximately $_____, less applicable tax and payroll deductions. To participate in the settlement, you must sign the enclosed consent form and return it no later than [INSERT 90 DAYS FROM MAILING]. This is a court-approved notice of a legal settlement and is not a solicitation.

The Lawsuits.

In February 2009, a lawsuit was filed in federal court in Kansas alleging that non-exempt (hourly) employees working in Bank of America retail banking centers were denied certain wages owed to them. In October 2009, another lawsuit was filed in federal court in Kansas alleging that non-exempt (hourly) employees working in certain positions in certain Bank of America call centers were also denied certain wages owed to them. In 2010, these lawsuits, along with several others that had been filed around the country, were joined together by court order into a consolidated proceeding and transferred to the federal court in Kansas for further handling.

The Consolidated Complaint in the lawsuit contends that Bank of America violated various state and federal wage and hour laws with respect to banking center and call center employees, including laws regarding straight-time and overtime compensation, meal and rest breaks, and vacation. A copy of the Consolidated Complaint, Settlement Agreement, and the approval order is available for your review at http://www.ksd.uscourts.gov/10-md-2138/. Bank of America has denied, and continues to deny, all allegations in this lawsuit.

The Settlement.

The parties have agreed to a settlement, and you are entitled to participate in the settlement in exchange for a release of the "Released Claims" by the "Released Parties." Generally, as defined in the court-approved settlement agreement, "Released Parties" means Bank of America Corporation, Bank of America, N.A. and related individuals and entities, and

"Released Claims" means all wage and hour claims that were or could have been asserted in the Consolidated Complaint, but the full definitions of those terms are set forth in the Settlement Agreement attached to the Court's approval order, which is available for your review at http://www.ksd.uscourts.gov/10-md-2138/. Those eligible to participate in the settlement include individuals who worked for the Bank in a banking center in California on or after February 13, 2005 and individuals who worked for the Bank in certain positions in certain call centers in California on or after February 13, 2005.

Your Settlement Payment.

Your settlement payment is based on a formula that takes into account a number of factors, including most importantly the number of weeks you worked during the time period covered by the lawsuit, and your most recent base hourly compensation rate. Additional factors that may impact your settlement amount include whether you were employed in the states of California or Washington, and whether you joined this litigation as a party plaintiff prior to the settlement. Part time weeks (i.e., less than 35 hours scheduled) have been discounted, as have weeks worked in the earliest year of the FLSA's limitation period (i.e., between October 19, 2006 and October 18, 2007). **If you wish to participate in the settlement, you must sign and return the enclosed consent form no later than [90 days from mailing].**

One half of your payment will be considered wages and shall be subject to the withholding of all applicable local, state, and federal taxes, and shall be reported on an IRS Form W-2. The remaining one-half payment will be considered liquidated damages, penalties and interest which will be reported on an IRS Form 1099. Please consult with your accountant or other tax advisor regarding the tax consequences of the settlement amount paid to you.

Court Approval.

The Court has approved this settlement as fair, reasonable, and adequate. By signing and returning the enclosed consent form you agree to opt-in to this litigation and agree not to sue any of the "Released Parties" for, and you will be prohibited by the Order of the Court from pursuing, all "Released Claims" defined in the court-approved settlement agreement.

Failure to return this consent on or before the deadline will prevent you from receiving your check. **You should keep a record of mailing to verify the date it was mailed**.

Your Choices.

As stated above, if you wish to participate in the Settlement, you must sign and return the enclosed Consent to Join Action and Settlement form on or before the deadline. Even if you have already joined the lawsuit by previously filing a consent to join form, you are still required to sign and return the enclosed Consent to Join Action and Settlement form in order to participate in this Settlement. Alternatively, you can choose to do nothing. If you do not sign and return the enclosed consent form, you will be unable to participate in the settlement, you will not be subject to the judgment in this case, and the lawsuit and the settlement will have no effect on you except as noted below with respect to claims under federal law and "PAGA" claims. Because of the various possible statutes of limitations applicable to this case, if you do not join this settlement you may lose any right, if such a right exists, to recover for these claims in the future. Due to an

order entered by the Court during this lawsuit, the statute of limitations on claims for unpaid wages and overtime and related remedies under federal law that you might assert against the Bank has been halted (or tolled) as of October 19, 2009. If you do not sign and return the enclosed consent form or file your own individual, non-collective action lawsuit against the Bank asserting claims for unpaid wages and overtime and related remedies under federal law by **[90 days from mailing],** you will not be able to rely upon the Court's previous court order halting the statute of limitations on such claims. Should you wish to pursue your claims after [90 days from mailing], please understand that there is typically a two-year statute of limitations for federal wage and hour claims. Upon a showing of willfulness as to the alleged violations, the statute of limitations could be three years. Failure to bring your individual, non-collective action claim within the statute of limitations period will bar you from recovering against Bank of America for these claims.

In the event you choose not to participate in this settlement of wage and hour claims, you will still receive a payment for a settlement of claims under California's Labor Code Private Attorney General Act (PAGA), and you will be deemed to have released your right to pursue any claims for penalties under PAGA arising out of or related to the Released Claims covered by the court-approved settlement, and you will be prohibited by order of the Court from pursuing such claims. If you choose to participate in this settlement, your PAGA settlement payment will be included in the payment set forth in the first paragraph of this letter.

No Retaliation.

If you currently work at Bank of America, no one at Bank of America will retaliate against you for accepting this offer. If you no longer work at Bank of America, acceptance will not in any way affect your eligibility for rehire.

Further Questions.

If you want to ask questions when deciding whether to accept this offer, or need to change your address, you may contact [Settlement Administrator], a third party that has been retained to administer this process at INSERT 1-800 NUMBER OR EMAIL ADDRESS or Class Counsel at INSERT 1-800 NUMBER OR EMAIL ADDRESS. Please do not contact the Court or Bank of America.

Sincerely,

[Insert Name]

[Settlement Administrator Letterhead]

[_____, 2013]

[Employee]

Re: ***In Re Bank of America Wage and Hour Employment Practices Litigation***
U.S. District Court, District of Kansas, Case No. 10-md-2138-JWL-KGS
Notice of Multidistrict Litigation Settlement

Dear **[Employee]**:

You are receiving this correspondence because you are eligible to join in a settlement with Bank of America regarding current and former employees. If you choose to participate in this settlement, you will receive a payment of approximately $_____, less applicable tax and payroll deductions. To participate in the settlement, you must sign the enclosed consent form and return it no later than [INSERT 90 DAYS FROM MAILING]. This is a court approved notice of a legal settlement and is not a solicitation.

The Lawsuits.

In February 2009, a lawsuit was filed in federal court in Kansas alleging that non-exempt (hourly) employees working in Bank of America retail banking centers were denied certain wages owed to them. In October 2009, another lawsuit was filed in federal court in Kansas alleging that non-exempt (hourly) employees working in certain positions in certain Bank of America call centers were also denied certain wages owed to them. In 2010, these lawsuits, along with several others that had been filed around the country, were joined together by court order into a consolidated proceeding and transferred to the federal court in Kansas for further handling.

The Consolidated Complaint in the lawsuit contends that Bank of America violated various state and federal wage and hour laws with respect to banking center and call center employees, including laws regarding straight-time and overtime compensation, meal and rest breaks, and vacation. A copy of the Consolidated Complaint, Settlement Agreement, and the approval order is available for your review at http://www.ksd.uscourts.gov/10-md-2138/. Bank of America has denied, and continues to deny, all allegations in this lawsuit.

The Settlement.

The parties have agreed to a settlement, and you are entitled to participate in the settlement in exchange for a release of the "Released Claims" by the "Released Parties." Generally, as defined in the court-approved settlement agreement, "Released Parties" means Bank of America Corporation, Bank of America, N.A. and related individuals and entities, and

"Released Claims" means all wage and hour claims that were or could have been asserted in the Consolidated Complaint, but the full definitions of those terms are set forth in the Settlement Agreement attached to the Court's approval order, which is available for your review at http://www.ksd.uscourts.gov/10-md-2138/. Those eligible to participate in the settlement include individuals who worked for the Bank in a banking center anywhere in the United States on or after October 19, 2006 (September 15, 2005 for individuals who worked in the state of Washington), or individuals who worked for the Bank in certain positions in certain call centers throughout the country on or after October 19, 2006.

Your Settlement Payment.

Your settlement payment is based on a formula that takes into account a number of factors, including most importantly the number of weeks you worked during the time period covered by the lawsuit, and your most recent base hourly compensation rate. Additional factors that may impact your settlement amount include whether you were employed in the state Washington, and whether you joined this litigation as a party plaintiff prior to the settlement. Part-time weeks (i.e. less than 35 hours scheduled) have been discounted, as have weeks worked in the first year of the limitation period under the Fair Labor Standards Act (i.e., between October 19, 2006 and October 18, 2007). **If you wish to participate in the settlement, you must sign and return the enclosed consent form no later than [90 days from mailing].**

One half of your payment will be considered wages and shall be subject to the withholding of all applicable local, state, and federal taxes, and shall be reported on an IRS Form W-2. The remaining one-half payment will be considered liquidated damages, penalties and interest, which will be reported on an IRS Form 1099. Please consult with your accountant or other tax advisor regarding the tax consequences of the settlement amount paid to you.

Court Approval.

The Court has approved this settlement as fair, reasonable, and adequate. By signing and returning the enclosed consent form you agree to opt-in to this litigation and agree not to sue any of the "Released Parties" for, and you will be prohibited by the Order of the Court from pursuing, all "Released Claims" defined in the court-approved settlement agreement.

Failure to return this consent on or before the deadline will prevent you from receiving your check. **You should keep a record of mailing to verify the date it was mailed**.

Your Choices.

As stated above, if you wish to participate in the Settlement, you must sign and return the enclosed Consent to Join Action and Settlement form on or before the deadline. Even if you have already joined the lawsuit by previously filing a consent to join form, you are still required to sign and return the enclosed Consent to Join Action and Settlement form in order to participate in this Settlement. Alternatively, you can choose to do nothing. If you do not sign and return the enclosed consent form, you will be unable to participate in the settlement, you will not be subject to the judgment in this case, and the lawsuit and the settlement will have no effect on you except as noted below with respect to claims under federal law. Because of the various possible statutes of limitations applicable to this case, if you do not join this settlement you may lose any right, if

such a right exists, to recover for these claims in the future. Due to an order entered by the Court during this lawsuit, the statute of limitations on claims for unpaid wages and overtime and related remedies under federal law that you might assert against the Bank has been halted (or tolled) as of October 19, 2009. If you do not sign and return the enclosed consent form or file your own individual, non-collective action lawsuit against the Bank asserting claims for unpaid wages and overtime and related remedies under federal law by **[90 days from mailing],** you will not be able to rely upon the Court's previous order halting the statute of limitations on such claims. Should you wish to pursue your claims after [90 days from mailing], please understand that there is typically a two-year statute of limitations for federal wage and hour claims. Upon a showing of willfulness as to the alleged violations, the statute of limitations could be three years. Failure to bring your individual, non-collective action claim within the statute of limitations period will bar you from recovering against Bank of America for those claims.

No Retaliation.

If you currently work at Bank of America, no one at Bank of America will retaliate against you for accepting this offer. If you no longer work at Bank of America, acceptance will not in any way affect your eligibility for rehire.

Further Questions.

If you want to ask questions when deciding whether to accept this offer, or need to change your address, you may contact [Settlement Administrator], a third party that has been retained to administer this process at INSERT 1-800 NUMBER OR EMAIL ADDRESS or Class Counsel at INSERT 1-800 NUMBER OR EMAIL ADDRESS. Please do not contact the Court or Bank of America.

Sincerely,

[Insert Name]

EXHIBIT D

Consent to Join

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE: BANK OF AMERICA WAGE AND HOUR EMPLOYMENT PRACTICES LITIGATION	**MDL No. 2138**
(This document relates to all cases)	**Case No: 10-md-2138-JWL-KGS**

CONSENT TO JOIN ACTION AND SETTLEMENT, INCLUDING RELEASE OF CLAIMS

I, the undersigned, hereby acknowledge that I have received and read the <DATE> Notice of Multidistrict Litigation Settlement (the "Settlement Notice") and have had an opportunity to read and review a copy of the Consolidated Complaint (Court Doc. 42), the Settlement Agreement, and the Court's approval order (the "Order" Court Doc. #XXX) available to me at http://www.ksd.uscourts.gov/10-md-2138/ and www.[settlementwebsite].com, and I hereby consent to be a party plaintiff in the above-captioned lawsuit and to participate in the court-approved settlement of this action. In exchange for a payment pursuant to the court-approved settlement in this action, and except as identified in the Settlement Notice I received, I hereby agree not to sue the Released Parties (as defined in the court-approved settlement agreement and as set forth in the Order), including named Defendants Bank of America Corporation and Bank of America, N.A., for any Released Claims (as also defined in the court-approved settlement agreement and as set forth in the Order) as covered by the court-approved settlement of this action. I hereby acknowledge and agree that I am releasing and waiving all such Released Claims against the named Defendants and all such Released Parties in this action under federal, state, or other statutory or common laws that were or could have been asserted in, arise out of, or are related to the subject matter of this lawsuit, while employed as a non-exempt (hourly) employee in a banking center or call center at any time through the date that I sign this form.

DATE: _____, 2014

_____
SIGNATURE

_____
PRINTED NAME

EXHIBIT E

Reminder Postcard

Bank of America Wage and Hour Employment Practices Litigation Settlement

Our records show that you are a current or former employee of Bank of America. You are eligible to participate in a settlement for alleged violations of wage and hour laws. A notice of the settlement of this litigation and consent form were mailed to you on ____. To date, you have not responded. If you wish to participate in the settlement, your completed consent form must be postmarked no later than:

_____, 2014

If you do not complete and timely return the consent form that was previously mailed to you at this address, you will not be allowed to participate in this settlement.

For more information about the case, or to get another copy of the notice of the settlement and consent form, you can call _____ toll-free at _____.

Claims Administrator

PRESORTED
FIRST CLASS MAIL

U.S. POSTAGE
PAID
DENVER, CO

Important Legal Notice