

Exhibit 1

1 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT**

2 This Class Action and PAGA Settlement and Release Agreement (“Settlement” or
3 “Agreement”) is entered into between Jose Gonzalez, David Lu, Requiaba Herndon, David Daniel
4 and Martin Bermudez (collectively, “Class Representatives”), on behalf of themselves and the
5 Settlement Class, as defined herein¹, on the one hand, and BMO Harris Bank N.A. as successor
6 in interest to Bank of the West (“BOTW”), on the other hand, subject to the terms and conditions
7 hereof and the approval of the Court. Class Representatives and BMO Harris Bank N.A.
8 (“BMO”) are referenced collectively herein as “the Parties.”

9
10 **RECITALS**

- 11 **A.** WHEREAS, on January 3, 2022, Class Counsel sent BOTW a letter in which they asserted
12 claims on behalf of Class Representatives and Mortgage Bankers, and in which they
13 invited BOTW to engage in an exchange of information and settlement negotiations;
- 14 **B.** WHEREAS, on November 1, 2022, the Parties participated in a full-day mediation with the
15 assistance of an experienced mediator, David Rotman; and
- 16 **C.** WHEREAS, based on the settlement discussions at mediation, and based upon their analysis
17 and evaluation of a number of factors, and recognizing the substantial risks of litigation, the
18 Parties have reached agreement on a resolution of Class Representatives’ claims on a class-
19 wide basis.
- 20 **D.** WHEREAS, on December 8, 2022, Class Representatives submitted a PAGA Notice to the
21 California Labor and Workforce Development asserting claims against BOTW under
22 California Labor Code §§ 218.5, 2699, 2802, and the applicable Wage Order.
- 23 **E.** NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this
24 Agreement, as well as the good and valuable consideration provided for herein, the Parties
25 agree to a full and complete Settlement of the Lawsuit (as defined below) on the following
26 terms and conditions:

27 **I. CONDITIONAL NATURE OF SETTLEMENT**

28 Class Representatives initiated a Lawsuit asserting the Alleged Claims (all terms defined
below). This Settlement is made in compromise of the Alleged Claims between Class
Representatives and BMO, as successor in interest to BOTW. This Agreement is made for the
sole purpose of settling the Lawsuit on a class-wide basis. The Parties enter into this Agreement

¹ Capitalized terms are defined in Section 3 unless otherwise noted.

1 on a conditional basis.

2 Furthermore, in the event that the Court does not enter the Final Approval Order, or a
3 Judgment is not entered in the Lawsuit, or the conditions precedent are not met for any reason,
4 this Settlement shall be deemed null and void *ab initio*, it shall be of no force or effect
5 whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the negotiations,
6 terms and entry of the Agreement shall remain subject to the provisions of California Evidence
7 Code sections 1119 and 1152 and any other analogous rules of evidence that might apply.
8 Notwithstanding this provision, the Parties hereby stipulate that the terms of Section 16.12 shall
9 survive and be admissible in evidence even if the Settlement does not become final.

10 BMO, as successor in interest to BOTW, denies all claims as to liability, damages,
11 penalties, interest, fees, restitution, injunctive relief, and all other forms of relief as well as the
12 class allegations asserted in the Complaint. BMO has agreed to resolve the Alleged Claims
13 through this Settlement, but to the extent this Settlement is deemed void, BMO does not waive,
14 but rather expressly reserves, all rights to challenge all such claims and allegations in the
15 Complaint upon all procedural and factual grounds, including without limitation the ability to
16 challenge class, collective, and representative action treatment on any grounds, as well as
17 asserting any and all other potential defenses or privileges. Class Representatives and Class
18 Counsel agree that BMO retains and reserves these rights. Specifically, Class Representatives and
19 Class Counsel agree not to argue or present any argument that, in the event this Settlement is not
20 approved in full, that BMO could not file a motion for decertification, contest any class action
21 certification on any grounds, or assert any and all other potential defenses and privileges if this
22 Lawsuit were to proceed, on the basis that BMO previously entered into this Settlement. Class
23 Representatives and Class Counsel hereby waive such arguments and agree they will not take a
24 position contrary to this provision.

25 **II. PARTIES TO AGREEMENT**

26 This Agreement is made and entered into by and among the following, herein referred to
27 as the "Settling Parties": (i) the Class Representatives (on behalf of themselves and each of the
28 Class Members and Aggrieved Employees), with the assistance of Class Counsel; and (ii)

1 Defendant, with the assistance of its counsel of choice. The Settling Parties intend this
2 Agreement to fully, finally, and forever resolve, discharge, and settle the Released Claims upon
3 and subject to the terms and conditions hereof.

4 **III. DEFINITIONS**

5 As used in this Agreement, the following terms shall have the meanings specified below:

6 3.1 “Settlement” or “Agreement” means the terms set forth in this current agreement.

7 3.2 “Court” means Superior Court of California, County of Sacramento.

8 3.3 “Complaint” means the complaint filed in Court asserting Class Representatives’
9 “Alleged Claims.”

10 3.4 “Lawsuit” means the proceedings initiated by the filing of the Complaint.

11 3.5 “PAGA” means the California Labor Code Private Attorneys General Act,
12 California Labor Code sections 2698 *et seq.*

13 3.6 “Class Period” means the period from March 24, 2018 through January 27, 2023.

14 3.7 “PAGA Period” means the period from March 24, 2021 through January 27, 2023.

15 3.8 “Aggrieved Employees” means all current and former employees of BOTW who,
16 during the PAGA Period worked for BOTW in California in one of the following job titles: (1)
17 Mortgage Banker, (2) Mortgage Banker HC NonNetwork, (3) Mortgage Banker Private, and/or
18 (4) Mortgage Banker Std NonNetwork.

19 3.9 “Alleged Claims” means all wage and hour claims that are or could have been
20 alleged in the Complaint related to unreimbursed business expenses incurred by the Aggrieved
21 Employees, including claims for violation of Labor Code sections 218.5, 2699, 2802; violation of
22 Private Attorneys General Act (PAGA) (Lab. Code § 2698, *et seq.*); and violation of Wage Order
23 No. 4. Alleged Claims also means any and all claims asserted by the Class Representatives for
24 interest and attorneys’ fees and costs incurred in this Litigation.

25 3.10 “Attorneys’ Fees” means the fees for work performed by Class Counsel and
26 approved for reimbursement by the Court as set forth in Section 9.2 of this Agreement.

27 3.11 “BOTW” means Bank of the West.

28 3.12 “Claims Administrator” or “Administrator” means AB Data, who the

1 Parties have selected to administer this Settlement. The Parties may jointly select a different
2 claims administrator, subject to the approval of the Court.

3 3.13 “Claims Administration Costs” mean the fees and expenses reasonably and
4 necessarily incurred by the Claims Administrator as a result of performing the settlement
5 administration procedures and functions expressly required in this Settlement and shall include all
6 costs of administering the Settlement, including but not limited to: formatting, printing and
7 mailing the Notice Packet, including filling in individuating information about the amount each
8 Settlement Class Member is estimated to receive; performing a National Change of Address
9 database search of Class Member addresses to update prior to the initial mailing of the Notice
10 Packet; skip-tracing of bad addresses upon the return of undelivered Notice Packets; establishing
11 a toll-free phone number and post office box for receipt of Class Member communications;
12 establishing a website where Class Members may view and download the operative complaint,
13 this Settlement Agreement, the Settlement Notice, approval motions/briefing, as well as any
14 Orders or Tentative Rulings issued by the Court; calculating, processing, reviewing, and issuing
15 Settlement Payments to participating Class Members and others as ordered by the Court;
16 reviewing and resolving Class Members’ disputed claims regarding payments under this
17 Agreement; calculating tax withholdings and payroll taxes, making related payment to federal and
18 state tax authorities, and issuing tax forms relating to payments made under the Settlement;
19 establishing a QSF or other appropriate vehicle for receipt of the Gross Settlement Amount and
20 disbursement of payments provided by this Agreement and ordered by the Court; preparing any
21 tax returns and any other filings required by any governmental taxing authority or agency; and
22 any other costs and fees incurred and/or charged by the Claims Administrator in connection with
23 the execution of its duties under this Agreement, which shall not exceed Twenty-Five Thousand
24 U.S. Dollars and Zero Cents (\$25,000.00).

25 3.14 “Class,” “Class Members,” and “Putative Class” means all current and former non-
26 exempt employees of BOTW who, during the Class Period worked for BOTW in California in
27 one of the following four job titles: (1) Mortgage Banker, (2) Mortgage Banker HC NonNetwork,
28 (3) Mortgage Banker Private, and/or (4) Mortgage Banker Std NonNetwork. The Class as defined

1 is broad enough to encompass all classes and subclasses to be outlined in Class Representatives’
2 Complaint.

3 3.15 “Class Counsel” means:

4 Outten & Golden LLP,
5 685 Third Avenue, 25th Floor,
6 New York, NY 10017

7 Shavitz Law Group, P.A.,
8 951 Yamato Rd, Suit 285,
9 Boca Raton, FL 33431.

10 3.16 “Class Representatives” means Class Representatives Jose Gonzalez, David Lu,
11 Requiaba Herndon, David Daniel and Martin Bermudez.

12 3.17 “Day” means calendar day, unless expressly stated otherwise.

13 3.18 “Defendant” and “BMO” mean BMO Harris Bank N.A. as successor in interest to
14 Bank of the West.

15 3.19 “Defendant’s Counsel” means:

16 Andrew R. Livingston (SBN 148646)
17 ORRICK, HERRINGTON & SUTCLIFFE LLP
18 The Orrick Building
19 405 Howard Street
20 San Francisco, California 94105-2669
21 Telephone: 415-773-5700
22 Facsimile: 415-773-5759

23 3.20 “Effective Date” means the date on which the Court’s Final Approval Order
24 becomes final. For purposes of this paragraph, the Court’s Final Approval Order “becomes final”
25 upon the last to occur of the following: (a) the date of final affirmance on appeal of the Judgment;
26 (b) the date of final dismissal of any appeal from the Judgment or the final dismissal of any
27 proceeding to review the Judgment; or (c) if no appeal is filed, the expiration date of the time for
28 the filing or noticing of any appeal from the Court’s Judgment.

3.21 “Final Approval Order” means an Order Granting Final Approval of Settlement of
the Lawsuit.

3.22 “Gross Settlement Amount” is the sum of Four Hundred Twenty-Five Thousand
U.S. Dollars and Zero Cents (\$425,000.00), which shall cover payment of all claims on behalf of

1 the Class Members and Aggrieved Employees, Claims Administration Costs, Attorneys' Fees,
2 Litigation Expenses, the portion of the PAGA Penalty Payment payable to the State of California,
3 and the Enhancement Payments to the Class Representatives. The Gross Settlement Amount is
4 the maximum amount BMO may be required to pay under this Settlement unless otherwise stated
5 herein.

6 3.23 "Judgment" means a judgment entered by the Court following entry of the Final
7 Approval Order.

8 3.24 "Last Known Address" means the most recently recorded mailing address for a
9 Class Member as such information is contained in the personnel records maintained by
10 Defendant.

11 3.25 "Litigation Expenses" means the expenses and costs of litigation incurred by Class
12 Counsel as detailed in their billing statement and approved for reimbursement by the Court as set
13 forth in Section 9.2 of this Agreement.

14 3.26 "LWDA" means the California Labor and Workforce Development Agency.

15 3.27 "Net Settlement Amount" means the Gross Settlement Amount less Class
16 Counsel's Attorneys' Fees, Litigation Expenses, Claims Administration Costs, the PAGA Penalty
17 Payment, the Enhancement Payment to the Class Representative. To the extent the Court does
18 not approve the full requested amount of Attorneys' Fees, Litigation Expenses, Claims
19 Administration Costs, or the Enhancement Payment, the Net Settlement Amount will increase
20 accordingly.

21 3.28 "Notice of Pendency of Class Action Settlement and Final Hearing" or "Notice"
22 shall mean the notice of this Settlement to be provided to Class Members, in the same or
23 substantially same form as set forth in **Exhibit A** to this Agreement, pending approval by the
24 Court.

25 3.29 "Notice Packet" refers collectively to the documents mailed to the Class Members
26 pursuant to the terms of this Settlement and includes the following: (1) Notice (**Exhibit A**); (2)
27 Request for Exclusion Form (**Exhibit B**); (3) a Change of Address Form (**Exhibit C**), and (4) a
28 pre-printed return envelope addressed to the Claims Administrator.

1 3.30 “Notice Period” means a period of forty-five (45) calendar days from the date the
2 Claims Administrator first mails the Notice Packet to Class Members. If the 45th day falls on a
3 Sunday or holiday, the Notice Period shall end on the next business day that is not a Sunday or
4 holiday.

5 3.31 “Notice Response Deadline” shall be the last day of the Notice Period.

6 3.32 “PAGA Penalty Payment” means amount to be paid to settle any and all Alleged
7 Claims for which penalties under California’s Private Attorneys General Act (“PAGA”),
8 California Labor Code sections 2698 *et seq.*, may be sought or are otherwise available, as set
9 forth in Section 9.4 of this Agreement.

10 3.33 “PAGA Work Months” means the total number of months worked by an
11 Aggrieved Employee for BOTW in California during the PAGA Period as a non-exempt hourly
12 (1) Mortgage Banker, (2) Mortgage Banker HC NonNetwork, (3) Mortgage Banker Private,
13 and/or (4) Mortgage Banker Std NonNetwork, rounded up to the next full month.

14 3.34 “Parties” mean Class Representatives and BMO.

15 3.35 “QSF” shall mean the Qualified Settlement Fund established by the Claims
16 Administrator for the benefit of the Class Members and from which the Settlement Payments
17 shall be paid.

18 3.36 “Reasonable Address Verification Measure” means utilization of the National
19 Change of Address Database maintained by the United States Postal Service prior to the initial
20 mailing of the Notice Packets, the customary skip-tracing measures used by the Administrator
21 upon the return of undelivered Notice Packets, and the forwarding of Notice Packets returned to
22 the Administrator with updated addresses affixed thereto by the U.S. Postal Service to the
23 updated address.

24 3.37 “Released Claims” shall have the meaning set forth in Section 12 of this
25 Agreement.

26 3.38 “Released Parties” means BMO and each and all of its respective past and present
27 parents, subsidiaries, affiliated companies and corporations, and each and all of their respective
28 past and present directors, officers, managers, employees, general partners, limited partners,

1 principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives,
2 predecessors, successors, divisions, joint venturers, assigns, or related entities, and each and all of
3 their respective executors, successors, assigns and legal representatives.

4 3.39 “Request for Exclusion” means the document which a Class Member must
5 complete and timely submit to request exclusion from the Settlement, in the form set forth in
6 **Exhibit B** to this Agreement, pending approval by the Court.

7 3.40 “Enhancement Payment” shall have the meaning set forth in Section 9.5 of this
8 Agreement.

9 3.41 “Settlement Class” and “Settlement Class Member” mean all Class Members who
10 have not validly and timely requested exclusion from the Settlement after Notice and thus who
11 will become bound by the Judgment if and once the Effective Date occurs.

12 3.42 “Settlement Payment” means the total amount due to an individual Settlement
13 Class Member, which shall be calculated as described in Section 9.6 of this Agreement.

14 3.43 “Updated Address” means a mailing address that was updated via a Reasonable
15 Address Verification Measure, or an updated mailing address provided by the United States
16 Postal Service, a Settlement Class Member, or any other valid source.

17 3.44 “Work Months” means the total number of months worked by a Class Member for
18 BOTW in California during the Class Period as a non-exempt hourly (1) Mortgage Banker, (2)
19 Mortgage Banker HC NonNetwork, (3) Mortgage Banker Private, and/or (4) Mortgage Banker
20 Std NonNetwork, rounded up to the next full month.

21 **IV. PROCEDURAL BACKGROUND**

22 On January 3, 2022, Class Counsel sent a letter to BOTW. The letter asserted that BOTW
23 failed to reimburse business expenses allegedly incurred by Class Members and Aggrieved
24 Employees related to cell phones, home internet, and mileage for work travel. Class Counsel
25 threatened to bring class and PAGA claims against BOTW but expressed willingness to postpone
26 their plan to file these claims and first engage in pre-suit settlement discussions.

27 On March 24, 2022, the Parties entered into a tolling agreement to permit them time to
28 mediate their claims.

1 On November 1, 2022, the Parties participated in a full-day mediation session with the
2 assistance of an experienced mediator David Rotman, and after a full day of mediation, the
3 Parties agreed to a pre-suit settlement. Following the mediation, the Parties agreed to a
4 Memorandum of Understanding of the key terms of the Settlement, which was fully executed as
5 of November 28, 2022.

6 The Parties and their counsel sufficiently discussed the Complaint Class Representatives
7 intend to file and the applicable laws to make an informed judgment as to the fairness of the
8 Settlement, the respective strengths, and weaknesses of the claims of the class and the sub-classes
9 Class Representatives seek to certify, and the risks of proceeding in litigation. The Parties are
10 represented by competent counsel and have had the opportunity to consult with counsel prior to
11 the signing this Agreement.

12 **V. COMPLAINT**

13 On May 9, 2023, Class Representatives filed a class and collective Complaint in the
14 Superior Court of California, County of Sacramento. The Complaint alleged claims for
15 unreimbursed business expenses incurred by the Settlement Class, including claims for Labor
16 Code sections 218.5, 2699, and 28025; violation of Private Attorneys General Act (PAGA) (Lab.
17 Code § 2698, et seq.).

18 **VI. DEFENDANT'S DENIAL OF LIABILITY**

19 BMO, as successor in interest to BOTW, specifically and generally denies any and all
20 liability or wrongdoing of any sort with regard to any of the Alleged Claims and makes no
21 concessions or admissions of liability of any sort. BMO maintains that for any purpose other than
22 settlement, the Lawsuit is not appropriate for class action treatment pursuant to California Code
23 of Civil Procedure § 382, and that had this matter proceeded, BMO would have opposed class
24 certification pursuant to California Code of Civil Procedure § 382. Nonetheless, BMO has
25 concluded that further litigation would be protracted, distracting and expensive, and that it is
26 desirable that the Lawsuit be fully and finally settled in the manner and upon the terms and
27 conditions set forth in this Agreement. BMO has also taken into account the uncertainty and risks
28 inherent in any litigation. BMO has therefore determined that it is desirable and beneficial to

1 settle the Lawsuit in the manner and upon the terms and conditions set forth in this Agreement.

2 The Parties agree there is a bona fide dispute as to whether unreimbursed expenses and/or
3 penalties are owed to Class Representatives, the Class Members and Aggrieved Employees and
4 neither this Agreement, nor the Settlement-related documents, nor the Settlement itself shall be
5 construed as an admission of either fact or law on any issue by any Party.

6 **VII. CLAIMS OF THE CLASS REPRESENTATIVES AND BENEFITS OF**
7 **SETTLEMENT**

8 The Class Representatives and Class Counsel believe that the claims to be asserted in the
9 Complaint have merit and that evidence developed to date supports the claims. However, the
10 Class Representatives and Class Counsel recognize and acknowledge the significant expense,
11 resources and time required to continue proceedings necessary to prosecute the Lawsuit against
12 BMO through trial and through appeals. The Class Representatives and Class Counsel have also
13 taken into account the uncertain outcome and the risks of litigation, the difficulties and delays
14 inherent in this and similar litigation, the challenges of maintaining class certification throughout
15 the Lawsuit, and the problems of proving liability and damages and rebutting possible defenses to
16 the Complaint. Based upon their evaluation, the Class Representatives and Class Counsel have
17 determined that the settlement set forth in this Agreement is fair, reasonable, adequate, and in the
18 best interests of the Class Representative, the Class, the Aggrieved Employees, and the State of
19 California. Both Class Counsel and the Class Representatives believe that the settlement set forth
20 in this Agreement confers substantial benefits upon the Class and each of the Class Members and
21 Aggrieved Employees.

22 **VIII. CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT**

23 8.1 The Parties enter into this Agreement and the Settlement on a conditional basis.
24 This Agreement and Settlement will become final and effective only upon the occurrence of all of
25 the following events:

26 8.1.1 The Court enters an order granting conditional certification of the proposed
27 class;

28 8.1.2 The Court enters an order granting preliminary approval of the Settlement;

1 8.1.3 The Court enters a Final Approval Order; and

2 8.1.4 The Effective Date occurs, and any challenge to the Settlement, whether by
3 objection or appeal, is resolved in favor of enforcement of the Settlement.

4 8.2 Unless the Court orders otherwise or agreed in writing by the Parties, this
5 Agreement shall be deemed null and void *ab initio* upon the failure of any of these four
6 conditions to occur.

7 **IX. SETTLEMENT CONSIDERATION—NO CLAIM FORM REQUIRED;**
8 **DEDUCTIONS FROM THE GROSS SETTLEMENT AMOUNT; CALCULATION**
9 **OF SETTLEMENT PAYMENTS FROM THE NET SETTLEMENT AMOUNT**

10 This shall be an all-in Settlement without a reversion. Class Members who do not request
11 exclusion from the Settlement using the procedures specified below will be automatically paid
12 without submitting any claim form.

13 9.1 **Payment of the Gross Settlement Amount:** BMO will pay the
14 Gross Settlement Amount in full and final settlement of the Lawsuit. The Gross Settlement
15 Amount will constitute adequate consideration for this Settlement. Since any uncashed settlement
16 check funds will be distributed pursuant to the *cy pres* doctrine, this Agreement and the
17 associated Judgment do not and will not create any unpaid residue or unpaid residual, and no
18 distribution of such shall be required. No money shall revert to Defendant.

19 9.2 **Attorneys' Fees and Litigation Expenses:** Class Counsel will submit an
20 application for: (a) an award of Attorneys' Fees of no more than 33 1/3% or one third of the
21 Gross Settlement Amount; and (b) an award of Class Counsel's actual Litigation Expenses to date
22 in the amount of \$13,401.88, plus any expenses incurred between the date this Settlement
23 Agreement is executed and the date of final approval, not to exceed an additional \$2,000.00 (as
24 documented on an itemized cost sheet with appropriate support), both of which would be paid out
25 of the Gross Settlement Amount. The amounts set forth in this section will constitute complete
26 consideration for all work performed and expenses incurred to date and for all worked to be
27 performed and expenses to be incurred through the completion of the Lawsuit, its settlement, and
28 the effort to secure final Judgment by Class Counsel.

 9.2.1 In the event that the Court (or any appellate court) awards less than the

1 amount requested for Attorneys' Fees or Litigation Expenses, only the awarded amounts shall be
2 paid and shall constitute satisfaction of those obligations and full payment thereunder, and any
3 remaining or unawarded portion of the requested Attorneys' Fees or Litigation Expenses shall be
4 made a part of the Net Settlement Amount for distribution to Settlement Class Members and
5 Aggrieved Employees. To the extent the Court does not approve any or all of the amount of
6 Attorneys' Fees or Litigation Expenses, the Settlement shall remain binding except as otherwise
7 provided, and this will not be a justification for Class Representatives to withdraw from the
8 Settlement.

9 9.2.2 Class Representatives' Counsel agrees to be solely responsible for any
10 claims, liens or other demands from persons or entities who previously represented Class
11 Representatives and may seek to be compensated out of the Gross Settlement Amount for
12 attorneys' fees and/or legal costs arising from prosecution of the Action against Defendant. If it
13 is ever claimed or determined that some portion of the Gross Settlement Amount should have
14 been paid as Class Representatives' attorneys' fees and/or costs to some person or entity other
15 than Class Counsel, Class Counsel warrants and agrees to pay and/or indemnify said amount,
16 defend any claim for this amount, and hold BMO harmless from such liens or claims. As of the
17 date of execution of this Agreement, BMO and BOTW represent that neither is currently aware of
18 any counsel or entity who represented Class Representatives and who have sought to be
19 compensated for attorneys' fees and/or cost arising from prosecution of the Action against
20 Defendant, or who otherwise represented Class Representative with respect to the prosecution of
21 the Action against Defendant.

22 9.3 **Claims Administration Costs:** From the Gross Settlement Amount, Claims
23 Administration Costs shall be paid in an amount not to exceed Twenty-Five Thousand Dollars
24 and Zero Cents (\$25,000.00), subject to approval from the Court.

25 9.4 **Payment of the PAGA Penalties:** From the Gross Settlement Amount, BMO
26 will pay Nine Thousand Dollars and Zero Cents (\$9,000.00) for settlement of any and all Alleged
27 Claims for which penalties under PAGA, Labor Code section 2698 *et seq.*, may be sought or are
28 otherwise available, as the PAGA Penalty Payment. Pursuant to the express requirements of

1 Labor Code section 2699(i), the PAGA Penalty Payment shall be allocated as follows: \$6,750.00
2 (75%) to the LWDA for the enforcement of labor laws and education of employers, and
3 \$2,250.00 (25%) to the Aggrieved Employees. The PAGA Penalty Payments to Aggrieved
4 Employees are not wages.

5 9.5 **Enhancement Payment to the Class Representatives:** From the Gross
6 Settlement Amount, Class Representatives intend to request Court approval for an Enhancement
7 Payment of up to Twenty Thousand Dollars and Zero Cents (\$2,000.00) for each of the Class
8 Representatives, Jose Gonzalez, David Lu, Requiba Herndon, David Daniel and Martin
9 Bermudez. The amount paid to the Class Representatives is in consideration for their efforts in
10 connection with this Lawsuit. Class Representatives are not providing a general release, thus the
11 Enhancement Award is not tethered in any way to any general releases. The Class
12 Representatives shall be issued an Internal Revenue Service Form 1099 for any Enhancement
13 Payment. The Class Representatives hereby acknowledge that they have obtained no tax advice
14 from BMO nor Class Counsel, and that neither BMO, its attorneys, nor Class Counsel have made
15 any representation concerning the tax consequences, if any, of the Enhancement Payment. The
16 Class Representatives agree that they are solely responsible for the tax consequences of the
17 Enhancement Payment.

18 9.5.1 In the event that the Court (or any appellate court) awards less than the
19 amount requested for the Enhancement Payment, only the awarded amount shall be paid and shall
20 constitute satisfaction of those obligations and full payment thereunder, and any remaining or
21 unawarded portion of the requested Enhancement Payment shall be made a part of the Net
22 Settlement Amount for distribution to Settlement Class Members and Aggrieved Employees. To
23 the extent the Court does not approve any or all of the amount of the Enhancement Payment, the
24 Settlement shall remain binding except as otherwise provided, and this will not be a justification
25 for Class Representatives to withdraw from the Settlement.

26 9.5.2 The Enhancement Payment, if approved by the Court, is in addition to
27 Class Representatives' Settlement Payment as described in Section 9.6 below.
28

1 9.6 **Payment to Settlement Class Members:** The Net Settlement Amount (as defined
2 in Section 3.26, after payment of all enumerated amounts from the Gross Settlement Amount)
3 shall be used to make the Settlement Payments described below.

4 9.6.1 Each Settlement Payment (not including the additional payment to
5 Aggrieved Employees) shall be calculated by dividing the Net Settlement Amount by the total
6 number of Work Months worked by Class Members then multiplying that amount by the number
7 of Work Months the individual Class Member worked. Each additional payment to Aggrieved
8 Employees will be calculated by dividing 25% of the PAGA Payment Penalty to be paid to
9 Aggrieved Employees by the total number of PAGA Work Months worked by Aggrieved
10 Employees then multiplying that amount by the number of PAGA Work Months the individual
11 Aggrieved Employee worked.

12 9.7 **Taxes:** The Parties agree that one-half (1/2) of each Settlement Payment
13 constitutes reimbursement of business expenses and one-half (1/2) of each Settlement Payment
14 constitutes interest, penalties, liquidated damages and other non-wage payments. As a result,
15 each Settlement Class Member will be issued an Internal Revenue Service Form 1099 for such
16 payment to him or her. BMO shall not be responsible for payroll tax payments on any portion of
17 the Gross Settlement Amount. The Parties further understand that the Class Representatives and
18 any Class Member who receives any Settlement Payment pursuant to this Agreement shall be
19 solely responsible for any and all tax obligations associated with such receipt.

20 9.8 BMO will not use the Settlement Payments to calculate any additional benefits
21 including without limitation vacation, holiday pay, pension, or 401(k) plan contributions. BMO
22 contends that the Settlement Payments do not represent any modification of previously credited
23 hours of service or other eligibility criteria under any employee pension or employee welfare
24 benefit plan sponsored by Defendant. Nor does BMO consider the Settlement Payments
25 “compensation” for purposes of determining eligibility for, or benefit accrual within, an employee
26 pension benefit plan, an employee welfare benefit plan, or other plan sponsored by BMO or its
27 predecessors, subsidiaries, or successors.

28

1 **X. NOTICE PROCEDURE**

2 10.1 **Selection and Compensation of Claims Administrator:** The Parties agree to
3 jointly utilize a third-party Claims Administrator to give notice of and communicate with Class
4 Members regarding the Settlement and to establish a website where Class Members may view
5 and download the operative complaint, this Settlement Agreement, the Settlement Notice,
6 approval motions/briefing, as well as any Orders or Tentative Rulings issued by the Court that
7 relate to the Settlement. The Parties have initially selected A.B. Data, Ltd., to administer the
8 Settlement, but may jointly select a different claims administrator subject to the approval of the
9 Court. If the actual cost of claims administration is less than the amount approved by the Court,
10 the remaining amount shall be added to the Net Settlement Amount and distributed as set forth in
11 Section 9.6 of this Agreement. All costs associated with claims administration as approved by the
12 Court shall come out of the Gross Settlement Amount. The Claims Administrator's actions shall
13 be governed by the terms of this Agreement.

14 10.2 **Establishment and Funding of the QSF:** The Parties agree that the QSF is
15 intended to be a "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code
16 and Treasury Regulation § 1.468B-1 (26 C.F.R. § 1.468B-1 *et seq.*) and will be administered by
17 the Claims Administrator as such. With respect to the QSF, the Claims Administrator shall: (1)
18 open and administer a settlement account in such a manner as to qualify and maintain the
19 qualification of the QSF as a "Qualified Settlement Fund" under Section 468B of the Internal
20 Revenue Code and Treasury Regulation § 1.468B-1; (2) calculate, withhold, remit and report
21 each Settlement Class Member's share of applicable payroll taxes (including, without limitation,
22 federal, state and local income tax withholding, FICA, Medicare and any state or local
23 employment taxes) and indemnify BMO for any penalty arising out of any error or incorrect
24 calculation and/or interest (if applicable) with respect to any late deposit of the same; (3) satisfy
25 all federal, state and local income and other tax reporting, return, and filing requirements with
26 respect to the QSF; and (4) satisfy out of the QSF all fees, expenses and costs incurred in
27 connection with the opening and administration of the QSF and the performance of its duties and
28 functions as described in this Agreement. The aforementioned taxes, fees, expenses, and costs

1 shall be treated as and included in the costs of administering the QSF and as Claims
2 Administration Costs. The Parties and the Claims Administrator shall treat the QSF as coming
3 into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26
4 C.F.R. § 1.468B-1(j)(2)(i), and such election statement shall be attached to the appropriate returns
5 as required by 26 C.F.R. § 1.468B-1(j)(2)(ii). The Parties agree to cooperate with the Claims
6 Administrator and one another to the extent reasonably necessary to carry out the provisions of
7 this section of the Agreement.

8 10.3 **Claims Administration:** BMO will provide for each Class Member the following
9 information drawn from records of Defendant: 1) name; 2) Social Security number; 3) last known
10 residential address; 4) last known telephone numbers; and 5) number of Work Months for which
11 the Class Member would be entitled to recover as set forth in Section 9.6 (“Class Data”) to the
12 Claims Administrator and Class Counsel. BMO will provide the Class Data to the Claims
13 Administrator and Class Counsel no later than seven (7) days (or, if that date falls on a weekend
14 or holiday, the next business day thereafter) after the date the Court enters an order granting
15 preliminary approval of the Settlement. Class Data shall be used by the Claims Administrator
16 solely for the purpose of notifying the Class Members of the Settlement. The Claims
17 Administrator shall run the Class Data list through the National Change of Address database and
18 will use the most recent address for each Class Member when mailing the Class Notice. Class
19 Data shall be provided in a format to be mutually agreed upon by the Claims Administrator and
20 Defendant.

21 10.4 **Notice to Class Members:** As soon as practicable after receiving the Class Data,
22 but no later than ten (10) business days after its receipt, the Claims Administrator shall send the
23 Notice Packet to the Class Members via United States First Class Mail. The envelope containing
24 the Notice Packet shall include language beneath the Administrator’s address which reads as
25 follows: *Important Legal Document – You May Get Money From A Class Action Settlement; Your*
26 *Prompt Reply To Correct A Bad Address Is Required.* The Notice shall specify the Court-
27 approved Notice Response Deadline by which Class Members must submit any dispute regarding
28 the payment amount, Requests for Exclusion, objections to the Settlement, or Change of Address

1 requests. The costs of mailing this Notice Packet will be considered part of the Claims
2 Administration Costs to be paid from the Gross Settlement Amount. Except as specifically set
3 forth in Subsections 10.4.1 through 10.4.3 below, the Notice Packet shall be deemed received by
4 the Class Member to whom it was sent.

5 10.4.1 In the event that subsequent to the first mailing of a Notice Packet and
6 prior to the Notice Response Deadline, that Notice Packet is returned to the Claims Administrator
7 by the United States Postal Service with a forwarding address for the recipient, the Claims
8 Administrator shall re-mail the Notice Packet to that address within five (5) business days, the
9 Notice Packet will be deemed mailed as of the date of re-mailing, the forwarding address shall be
10 deemed the Updated Address for that Class Member, and any responses from the Class Member
11 (*i.e.*, a dispute regarding calculation of Work Months, a Request for Exclusion, or an objection)
12 are due to the Claims Administrator by the Notice Response Deadline or within twenty-one (21)
13 days from the date of re-mailing, whichever is later.

14 10.4.2 In the event that subsequent to the first mailing of a Notice Packet, the
15 Notice Packet is returned to the Claims Administrator by the United States Postal Service because
16 the address of the recipient is no longer valid, but no forwarding address is provided, the Claims
17 Administrator shall perform Reasonable Address Verification Measures in an effort to ascertain
18 the current address of the particular Class Member in question. If such an address is ascertained,
19 the Claims Administrator shall re-mail the Notice Packet within five (5) business days of
20 receiving such information, the Notice Packet will be deemed mailed as of that date of re-mailing,
21 the newly obtained address shall be deemed the Updated Address for that Class Member, and any
22 responses from the Class Member (*i.e.*, a dispute regarding calculation of Work Months, a
23 Request for Exclusion, or an objection) are due to the Claims Administrator by the Notice
24 Response Deadline or within twenty-one (21) days from the date of re-mailing, whichever is later.

25 10.4.3 In the event that subsequent to the first mailing of a Notice Packet, the
26 Notice Packet is returned to the Claims Administrator by the United States Postal Service but no
27 Updated Address is obtained for that Class Member using either method specified above, the
28 Notice Packet shall be re-mailed to the Last Known Address within five (5) business days of

1 receiving such information, the Notice Packet will be deemed mailed as of that date of re-mailing,
2 and the Class Member shall have until the Notice Response Deadline or within twenty-one (21)
3 days from the date of re-mailing to submit a response, whichever is later. In either event, the
4 Notice Packet shall be deemed received when it is mailed for the second time under this
5 paragraph.

6 10.4.4 In the event that any Notice Packet is returned to the Claims Administrator
7 as undeliverable is associated with a Class Member who is currently employed by Defendant,
8 counsel for BMO will make immediate efforts to obtain a current mailing address and provide
9 such updated address to the Claims Administrator for re-mailing of the Notice Packet.

10 10.5 **Disputes Regarding Work Months:** In calculating each individual Class
11 Member's share of the settlement, Defendant's reasonably available records regarding the Work
12 Months of Class Members shall be presumed to be correct. Class Members will be provided with
13 the individualized information upon which their respective shares of the Net Settlement Amount
14 will be based. Class Members who dispute Defendant's records must submit a challenge in
15 writing to the Claims Administrator and will bear the burden of proof, *i.e.*, a Class Member who
16 fails to provide written documentation supporting a different the number of Work Months than
17 that specified in his or her Notice will have his or her dispute denied. All such disputes must be
18 submitted to the Claims Administrator by the Notice Response Deadline (as evidenced by the
19 date of the postmark of the submission). BMO will investigate the dispute and determine whether
20 any correction to the number of Work Months for the Class Member raising the dispute should be
21 made. In no case will a dispute regarding the number of Work Months result in a payment by
22 BMO in excess of the Gross Settlement Amount.

23 10.6 **Requests for Exclusion:** Class Members who wish to be excluded from the
24 Settlement must submit a written Request for Exclusion to the Claims Administrator by the
25 Notice Response Deadline (as evidenced by the date of the postmark of the submission). The
26 Request for Exclusion must be submitted on the form attached as **Exhibit B** hereto and signed by
27 the Class Member. Requests for Exclusion must be made individually and cannot be made on
28 behalf of a group or other Class Members. If a Class Member submits a Request for Exclusion

1 that fails to include all required information or that cannot be verified by the Claims
2 Administrator as being an authentic submission by the Class Member, it will be considered
3 invalid, and the Claims Administrator shall mail notification of the deficiency to the Class
4 Member within five (5) business days of receipt. The Class Member shall have until the Notice
5 Response Deadline or twenty-one (21) days from the date of the mailing of notification of the
6 deficiency (whichever is later), to cure any deficiencies, at which point his or her Request for
7 Exclusion will be rejected if not received and that Class Member will be mailed his or her share
8 of the Net Settlement Amount (according to the formulas set forth in this Agreement). In the
9 event that ten percent (10%) or more of all Class Members timely request exclusion from the
10 Class by submitting Requests for Exclusion or comparable documentation, BMO shall have the
11 absolute right in its sole discretion to revoke, terminate, and withdraw from this Agreement in its
12 entirety. If BMO exercises this option, it will be solely responsible to pay fees and costs incurred
13 by the Settlement Claims Administrator to date. Any valid Request for Exclusion will be effective
14 only as to the Class Settlement. Any Class Member who is an Aggrieved Employee will be bound
15 by the release of PAGA claims and will receive their share of the PAGA amount regardless of
16 submitting a Request for Exclusion.

17 10.7 **No Request for Exclusion by Class Representative:** The Class Representative
18 shall not request exclusion from the Settlement. The Class Representatives agree that by signing
19 this Agreement they are accepting the terms of this Settlement.

20 10.8 **Objections to Settlement:** Class Members who do not request exclusion from the
21 Class may object to the Agreement by submitting copies of their written objections to the Claims
22 Administrator (as evidenced by the date of the postmark of the submission) by the Notice
23 Response Deadline. This Notice Response Deadline applies to any objections notwithstanding
24 any argument regarding alleged non-receipt of the Notice Packet. Written objections should be
25 signed by the Class Member and should: (1) state the objecting Class Member's name, address,
26 telephone number and the last four digits of his/her Social Security number, (2) state the case
27 name and number as written in the Complaint, (3) state concisely each objection to the
28 Settlement, (4) explain the basis for each such objection, and (5) be dated. If the Class Member

1 intends to use any document(s) to support his or her objection, a copy of the document(s) should
2 be included with the written objection at the time of submission. Submitting an objection to this
3 Settlement does not affect the Class Members' right to obtain the benefits of this Settlement. The
4 Claims Administrator shall forward a copy of any written objections and/or supporting
5 documentation that it receives to both Class Counsel and Counsel for BMO within two (2)
6 business days of receipt.

7 **10.9 Anyone wishing to appear at the final approval hearing to discuss concerns or**
8 **objections to the Settlement shall be permitted to do so, whether or not they submit a**
9 **written objection.** Anyone wishing to appear at the final approval hearing to object to the
10 Settlement can, but is not required to, indicate this in his or her written objections. The Claims
11 Administrator shall forward a copy of any Objection received to both Class Counsel and Counsel
12 for BMO within two (2) business days of receipt. Class members who wish to appear at the final
13 fairness hearing may do so in person or contact Class Counsel to arrange a telephonic appearance
14 through CourtCall, at least five days before the hearing if possible. Any CourtCall fees for an
15 appearance by an objecting class member will be paid by Class Counsel.

16 **10.10** Any Class Member who fails to serve timely written objections in the manner set
17 forth herein be deemed to have waived any objections and shall be foreclosed both from making
18 any objection to the Settlement and from filing any appeal from any Final Approval Order issued
19 by the Court. Class Members who timely and validly request exclusion from the Settlement shall
20 have no right to object and shall be foreclosed from making any objection to the Settlement.

21 **XI. PAYMENT OF CLAIMS**

22 **11.1 Eligibility for Settlement Payments:** Settlement Class Members need not submit
23 a claim form to receive a Settlement Payment. As a condition of receiving any Settlement
24 Payment under this Agreement, Class Members must not request exclusion from the Class. Each
25 Settlement Class Member shall be entitled to a payment equal to the sum of their individually
26 determined Settlement Payment, as recalculated on a *pro rata* basis, in accordance with Section
27 9.6.1, based on total Work Months at issue with respect to Settlement Class Members
28 participating in the settlement following the close of the Notice Period. Class Members who have

1 submitted untimely or invalid Requests for Exclusion will still be considered part of the
2 Settlement Class, will still be bound by the Settlement and the Settlement Class Release (defined
3 in section 12.1 below), and will be entitled to receive Settlement Payments.

4 11.2 **Distribution of Settlement Payments.** After the Court grants final approval of
5 the Settlement, and the Effective Date has passed, the Claims Administrator shall prepare a final
6 list of all Settlement Class Members and Aggrieved Employees. For each Settlement Class
7 Member on this list, the Claims Administrator will calculate the amounts due to each Settlement
8 Class Member as directed in Sections 9.7 and 11.1, and provide that calculation to Class Counsel
9 and Defendant's Counsel within five (5) days after the Effective Date.

10 11.3 No later than ten (10) business days after the Effective Date has passed, BMO
11 shall pay to the Claims Administrator the Gross Settlement Amount of \$425,000.00. BMO will
12 wire the funds requested by the Claims Administrator into the QSF set up and controlled by the
13 Claims Administrator.

14 11.4 The Settlement Payments to the Settlement Class and Aggrieved Employees, and
15 the PAGA Penalty Payment to the LWDA will be paid by the Claims Administrator no later than
16 twenty (20) business days after the Effective Date.

17 11.5 Class Counsel's Attorneys' Fees and Litigation Expenses and the Enhancement
18 Payment to the Class Representative will be paid by the Claims Administrator no later than
19 twenty (20) business days after the Effective Date. Payments made shall constitute full
20 satisfaction of any claim for fees or costs. Class Representatives and Class Counsel, on behalf of
21 themselves and all Settlement Class Members, agree that they shall not seek nor be entitled to any
22 additional attorneys' fees or costs for the Released Claims, beyond what is permitted herein.
23 However, in the event of any dispute to enforce the terms of this Agreement, the prevailing party
24 shall be entitled to an award of their reasonable attorneys' fees and costs from the non-prevailing
25 party. Additionally, to the extent BOTW fails to timely pay all sums due by virtue of this
26 Agreement, Class Representatives shall be entitled to seek the immediate collection of all
27 outstanding sums owed based on the Judgment entered by the Court pursuant this Agreement,
28 which the parties agree is a Final Judgement. Class Counsel shall provide the Claims

1 Administrator with the pertinent taxpayer identification numbers and instructions on the total
2 amount of the payment for wiring and reporting purposes within five (5) days after the Effective
3 Date has passed (or, if that date falls on a weekend or holiday, the next business day thereafter).
4 Other than any reporting of this fee payment as required by this Agreement or law, which BMO
5 shall make, Class Counsel shall be responsible for the reporting and payment of any federal, state,
6 and/or local income or other form of tax on any payment that they receive pursuant to this
7 Agreement.

8 11.6 Not later than seventy-five (75) calendar days following the Effective Date (or, if
9 that date falls on a weekend or holiday, the next business day thereafter), the Claims
10 Administrator shall provide Class Counsel and Defendant's Counsel with a declaration under oath
11 to verify the mailing of Settlement Payment checks and the other distributions from the Gross
12 Settlement Amount. Any checks issued to Settlement Class Members and/or Aggrieved
13 Employees shall remain negotiable for a period of one hundred eighty (180) calendar days from
14 the date of mailing of the Settlement Payment checks. Uncashed checks will be voided.
15 Settlement Class Members and Aggrieved Employees who fail to negotiate their Settlement
16 Payment check(s) by the one hundred eight (180) day deadline shall remain subject to the terms
17 of the Settlement, the Released Claims (as applicable), and the Final Approval Order from the
18 Court. The funds associated with any Settlement Payment checks that were not timely negotiated
19 will be paid to Center for Workers' Rights pursuant to the *cy pres* doctrine within two hundred
20 (200) calendar days from the date of mailing the Settlement Payment checks. No later than two
21 hundred ten (210) calendar days from the date of mailing of the Settlement Payment checks (or, if
22 that date falls on a weekend or holiday, the next business day thereafter), the Claims
23 Administrator shall provide Class Counsel and Defendant's Counsel with a declaration as to the
24 total amount of any uncashed settlement checks and the *cy pres* payment.

25 11.7 BMO understands its legal obligation not to retaliate against the Class
26 Representative or Class Members for their participation and/or election to participate in the
27 benefits to be afforded any of them by the Settlement Payments and/or the Lawsuit.
28

1 **XII. RELEASED CLAIMS**

2 12.1 **Settlement Class Member Released Claims.** Upon the Effective Date, each of
3 the Settlement Class Members, on behalf of themselves and each of their heirs, representatives,
4 successors, assigns, and attorneys, shall be deemed to have, and by operation of the Judgment
5 shall have, fully, finally, and forever released, relinquished, and discharged the Released Parties
6 from the following claims, which pursuant to the Agreement are being released through and
7 including the dates of the Class Period: all wage and hour class claims that are or could have been
8 alleged in the Complaint related to unreimbursed business expenses associated with their
9 employment with BOTW as (1) Mortgage Banker, (2) Mortgage Banker HC NonNetwork, (3)
10 Mortgage Banker Private, and/or (4) Mortgage Banker Std NonNetwork, in California. These
11 released claims include but are not limited to: claims for Labor Code Sections 218.5, 2699, and
12 2802; violation of Wage Order No. 4, and claims related to any and all damages, penalties,
13 interest, punitive damages, liquidated damages, attorneys' fees, costs, injunctive relief,
14 declaratory relief, or accounting based on or related to the above claims (the "Settlement Class
15 Release"). The Settlement Class Release expressly excludes all unrelated claims including but
16 not limited to claims for retaliation, discrimination, unemployment insurance, disability, workers'
17 compensation, and claims outside the Class Period. The Settlement Class Release and the PAGA
18 Release (defined in section 12.2 below) shall be collectively referred to as the "Released Claims."

19 12.1.1 Consistent with the foregoing, Settlement Class Members may not sue or
20 otherwise make a claim against any of the Released Parties that is in any way related to, arises out
21 of, or is connected with any of the Released Claims set forth in this section.

22 12.2 **Aggrieved Employees' Released Claims.** Upon the Effective Date, Aggrieved
23 Employees shall release any and all PAGA claims or causes of action asserted in the Alleged
24 Claims. The Alleged Claims are all wage and hour claims that are or could have been alleged in
25 the Complaint related to unreimbursed business expenses incurred by the Aggrieved Employees,
26 including claims for violation of Labor Code sections 218.5, 2699, 2802; violation of Private
27 Attorneys General Act (PAGA) (Lab. Code § 2698, *et seq.*); and violation of Wage Order No. 4.
28 Alleged Claims also means any and all claims asserted by the Class Representatives for interest

1 and attorneys' fees and costs incurred in this Litigation (collectively, the "PAGA Release").

2 12.3 All Aggrieved Employees, including those who are also Class Members but who
3 otherwise have opted out of the Settlement, shall be bound by the release described in Section
4 12.2.

5 12.4 **Class Representatives Released Claims**: Upon the Effective Date, Class
6 Representatives, on behalf of themselves and their heirs, representatives, successors, assigns, and
7 attorneys, shall be deemed to have, and by operation of the Judgment shall have, fully, finally,
8 and forever released, finally, and forever released, relinquished, and discharged the Released
9 Parties from the following claims, which pursuant to the Agreement are being released through
10 and including the dates of the Class Period: all wage and hour class claims that are or could have
11 been alleged in the Complaint related to unreimbursed business expenses associated with their
12 employment with BOTW as (1) Mortgage Banker, (2) Mortgage Banker HC NonNetwork, (3)
13 Mortgage Banker Private, and/or (4) Mortgage Banker Std NonNetwork, in California. These
14 released claims include but are not limited to: claims for Labor Code Sections 218.5, 2699, and
15 2802; violation of Private Attorneys General Act (PAGA) (Lab. Code § 2698, et seq.); violation of
16 Wage Order No. 4, and claims related to any and all damages, penalties, interest, punitive
17 damages, liquidated damages, attorneys' fees, costs, injunctive relief, declaratory relief, or
18 accounting based on or related to the above claims (the "Class Representatives Released
19 Claims"). The Class Representatives Released Claims expressly exclude all unrelated claims
20 including but not limited to claims for retaliation, discrimination, unemployment insurance,
21 disability, workers' compensation, and claims outside the Class Period.

22 12.4.1 With regard to the Class Representatives Released Claims, the Class
23 Representatives do not provide a general release.

24 12.4.2 The Class Representatives may hereafter discover facts in addition to or
25 different from those which they now know or believe to be true with respect to the subject matter
26 of the Class Representatives Released Claims, but she shall be deemed to have, and by operation
27 of the Judgment shall have, fully, finally, and forever settled and released any and all Class
28 Representatives Released Claims, known or unknown, suspected or unsuspected, contingent or

1 non-contingent, whether or not concealed or hidden, which then exist, or heretofore have existed
2 upon any theory of law or equity now existing or coming into existence in the future, including,
3 but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of
4 any duty, law or rule, without regard to the subsequent discovery or existence of such different or
5 additional facts.

6 **XIII. MOTIONS FOR COURT APPROVAL**

7 13.1 **Motion for Preliminary Approval:** Class Counsel will file a motion for
8 preliminary approval within 60 days of the filing of the Complaint. Class Counsel shall endeavor
9 to provide to BMO for review and comment at least five (5) business days before the filing of the
10 motion. Class Counsel shall file, if required by the Court: (i) this Agreement and its Exhibits, (ii)
11 a noticed motion seeking the Court's preliminary approval of this Settlement, (iii) a proposed
12 order granting such preliminary approval and setting hearing for final approval, and (iv) any other
13 document consistent with the Settlement and reasonably necessary to obtain the Court's
14 preliminary approval of the Settlement.

15 13.2 **Motion for Final Approval:** The Parties shall request that the motion for final
16 approval be set for hearing a reasonable period of time after the Notice Response Deadline, as the
17 Court's calendar will allow. Class Counsel shall prepare the motion for final approval of the
18 Settlement according to the timeline the Court directs, and shall provide to BMO for review and
19 comment a draft motion for final approval at least five (5) business days before the filing of the
20 motion. Sufficiently in advance of the final approval hearing to meet the statutory notice
21 requirements, Class Representatives shall file with the Court: (i) a noticed motion for final
22 approval which shall include Class Counsel's motion for Attorneys' Fees, Litigation Expenses,
23 and Enhancement Payments, (ii) a proposed order granting final approval and entering Judgment
24 thereon, and (iii) any other documents consistent with the Settlement and reasonably necessary to
25 obtain the Court's final approval of the Settlement and entry of Judgment. The Parties will ask
26 the Court to maintain jurisdiction of this matter for the purpose of monitoring compliance with
27 and performance under this Agreement and any and all orders and judgments, including the
28 Judgment, entered by the Court.

1 **XIV. RIGHT TO REVOKE**

2 14.1 **Defendant's Right to Revoke:** BMO has the right in its sole and exclusive
3 discretion to terminate this Agreement and withdraw from the Settlement at any time prior to date
4 the Court enters the Final Approval Order on this Settlement if: (a) the Settlement is construed in
5 such a fashion that BMO is required to pay more than the Gross Settlement Amount unless
6 otherwise permitted herein; or (b) the Court does not grant preliminary approval of the
7 Settlement; or (d) 10% or more of all Class Members timely and validly request exclusion from
8 the Settlement. In the event that BMO exercises its right to revoke, BMO shall be responsible for
9 all settlement administration costs incurred.

10 14.2 **Escalator Clause:** During negotiations BMO estimated that the settlement class
11 consisted of approximately 186 employees who worked approximately 4,385 Work Months. If
12 the actual number of Work Months exceeds this estimate by five percent (5%) or more then the
13 Gross Settlement Amount shall increase by the same percentage in excess of 5% (i.e., a 6%
14 increase shall require an additional 1% added to the Gross Settlement Amount).

15 14.3 **Termination of Settlement Agreement:** If the conditions of the Settlement set
16 forth in this Agreement are not satisfied, or if BMO or Class Representatives terminate and
17 withdraws from the Agreement pursuant to Sections 14.1 or 14.2 above, or if the Court does not
18 enter the Final Approval Order as provided for in this Agreement, or if appellate review is sought
19 and on such review the Court's Final Approval Order is materially modified or reversed, or if one
20 or more of the material terms of the Settlement is not approved or the Settlement with respect to
21 one or more such material terms is materially modified or reversed, then this Settlement shall be
22 canceled, terminated, and shall have no force or effect, and any class certified for settlement
23 purposes will be vacated. In such an event, neither the Agreement, nor the settlement documents,
24 nor the negotiations leading to the Settlement may be used as evidence for any purpose, and BMO
25 shall retain the right to challenge all claims and allegations in the Lawsuit, to assert all applicable
26 defenses, and to dispute the propriety of class certification on all applicable grounds. If the
27 Effective Date does not occur (due to failure of the Court to grant final approval or otherwise), or
28 if this Settlement is terminated, revoked, or canceled pursuant to its terms, the Parties to this

1 Settlement shall be deemed to have reverted to their respective status as of the date immediately
2 prior to the execution of this Settlement. Notwithstanding this provision, the Parties hereby
3 stipulate that the terms of Section 16.12 shall survive and be admissible in evidence even if the
4 Settlement does not become final.

5 **XV. COOPERATION**

6 15.1 The Parties shall cooperate fully with one another in seeking approval of the Court
7 of this Agreement and to use their respective best efforts to consummate the Settlement and cause
8 the Final Approval Order and Judgment to be entered and to become final. The Parties therefore
9 agree to cooperate in good faith to promptly prepare, execute and finalize all Settlement-related
10 documents, seek all necessary Court approvals, and do all other things necessary to consummate
11 the Settlement. The Parties also agree to mutually seek to stay any pending or subsequently filed
12 class action lawsuits that allege any of the Released Claims set forth in Section 12 of this
13 Agreement.

14 15.2 No Party to this Agreement shall seek to evade his, her, or its good faith
15 obligations to seek approval and implementation of this Settlement by virtue of any ruling, order,
16 governmental report, or other development, whether in the Lawsuit, in any other litigation, or
17 otherwise, that hereafter might occur and might be deemed to alter the relative strengths of the
18 Parties with respect to any claims or defenses or their relative bargaining power with respect to
19 negotiating.

20 15.3 The Parties and their respective counsel of record deem this Settlement to be fair
21 and reasonable and have arrived at this Settlement after arms-length negotiations taking into
22 account all relevant factors, present and potential.

23 15.4 The Class Representative and Class Counsel agree to waive appeals of an order
24 granting final approval of this Settlement or entering Judgment in the Lawsuit as to BMO so long
25 as such order is consistent with the material terms of this Agreement.

26 15.5 Other than as necessary to implement the Settlement, neither Class Representatives
27 nor Class Counsel, nor BMO nor Defendant's Counsel, shall initiate any publicity, disclosure or
28 contact with the media, or respond to any inquiry from the media, regarding the Settlement other

1 than to confirm that this Action has settled. Any confirmation of settlement shall remain
2 confidential until Notice is mailed.

3 **XVI. MISCELLANEOUS PROVISIONS**

4 16.1 All of the Parties have been represented by counsel throughout all negotiations that
5 preceded the execution of this Agreement, and this Agreement is made with the consent and
6 advice of counsel.

7 16.2 This Agreement may not be modified or amended, except in a writing that is
8 signed by the respective counsel of record for the Parties and approved by the Court.

9 16.3 This Agreement and its Exhibits attached hereto constitute the entire agreement
10 between the Parties concerning the subject matter hereof, and supersede and replace all prior
11 negotiations, understandings, memoranda of understanding and proposed agreements, written and
12 oral, relating thereto. No extrinsic oral or written representations or terms shall modify, vary, or
13 contradict the terms of the Agreement unless made in writing, signed by duly authorized
14 representatives of all Parties, and approved in writing by a final order of the Court. No waiver of
15 any term, provision, or condition of this Agreement, whether by conduct or otherwise, in any one
16 or more instance shall be deemed to be or construed as a further or continuing waiver of any such
17 term, provision or condition.

18 16.4 This Agreement shall be subject to, governed by, construed, enforced, and
19 administered in accordance with the laws of the State of California, without giving effect to the
20 principles of conflict of laws, both in its procedural and substantive aspects, and shall be subject
21 to the continuing jurisdiction of the Court. This Agreement shall be construed as a whole
22 according to its fair meaning and intent, and not strictly for or against any party, regardless of
23 who drafted (or was principally responsible for drafting) this Agreement or any specific term or
24 condition thereof. In any construction to be made of the Agreement, the Agreement shall not be
25 construed against any party and the canon of contract interpretation set forth in California Civil
26 Code section 1654 shall not be applied.

27 16.5 The Settlement shall be binding upon and inure to the benefit of the Settling
28 Parties' respective successors, assigns, heirs, spouses, marital communities, executors,

1 administrators and legal representatives. The Agreement and Settlement are not designed to and
2 do not create any third-party beneficiaries either express or implied.

3 16.6 The Parties agree they can consult mediator David Rotman to advise on disputes
4 that may arise in connection with interpreting the terms of the Settlement. However, Mr.
5 Rotman's opinions will be non-binding on the Parties and the Parties agree only the Court shall
6 retain jurisdiction with respect to disputes that may arise in connection with interpreting the terms
7 of the Agreement, and the implementation and enforcement of the terms of the Agreement, and
8 all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and
9 enforcing the terms of the Agreement.

10 16.7 This Agreement may be executed in one or more counterparts, including via
11 electronic means, each of which shall be deemed an original and together shall constitute one and
12 the same instrument. When each of the Parties has signed at least one such counterpart, this
13 Agreement shall become effective and binding as to all of the Parties as of the day and year last
14 executed. Fax and/or electronically scanned signatures shall be deemed as effective as originals.

15 16.8 The Parties hereto represent, covenant, and warrant that they have not directly or
16 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
17 person or entity any portion of any liability, claim, demand, action, cause of action or rights
18 herein released and discharged except as set forth herein.

19 16.9 Each individual signing this Agreement warrants that he or she has the authority
20 and is expressly authorized to enter into this Agreement on behalf of the party (or parties) for
21 which that individual signs.

22 16.10 Any notices or other documents that must or may be transmitted to Class Counsel
23 and/or Defendant's Counsel, pursuant to any section of this Agreement, shall be transmitted to the
24 addresses set forth in the definitions of Class Counsel and Defendant's Counsel, respectively, set
25 forth above.

26 16.11 The Parties and all counsel acknowledge and agree that for the purposes of any
27 claims, actions, and/or proceedings arising out of this Agreement, notice provided to Class
28 Counsel shall be deemed to be notice to the Class Representatives.

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16.12 The Parties have stipulated to stay any and all deadline(s) to bring the case to trial, including pursuant to Cal. Civ. Code Section 583.320. This stay shall remain in place until such time as the Settlement is either approved or nullified, as set forth herein.

[signatures on following page]

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IN WITNESS WHEREOF, each of the undersigned has agreed to and accepted the foregoing terms and conditions by executing this Agreement as of the date indicated below.

APPROVED AND AGREED:

Dated: 07/05/2023

By: Jose Gonzalez

Jose Gonzalez
Class Representative

Dated: _____

By: _____

David Lu
Class Representative

Dated: _____

By: _____

Requiba Herndon
Class Representative

Dated: _____

By: _____

David Daniel
Class Representative

Dated: _____

By: _____

Martin Bermudez
Class Representative

Dated: _____

BMO HARRIS BANK N.A. as successor in interest
to BANK OF THE WEST

By: _____

Angela Perez, Executive Vice President,
Head of Employee Relations
Defendant Bank of the West

1 IN WITNESS WHEREOF, each of the undersigned has agreed to and accepted the
2 foregoing terms and conditions by executing this Agreement as of the date indicated below.

3 **APPROVED AND AGREED:**

4
5 Dated: _____

By: _____

6 Jose Gonzalez
7 Class Representative

8 Dated: 07/05/2023 _____

By: David Lu _____

9 David Lu
10 Class Representative

11 Dated: _____

By: _____

12 Requiba Herndon
13 Class Representative

14 Dated: _____

By: _____

15 David Daniel
16 Class Representative

17 Dated: _____

By: _____

18 Martin Bermudez
19 Class Representative

20 Dated: _____

21 BMO HARRIS BANK N.A. as successor in interest
22 to BANK OF THE WEST

23 By: _____

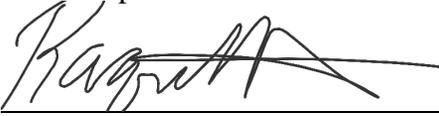
24 Angela Perez, Executive Vice President,
25 Head of Employee Relations
26 Defendant Bank of the West
27
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3 **APPROVED AND AGREED:**

4
5 Dated: _____ By: _____
6 Jose Gonzalez
7 Class Representative

8 Dated: _____ By: _____
9 David Lu
10 Class Representative

11 Dated: 07/07/2023 By: 
12 Requiaba Herndon
13 Class Representative

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15 Dated: _____ By: _____
16 David Daniel
17 Class Representative

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19 Dated: _____ By: _____
20 Martin Bermudez
21 Class Representative

22
23 Dated: _____ BMO HARRIS BANK N.A. as successor in interest
24 to BANK OF THE WEST
25
26 By: _____
27 Angela Perez, Executive Vice President,
28 Head of Employee Relations
Defendant Bank of the West

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5 Dated: _____ By: _____

6 Jose Gonzalez
7 Class Representative

8 Dated: _____ By: _____

9 David Lu
10 Class Representative

11 Dated: _____ By: _____

12 Requiba Herndon
13 Class Representative

14
15 Dated: 07/05/2023 _____



16 By: _____

17 David Daniel
18 Class Representative

19 Dated: _____ By: _____

20 Martin Bermudez
21 Class Representative

22
23 Dated: _____

24 BMO HARRIS BANK N.A. as successor in interest
25 to BANK OF THE WEST

26 By: _____

27 Angela Perez, Executive Vice President,
28 Head of Employee Relations
Defendant Bank of the West

1 IN WITNESS WHEREOF, each of the undersigned has agreed to and accepted the
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3 **APPROVED AND AGREED:**

4
5 Dated: _____ By: _____

6 Jose Gonzalez
7 Class Representative

8 Dated: _____ By: _____

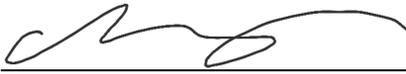
9 David Lu
10 Class Representative

11 Dated: _____ By: _____

12 Requila Herndon
13 Class Representative

14
15 Dated: _____ By: _____

16 David Daniel
17 Class Representative

18
19 Dated: 07/05/2023 By: 

20 Martin Bermudez
21 Class Representative

22
23 Dated: _____ BMO HARRIS BANK N.A. as successor in interest
24 to BANK OF THE WEST

25
26 By: _____

27 Angela Perez, Executive Vice President,
28 Head of Employee Relations
Defendant Bank of the West

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IN WITNESS WHEREOF, each of the undersigned has agreed to and accepted the foregoing terms and conditions by executing this Agreement as of the date indicated below.

APPROVED AND AGREED:

Dated: _____ By: _____

Jose Gonzalez
Class Representative

Dated: _____ By: _____

David Lu
Class Representative

Dated: _____ By: _____

Requiba Herndon
Class Representative

Dated: _____ By: _____

David Daniel
Class Representative

Dated: _____ By: _____

Martin Bermudez
Class Representative

Dated: 6/30/2023

BMO HARRIS BANK N.A. as successor in interest
to BANK OF THE WEST

By: Angie Perez

Angela Perez, Executive Vice President,
Head of Employee Relations
Defendant Bank of the West

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APPROVED AS TO FORM:

OUTTEN & GOLDEN LLP

Dated: 7/7/2023



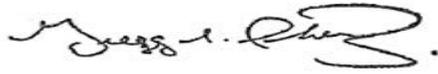
By: _____

JUSTIN SWARTZ

Attorneys for Class Representatives Jose Gonzalez,
David Lu, Requiba Herndon, David Daniel, Martin
Bermudez and the Proposed Class

SHAVITZ LAW GROUP, LLP

Dated: 07/07/2023



By: _____

GREGG SHAVITZ

Attorneys for Class Representatives Jose Gonzalez,
David Lu, Requiba Herndon, David Daniel, Martin
Bermudez and the Proposed Class

Dated: 07/07/2023



By: _____

PAOLO MEIRELES

Attorneys for Class Representatives Jose Gonzalez,
David Lu, Requiba Herndon, David Daniel, Martin
Bermudez and the Proposed Class

Dated: 6/30/2023

ORRICK HERRINGTON & SUTCLIFFE LLP

By: Andrew Livingston

ANDREW R. LIVINGSTON

Attorneys for Defendant BANK OF THE WEST

Exhibit A

This notice is being sent pursuant to court order. This is not a solicitation from a lawyer.

CALIFORNIA NOTICE OF PENDING CLASS ACTION SETTLEMENT

Gonzalez, et al. v. Bank of the West

[California court, Case No. _____]

If you were employed by Bank of the West as a non-exempt classified Mortgage Banker, Mortgage Banker HC NonNetwork, Mortgage Banker Private, and/or Mortgage Banker Std NonNetwork (“Covered Position”) in California at any time from March 24, 2018 through January 27, 2023, you could be a Class Member and receive a payment from a proposed class action settlement.

You are not being sued. Read this notice carefully, as your legal rights could be affected whether you act or not.

The Superior Court of California for the County of Sacramento (the “Court”) has preliminarily approved a class action settlement that may affect your legal rights. The proposed settlement resolves a class action lawsuit filed by Jose Gonzalez, David Lu, Requiha Herndon-Allen, David Daniel, and Martin Bermudez (collectively, “Plaintiffs”) against Bank of the West (“BOTW”) - *Gonzalez, et al. v. Bank of the West*, Sup. Ct. Sacramento Co., Case No. [_____] (the “Lawsuit”).

- This Lawsuit is based on various allegations pursuant to California law, including but not limited to, Plaintiffs’ claims that BOTW failed to reimburse Class Members for necessary business expenses. The lawsuit also asserts violations of the California Private Attorneys General Act of 2004 (“PAGA”). Depending on your dates of employment, you may qualify for recovery under those claims as part of this settlement to the extent the Court grants final approval of this settlement.
- The settlement provides cash payments to Class Members who worked for BOTW in California in a Covered Position at any time from March 24, 2018 through January 27, 2023 (the “Class Period”), based on the number of months each Class Member worked during the Class Period. As an individual eligible to participate in the settlement, to the extent the Court grants final approval of the settlement, you are estimated to receive a gross settlement payment related to the class claims of approximately \$ ____.
- To the extent the Court grants final approval of the settlement, the settlement also provides for additional cash payments to Class Members who worked for BOTW in California at any time from March 24, 2021 through January 27, 2023 (the “PAGA Period”), based on the number of months each eligible Class Member worked during the PAGA Period.
- BMO Harris Bank N.A. as successor in interest to Bank of the West (“BMO”) denies Plaintiffs’ contentions and maintains it has fully complied with the law. By entering into this settlement, BMO in no way admits any violation of law or any liability whatsoever to Plaintiffs or Class Members, individually or collectively, and expressly denies all such liability.
- Plaintiffs and BMO have reached this settlement in light of all known facts and circumstances—including the risks of significant delay and uncertainty associated with litigation, various defenses asserted by BMO, and numerous potential appellate issues—with the assistance of an experienced mediator knowledgeable of both the wage and hour laws and class, collective, and representative claims at issue.

THIS NOTICE IS NOT TO BE UNDERSTOOD OR VIEWED AS AN EXPRESSION OF ANY OPINION FROM THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS ASSERTED BY PLAINTIFFS OR DEFENSES ASSERTED BY BMO.

CALIFORNIA NOTICE OF PENDING CLASS ACTION SETTLEMENT
Questions? Please contact the Settlement Administrator at (XXX) XXX-XXXX

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	You do not have to do anything in response to this notice. If you do nothing, you will remain eligible to automatically receive a Settlement Payment if the Court grants final approval of the settlement and be bound by the release provisions in the Settlement Agreement.
OPT OUT	You may opt out of the settlement by submitting a request for exclusion in the manner discussed below. If you opt out, you may not object to the settlement, you shall not receive a Settlement Payment, and you shall not be bound by the release provisions in the Settlement Agreement. However, regardless if you choose to opt out, to the extent the Court grants final approval of the settlement and you worked within the PAGA Period identified above, you will still be sent a settlement check associated with those claims, as more fully described herein.
OBJECT	You may object to the settlement by submitting a written objection. If the Court grants final approval of the settlement despite your objection, you still will remain eligible to automatically receive a Settlement Payment if the Court grants final approval of the settlement and be bound by the release provisions in the Settlement Agreement. However, you can only file an objection if you do not opt out of the settlement.

1. Why Did I Receive This Notice?

You are receiving this California Notice of Pending Class Action Settlement (“California Notice”) because BMO’s records show that you are a person who is or was employed by BOTW in a Covered Position in California at any time since March 24, 2018 through January 27, 2023 (“Class Member”). As a Class Member, you may be entitled to share in the funds to be made available for settlement of the Lawsuit.

Because the settlement preliminarily approved by the Court would affect Class Members’ legal rights, the Court ordered that this California Notice be sent to you. This California Notice provides a brief description of the Lawsuit, informs you of the settlement terms preliminarily approved by the Court, and advises you of your legal rights with respect to the settlement. If finally approved by the Court, the settlement will fully resolve the Lawsuit and your legal rights may be affected by the settlement.

The terms of the settlement are set forth in detail in the Class Action and PAGA Settlement Agreement (“Settlement Agreement”). You may obtain a copy of the Settlement Agreement from the neutral third-party appointed by the Court to administer the settlement (the “Settlement Administrator”). Details about how to get additional information about the Settlement Agreement are provided at the end of this California Notice.

2. What Is the Lawsuit About?

On [date of lawsuit], 2023, Plaintiff, on behalf of himself and all others similarly situated, filed the initial complaint in this Lawsuit in the Superior Court of California for the County of Sacramento. The operative complaint alleges the following claims under California and federal law: (1) failure to reimburse for necessary business expenses and (2) violations under the PAGA.

BMO denied and continues to deny (i) all of the allegations made by Plaintiffs, (ii) that it violated any applicable laws, (iii) that it is liable or owes damages, penalties, or other compensation or remedies to anyone with respect to the alleged facts or claims asserted in the Lawsuit, and (iv) that class certification or representative treatment of the Lawsuit or any of Plaintiffs’ alleged claims is proper. Nonetheless, without admitting or conceding any liability or wrongdoing whatsoever and without admitting or conceding that class certification or representative treatment is appropriate for any purpose other than settlement purposes alone, BMO has agreed to settle the Lawsuit on the terms and conditions set forth in this Settlement Agreement, to avoid the burden, expense, and uncertainty of continuing the Lawsuit.

CALIFORNIA NOTICE OF PENDING CLASS ACTION SETTLEMENT
 Questions? Please contact the Settlement Administrator at (XXX) XXX-XXXX

The Court has preliminary approved Plaintiffs' counsel Justin M. Swartz and Kaelyn Mahar of Outten & Golden LLP, and Camar R. Jones of Shavitz Law Group, P.A., as Class Counsel. Based on their investigation and evaluation, Class Counsel is of the opinion that the terms set forth in the Settlement Agreement are fair, reasonable, adequate, and in the best interests of Class Members.

3. What Are the Payments Under the Settlement?

a. Overall Summary of Settlement Payments

BMO agrees to pay a maximum potential settlement amount of **Four Hundred Twenty Five Thousand Dollars and Zero Cents** (\$425,000.00) (the "Gross Settlement Amount"). The \$425,000.00 Gross Settlement Amount is inclusive of (i) any award by the Court to Class Counsel for attorneys' fees and costs associated with the litigation ("Attorneys' Fees and Litigation Expenses"), (ii) any award by the Court to Plaintiffs in recognition of their efforts and work in prosecuting the Lawsuit and specifically in exchange for their general release of claims ("Enhancement Payments"), (iii) any costs of settlement administration, AB Data Ltd. approved by the Court for administering the settlement ("Claims Administration Costs"), and (iv) the PAGA Penalty Payment in the amount of \$9,000.00, of which \$6,750.00 will be paid to the Labor & Workforce Development Agency (the "LWDA Payment") and of which \$2,250.00 will be distributed to PAGA Aggrieved Employees ("PAGA Settlement Fund").

The remaining portion of the Gross Settlement Amount available for distribution to Class Members is the "Net Settlement Amount," to be allocated based on the number of months each individual worked in a Covered Position during the Class Period, on a pro-rata basis. Likewise, all non-exempt employees who worked in a Covered Position in California during the PAGA Period ("Aggrieved Employees") will receive a pro rata portion of the PAGA Settlement Fund based on the number of months each individual worked during the PAGA Period. Partial months will be counted as full months.

b. Individual Settlement Payments

Each Class Member who does not timely and properly opt out of the Settlement ("Settlement Class Members") will be entitled to receive a portion of the Net Settlement Amount based on the Settlement Formula above ("Settlement Payments"). The Claim Administrator will calculate Settlement Payments for all Settlement Class Members.

1. Applicable Tax Withholding and Responsibility for Taxes

Each Class Member's Settlement Payment from the Net Settlement Amount will be characterized as 100% 1099 income. The Claims Administrator shall issue any necessary IRS Form 1099 to Settlement Class Members for their respective Settlement Payments. Settlement Class Members shall be solely and legally responsible for paying all other applicable taxes on their respective Settlement Payments.

2. Undeliverable or Uncashed Checks

Any settlement check returned to the Claims Administrator as undeliverable shall be remailed. Settlement checks left uncashed 180 calendar after the initial distribution will be paid to Center for Workers' Rights as the *cy pres* recipient.

c. Attorneys' Fees and Litigation Expenses

You do not need to pay individually any portion of Class Counsel's attorneys' fees and litigation expenses. Any payments for those attorneys' fees and expenses will be deducted from the Gross Settlement Amount. Class Counsel intends to request that the Court approve an Attorneys' Fees award in the amount of up to one-third of the Settlement Amount (or \$141,666.66) ("Attorneys' Fee") and litigation expenses in the amount of up to \$15,401.88 ("Litigation Expenses").

The Court's approval of an Attorneys' Fees and Litigation Expenses is not a material term of the settlement.

d. Class Representative Enhancement Payments

Class Counsel intends to request that the Court approve an Enhancement Payments for the five Plaintiffs in the total amount of up to \$5,000. Plaintiff's Enhancement Payment is in addition to Plaintiff's Individual Settlement Payment.

The Court's approval of Plaintiff's Enhancement Payment is not a material term of the settlement.

e. Claims Administration Costs

Class Counsel intends to request that the Court approve Claims Administration Costs of up to \$25,000.00, payable to the Claims Administrator for administering the settlement, including, but not limited to, printing, distributing, or tracking Class Notices, providing any required tax forms, processing any required tax payments or reporting, and calculating and distributing Settlement Payments. Any amount of Claims Administration Costs requested by Class Counsel but unapproved by the Court shall be allocated to the Net Settlement Fund.

f. LWDA Payment

Class Counsel intends to request that the Court allocate \$9,000.00 to PAGA penalties and approve an LWDA Payment of \$6,750.00 (or 75% of the PAGA penalties) to the State of California Labor and Workforce Development Agency. Any amount of the LWDA Payment requested by Plaintiffs but not approved by the Court shall be allocated to the Net Settlement Fund.

g. All Payments Subject to Court Approval

All of the payments listed above will be made if and only if the Court grants final approval of the settlement and concludes it is reasonable, fair, and adequate for the Class. The Court may adjust the amounts of certain payments.

4. What Do I Release Under the Settlement?

In exchange for your Settlement Payments, you and each of your heirs, representatives, successors, assigns, and attorneys, will release certain claims against BMO and its respective past and present parents, subsidiaries, affiliated companies and corporations, and each and all of their respective past and present directors, officers, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint venturers, assigns, or related entities, and each and all of their respective executors, successors, assigns and legal representatives (collectively, "Released Parties").

Your release will include any and all wage and hour class claims that are or could have been alleged in the Complaint related to unreimbursed business expenses associated with their employment with BOTW as (1) Mortgage Banker, (2) Mortgage Banker HC NonNetwork, (3) Mortgage Banker Private, and/or (4) Mortgage Banker Std NonNetwork, in California. These released claims include but are not limited to: claims for Labor Code Sections 218.5, 2699, and 2802; violation of Wage Order No. 4, and claims related to any and all damages, penalties, interest, punitive damages, liquidated damages, attorneys' fees, costs, injunctive relief, declaratory relief, or accounting based on or related to the above claims ("Settlement Class Release").

Should the Court grant final approval of the settlement and you worked in a Covered Position in California during the PAGA Period, you will receive a check associated with the PAGA claims being resolved and you will release all claims under PAGA alleged in the operative complaint or claims that could have been alleged based on the facts therein, arising during the PAGA Period. This includes, all wage and hour claims that are or could have been alleged in the Complaint related to unreimbursed business expenses incurred by the Aggrieved Employees, including claims for violation of Labor Code sections 218.5, 2699, 2802; violation of Private Attorneys General Act (PAGA) (Lab. Code § 2698, *et seq.*); and violation of Wage Order No. 4. Alleged Claims also means any and all claims asserted by the Class Representatives for interest and attorneys' fees and costs incurred in this Litigation ("PAGA Release").

5. How Do I Object to the Settlement?

If you want to participate in the settlement as a Class Member, you do not have to do anything and do not have to appear at the final approval hearing before the Court. You will receive your Settlement Payment automatically if the Court grants final approval of the settlement.

However, if you want to object to the settlement, you must take the steps below. Failure to do so will be deemed a waiver of any objections, and you will not be permitted to appear at the final approval hearing before the Court:

- (1) You must mail a written statement to the Claims Administrator listed below.
- (2) The written statement MUST include: your name, address, telephone number, last four digits of your Social Security number, the basis for your objection, the case name and number, and the date of your submission.
- (3) If you intend to use any document(s) to support the objection, you must include a copy of the document(s) with your submission.
- (4) If you object, you may but are not required to appear at the final approval hearing either in person or through counsel, paid for at your own expense.
- (5) The written statement must be postmarked by [45 calendar days after the initial mailing of Class Notice].

If you fail to make an objection in the manner specified above, you shall be deemed to have waived any objections and shall be foreclosed from making any objection, whether by appeal or otherwise, to this settlement. The Claims Administrator will send a copy of your objection to all Parties involved in the Lawsuit who will file all objections with the Court within 10 calendar days after the above postmark deadline to submit objections.

If you submit an objection, you will remain bound by the settlement if finally approved. If you do not want to be bound by the settlement if finally approved, you must opt out of the settlement. However, you may not assert an objection if you opt out of the settlement.

6. How Do I Opt Out of the Settlement?

If you do not want to participate in the settlement, you may opt out of the settlement. If you opt out of the settlement, you may not object to the settlement, shall not receive any Settlement Payments, and shall not be bound by the release provisions in the Settlement Agreement. However, notwithstanding your decision to opt out, if the Court grants final approval of the settlement and you otherwise qualify to participate in the settlement as it pertains to the PAGA claims, you will still receive a settlement check in the mail associated with those claims, and you may not opt out of an approved PAGA settlement.

In order to opt out, you must take the steps below. Failure to do so will be deemed a waiver of your request to opt out of the settlement, and you will be bound by the Released Class Claims:

- (1) You must mail the enclosed Request for Exclusion to the Settlement Administrator listed below.
- (2) The Request for Exclusion MUST include: your name, address, telephone number, the last four digits of your Social Security number, and the case name and number.
- (3) The written statement must be postmarked by [45 calendar days after the initial mailing of Class Notice].

Any request for exclusion that does not include all required information or that is not submitted on a timely basis will be deemed null, void, and ineffective. A request for exclusion shall be deemed to be submitted as of the postmarked date. If you submit both a request for exclusion and an objection, your objection will be deemed invalid and your request for exclusion will be granted.

If you validly request to be excluded from the Settlement, you will not be able to participate in the settlement and you will not receive an Individual Settlement Payment for the release of the Released Class Claims.

Notwithstanding, should the Court grant final approval of the settlement and you worked in a Covered Position in California during the PAGA Period, you will still receive a settlement payment associated with the resolution of the PAGA claims in this lawsuit and you will be bound by the PAGA Release.

7. Where Can I Get Additional Information?

This notice summarizes the Lawsuit, settlement, and related matters. For more information, you may contact the Claims Administrator or Class Counsel:

Claims Administrator:

[XXXXXXXX]

Class Counsel:

OUTTEN & GOLDEN LLP

Justin M. Swartz
Kaelyn Mahar
685 Third Avenue, 25th Floor
New York, NY 10017
Telephone: (866) 771-9657

SHAVITZ LAW GROUP, P.A.

Camar R. Jones
951 Yamato Road, Suite 285
Boca Raton, FL 3341
Telephone: (561) 447-8888
info@shavitzlaw.com

You also may view the Settlement Agreement, complaint, and other documents from the Lawsuit by using ["PACER" at the Court's website (<http://www.cacd.uscourts.gov/home>)] or in the Court Clerk's office during normal working hours.

PLEASE DO NOT CALL THE COURT FOR INFORMATION REGARDING THE SETTLEMENT

Exhibit B

REQUEST FOR EXCLUSION

Gonzalez, et al. v. Bank of the West

[California court, Case No. _____]

I _____, hereby request to be excluded from the settlement in the lawsuit *Gonzalez, et al. v. Bank of the West*, Case No. [_____].
[type name]

[Signature]

[Address]

[City/State/Zip]

[Telephone Number]

[Last Four Digits of Social Security Number]

***Note, to be accepted, this Request for Exclusion must be fully completed and mailed to the Claims Administrator at Section 7 of the Notice of Pending Class Action Settlement to which this Form is attached, postmarked by no later than [45 calendar days after the initial mailing of Class Notice].**

Exhibit C

CHANGE OF ADDRESS

Gonzalez, et al. v. Bank of the West

[California court, Case No. _____]

I _____, in connection with the above referenced matter, submit the below, updated contact information.

[Signature]

[Address]

[City/State/Zip]

[Telephone Number]

[Last Four Digits of Social Security Number]