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Susana Gomez Rivas

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ALAMEDA**

SUSANA GOMEZ RIVAS, an individual on  
behalf of themselves and all others similarly  
situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.; and DOES 1  
through 10, inclusive,

Defendant.

Case No. HG21110153

**JOINT STIPULATION OF CLASS  
ACTION SETTLEMENT AND  
RELEASE**

Complaint Filed: July 29, 2021  
Judge: Hon. Evelio Grillo  
Dept.: 21

**I.  
PREAMBLE**

1           1.       This Class Settlement Agreement (“Settlement” or “Agreement”) is entered  
2  
3 into between Plaintiff Susana Gomez Rivas (“Rivas” or “Named Plaintiff”), individually  
4 and as class representative on behalf of all individuals defined in Section III of this  
5 Agreement (collectively, with Named Plaintiff, the “Settling Class”), on the one hand, and  
6 Defendant Bank of America, National Association (“Defendant” or “BofA”), on the other  
7 hand. The Settling Class and BofA are referred to collectively herein as the “Settling  
8 Parties.”  
9

10           2.       Rivas, who has been employed by Bank of America, National Association at  
11 various relevant times as a Mortgage Loan Specialist, Mortgage Loan Officer, Financial  
12 Center Lending Officer, and Credit Solutions Advisor, filed a Class Action Complaint  
13 commencing the above-captioned action in the Superior Court of the State of California  
14 for the County of Alameda on July 29, 2021, where it was assigned case number  
15 HG21110153 (the “Lawsuit”). BofA filed an Answer denying all allegations in the  
16 Lawsuit on October 7, 2021.

17           3.       The Lawsuit seeks to assert claims on behalf of a putative class, which is plead  
18 to consist of “All current or former employees of Defendant who worked in California in  
19 any capacity who incurred business expenses as a result of their performance of duties for  
20 Defendant while working from home at any time during the statutory period covered by this  
21 Complaint to the present.” (Compl. ¶ 10.) The Lawsuit generally alleges that BofA failed  
22 to reimburse business expenses incurred by Named Plaintiff and putative class members,  
23 including “expenses incurred while employees worked from home during coronavirus  
24 pandemic, among other times,” (Compl. ¶ 8), thereby violating Labor Code § 2802, and that  
25 BofA engaged in unfair competition pursuant to Business & Professions Code §§ 17200 *et*  
26 *seq.* (the “UCL”). The Lawsuit seeks compensatory damages (reimbursement of business  
27 expenses); restitutionary disgorgement; an injunction; statutory penalties; an accounting of  
28 Defendant’s records for the liability period; general, special, and consequential damages;

1 prejudgment interest, reasonable attorneys' fees and costs, and such other relief as the Court  
2 may award.

3 4. BofA believes that the Lawsuit's claims and allegations are meritless and  
4 contends that at all times it has complied with relevant California law to the extent that said  
5 law applies to the Settling Class. More specifically, BofA has maintained that it provided  
6 a certain level of reimbursement to all employees working in California without requiring  
7 any documentation of expenditure, and offered additional reimbursement for requests  
8 supported by documentation.

9 5. On August 29, 2022, the Settling Parties remotely attended a full day  
10 mediation before private mediator Jill R. Sperber of Judicate West, a highly regarded  
11 mediator who is intensely familiar with employment class actions lawsuits. The mediation  
12 was not successful. However, after conducting additional discovery, the Settling Parties  
13 agreed to a second day of mediation, which was held remotely on July 11, 2023, and  
14 resulted in a settlement in principle.

15 6. Over the course of the Lawsuit, the Settling Parties have engaged in  
16 significant discussion of the validity of the legal claims at issue and have exchanged  
17 extensive documents and information that have allowed the Settling Parties to fully assess  
18 the value of the claims involved. The Settling Parties have agreed to avoid further litigation  
19 and to settle and resolve the Lawsuit, as well as all existing and potential disputes, actions,  
20 lawsuits, charges, and claims that are or could have been raised in the Lawsuit, that the  
21 Settling Class has or may have against BofA, to the fullest extent permitted by law and  
22 without any admission of liability or wrongdoing by either party. The Named Plaintiff and  
23 her counsel have concluded that the Settlement is fair, reasonable, and in the best interests  
24 of the Settling Class and respectfully request that the Settlement be approved by the Court.

25 7. This Agreement shall become effective upon the "Effective Date," as set  
26 forth in Section VII below. The Settling Parties hereby agree to engage in all procedures  
27 reasonably necessary and appropriate to obtain final Court approval of this Agreement, in  
28 consideration for: (a) the payment by BofA of the consideration described herein, subject

1 to the terms, conditions, and limitations of this Agreement; and (b) the release and  
2 dismissal with prejudice of the Lawsuit and all claims by the Named Plaintiff and Settling  
3 Class Members, as described in Paragraphs 31, 53, 54, 55, and 56 of this Agreement.

4 **II.**  
5 **PAYMENTS TO THE SETTLING CLASS, CLASS COUNSEL, NAMED**  
6 **PLAINTIFF, AND THE CLAIMS ADMINISTRATOR**

7 8. Subject to Court approval, and the provisions of this Agreement, BofA shall  
8 pay an aggregate total of four million, two hundred fifty thousand United States dollars and  
9 zero cents (\$4,250,000.00) (the “Gross Settlement Value” or “GSV”) in consideration for  
10 the settlement and dismissal with prejudice of the Lawsuit and the related release of all  
11 claims the Named Plaintiff and the Settling Class Members may have against the BofA  
12 Releasees, as contained in Paragraphs 31, 53, 54, 55, and 56 of this Agreement.

13 9. BofA shall deposit the full GSV in a non-interest bearing account to be  
14 established by the Claims Administrator (as defined in Paragraph 14) no later than fifteen  
15 (15) business days after receipt of notice of preliminary approval of the Settlement,  
16 provided, however, that the Claims Administrator must provide wire information on its  
17 official letterhead and complete, current, and accurate forms SS-4, W-9, and CA Form 590  
18 promptly upon request. Should the Settlement Effective Date never be reached for any  
19 reason, the Gross Settlement Amount shall be returned to BofA. The GSV shall remain in  
20 said account, pending occurrence of the Effective Date as defined in Section VII of the  
21 Agreement. The Claims Administrator shall not disburse any portion of these funds until  
22 after the Effective Date.

23 10. The GSV is the maximum amount that BofA shall be required to pay for  
24 settlement of the Lawsuit. The GSV will cover compensation to the Settling Class,  
25 additional compensation to the Named Plaintiff as class representative, the cost of claims  
26 administration and notice, and attorneys’ fees and reimbursement of litigation costs and  
27 expenses to Class Counsel (as defined in Sections IV and IX). This is a non-reversionary  
28

1 settlement, which means that once the Agreement is final and effective, no part of the GSV  
2 shall revert to BofA.

3  
4 **III.**  
**SETTLING CLASS**

5 11. Solely for the purpose of effectuating this Settlement, and subject to Court  
6 approval, the Settling Parties hereby stipulate to the following “Settling Class” comprised  
7 of “Settling Class Members” defined as follows:

8 All current or former employees of Bank of America, National  
9 Association and/or Bank of America Corporation who worked  
10 in California in any capacity who incurred business expenses as  
11 a result of their performance of duties for Defendant while  
12 working from home at any time from July 29, 2017 through the  
13 date of Preliminary Approval of the Settlement.

14 Accordingly, the “Settling Class Period” is defined as July 29, 2017, through the date this  
15 Settlement receives Preliminary Approval.

16 12. The individuals who worked from home during the Class Period shall be  
17 identified by BofA and provided to the Claims Administrator Pursuant to Paragraph 18 of  
18 this Agreement. Persons who request exclusion from the Lawsuit pursuant to the terms of  
19 this Settlement shall not be Settling Class Members, shall not share in the distribution of  
20 the GSV, and shall not be bound by the terms of this Settlement.

21 13. The certification of the Settling Class, the Settling Parties’ settlement of the  
22 Lawsuit, and their rights and obligations hereunder are contingent upon final approval by  
23 the Court of this Agreement as to the Settling Class. The Settling Class recognizes and  
24 agrees that – in consideration of the covenants undertaken herein by BofA, including,  
25 without limitation, BofA’s agreement to pay the full amount of the GSV – this Agreement  
26 settles any and all claims, known and unknown, that the Settling Class has or may have  
27 against BofA to the extent set out herein.

28 14. Subject to Court approval, the Settling Parties agree that ILYM Group, Inc.  
will be appointed as Claims Administrator. The Claims Administrator will be responsible

1 for establishing and maintaining a non-interest bearing account for the GSV; mailing the  
2 class notices; receiving and logging adjustment forms and requests for exclusion;  
3 researching and updating addresses through skip-traces and similar means; answering  
4 questions from the Settling Class members; reporting on the status of the Settlement to the  
5 Settling Parties; preparing a declaration regarding its due diligence in the claims  
6 administration process; providing the Settling Parties with data regarding the filing of  
7 adjustment forms and requests for exclusion; calculating and distributing settlement  
8 checks; calculating tax obligations (if any); remitting any and all tax obligations (if any) to  
9 the appropriate taxing authorities; and doing such other things as the Settling Parties may  
10 direct.

11 **IV.**  
12 **APPOINTMENT OF NAMED PLAINTIFF'S COUNSEL**  
13 **AS SETTLING CLASS COUNSEL**

14 15. Class Counsel for the Settling Class shall be as follows:

15 Joshua H. Haffner  
16 Vahan Mikayelyan  
17 Haffner Law PC  
18 15260 Ventura Blvd., Suite 1520  
19 Sherman Oaks, California 91403  
20 Telephone: (213) 514-5681  
21 Facsimile: (213) 514-5682

22 **V.**  
23 **SETTLEMENT APPROVAL PROCEDURES**  
24 **AND NOTICE TO CLASS MEMBERS**

25 16. The Settling Parties' settlement of the Lawsuit, and their rights and  
26 obligations hereunder, is expressly conditioned on both the Court's preliminary and final  
27 approval of this Settlement as to the class defined in Section III of this Agreement.

28 17. At the earliest possible opportunity, Class Counsel shall file a motion  
requesting an order which, *inter alia*, grants preliminary approval of the Settlement  
Agreement, modifies the litigation class for settlement purposes only, and sets a date for the

1 settlement fairness hearing (“Final Approval Hearing”). In conjunction with this request,  
2 Class Counsel shall submit this Agreement, supporting papers, and proposed forms of all  
3 notices and other documents, in the form attached hereto, necessary to implement the  
4 Settlement Agreement. The Preliminary Approval Order shall provide for notice of the  
5 Agreement and related matters (“Settlement Class Notice”), including notice of the  
6 procedure to withdraw from the Class to be sent to the Settling Class as specified herein.  
7 The Preliminary Approval Order submitted to the Court shall be in the form attached hereto  
8 as Exhibit A, and the Settlement Class Notice shall be in the form attached hereto as  
9 Exhibit B, and as further described in Paragraph 47 of this Agreement.

10 18. Not later than fifteen (15) business days after receipt of notice of the Court’s  
11 entry of an Order of Preliminary Approval, and to the extent possible based on the presence  
12 of information in its records, BofA shall provide to the Claims Administrator, in electronic  
13 form, a spreadsheet that contains the name, social security number, dates of active  
14 employment in a class-qualifying capacity, and last known mailing address of every Settling  
15 Class Member. BofA shall meet-and-confer with the Claims Administrator regarding the  
16 format of said spreadsheet and shall cooperate to provide any additional information that  
17 the Claims Administrator may request that is reasonable and necessary for the purpose of  
18 giving Class Notice, allocating and distributing the GSV, and otherwise administering this  
19 Agreement.

20 19. Not later than ten (10) business days after receipt of the information  
21 described in Paragraph 18 of this Agreement, the Claims Administrator shall mail the  
22 Settlement Class Notice to all Settling Class Members whose address information is  
23 known. This mailing will be sent by first-class U.S. mail. Before mailing the Settlement  
24 Class Notice, the Claims Administrator shall run the Class member addresses through the  
25 U.S. Postal Service’s Change of Address Database.

26 20. The Claims Administrator shall make such further efforts as are possible and  
27 reasonable (if any), to provide the Settlement Class Notice to Settling Class Members  
28 whose original Settlement Class Notice is returned as undeliverable, provided that all such

1 efforts shall be completed by the thirtieth (30th) calendar day after the Settlement Class  
2 Notice is mailed. The Claims Administrator shall document all efforts under this Section  
3 V, and keep such documentation for a period of four (4) years from the date of the Court's  
4 final approval of the settlement.

5 21. The Claims Administrator shall set up and maintain a website to post the  
6 Notice and provide other relevant information for Class Members about the Settlement.  
7 The uniform resource locator (URL) of said website shall not contain the terms "BofA" or  
8 "Bank of America" or similar identifier.

## 9 VI.

### 10 PROCEDURE FOR OBJECTIONS AND OPT-OUTS

11  
12 22. If any Settling Class Member believes that the proposed Settlement should  
13 not be approved by the Court for any reason, the Settling Class Member may object by: (1)  
14 filing a signed written objection in which the Settling Class Member provides their name,  
15 address, and telephone number and states the basis for an objection with the Court and  
16 whether they are represented by counsel; (2) serving a copy of the objection on the Claims  
17 Administrator; and (3) sending copies of the objection to counsel for the Named Plaintiff  
18 and counsel for BofA. Settling Class Members may also object by appearing at the hearing  
19 for Final Approval.

20 23. Class members are requested to submit written objections within forty-five  
21 (45) calendar days from the date the Settlement Class Notice is first mailed. Class members  
22 will also be notified by the Settlement Class Notice that they may appear at the Court  
23 hearing scheduled for final approval of the Settlement to have objections heard by the  
24 Court. Any attorney who represents an individual objecting to the Settlement must file a  
25 Notice of Appearance with the Court and timely serve counsel for all parties. All objections  
26 or other correspondence must state the name and number of the case, which is *Susana*  
27 *Gomez Rivas v. Bank of America, National Association*, Case No. HG21110153 (Alameda  
28 Superior Court).

24. Any Settling Class Member who does not want to participate in this Settlement may “opt-out” of the Settlement by mailing a written request for exclusion to the Claims Administrator. Requests for exclusions must be post-marked no later than forty-five (45) calendar days after the Settlement Class Notice is first mailed. For a request for exclusion to be valid, it must be actually received by the Claims Administrator and contain the name and signature of the Settling Class Member.

25. If a Class member submits both a timely and valid Adjustment Form (as set out in Paragraph 46, *supra*) and a timely and valid request for exclusion, the latter-filed shall be determinative. If the two documents are filed simultaneously, and both are timely and valid, the Claims Administrator shall attempt to contact the individual and determine their intent. If this attempt is unsuccessful, the request for exclusion shall be deemed invalid and the Settling Class Members shall be bound by and have the right to receive a payment through this Settlement.

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

27. In addition to the list discussed in Paragraph 34, the Claims Administrator shall stamp the date received on the original of any request for exclusion it receives and serve copies of the request(s) for exclusion on counsel for BofA within three (3) business days after receipt thereof.

## VII.

## THE EFFECTIVE DATE

28. This Agreement shall become final and effective (the “Effective Date”) on the occurrence of all of the following events described in Paragraphs 29 through 32.

1           29.     Entry by the Court of an Order of Preliminary Approval as discussed in  
2 Paragraph 17 of this Agreement, and appointment of a Claims Administrator as described  
3 in Paragraph 14 of this Agreement.

4           30.     Class Counsel filing, at or before the Final Approval Hearing, a declaration  
5 from the Claims Administrator:

6                 (a)     Certifying that Class Notice to each Settling Class Member was sent  
7 in accordance with Sections V and XI of this Agreement and the Preliminary Approval  
8 Order;

9                 (b)     Setting out the number of Class Notices that were returned as  
10 undeliverable, and any efforts under Paragraphs 19 and 20 with regard to same; and

11                (c)     Delineating the number of putative Settling Class Members who  
12 submitted timely requests for exclusion, and providing participation metrics measured by  
13 both headcount and workweeks on a percentage and absolute numbers basis.

14           31.     Entry by the Court of an Order and Judgment Granting Final Approval and  
15 dismissing the Lawsuit with prejudice. The Settling Parties shall jointly prepare and lodge  
16 a proposed Order and Judgment to this effect in advance of the Final Approval Hearing,  
17 which shall reflect, *inter alia*: the dismissal of the Lawsuit with prejudice; that the  
18 Settlement is effective as a release of all claims alleged in the Lawsuit as to all individuals  
19 who did not exclude themselves from the Settlement, including those who did not cash a  
20 check or receive a payment; and the Court's approval of the settlement pursuant to the  
21 terms of this Agreement, including but not limited to the releases set out in Paragraphs 53,  
22 54, 55, and 56.

23           32.     The occurrence of the "Effective Date of Judgment," which shall be deemed  
24 to be the last to occur of the following:

25                 (a)     If an appeal or other review is not sought from the Order and  
26 Judgment Granting Final Approval and Dismissing Lawsuit with Prejudice, the sixty-fifth  
27 (65th) calendar day after entry of the judgment; or  
28

1 (b) If an appeal or other review is sought from the Order and Judgment  
2 Granting Final Approval and Dismissing Lawsuit with Prejudice by a Settling Class  
3 Member, the day after the trial court's judgment is affirmed or the appeal or other review  
4 is dismissed or denied, and the judgment is no longer subject to judicial review or other  
5 challenge.

6 **VIII.**  
7 **EFFECT OF NON-APPROVAL,**  
8 **FAILURE OF THE EFFECTIVE DATE TO OCCUR, OPT-OUTS**  
9 **IN EXCESS OF FIVE PERCENT**

10 33. If any one of the events specified in Section VII do not occur, this Agreement  
11 shall be voidable at BofA's discretion, and any portion of the GSV previously deposited  
12 with the Claims Administrator shall immediately be returned to BofA.

13 34. The Claims Administrator shall provide written notice to Class Counsel and  
14 counsel for BofA no later than five (5) business days after the Notice Period Deadline with  
15 a complete list of all putative Settling Class Members who have timely requested exclusion  
16 from the class and the number of workweeks associated with each. BofA, in its sole and  
17 independent discretion, shall have the right, but not the obligation, to revoke this  
18 Agreement if requests for exclusion from the settlement are filed by seven and a half  
19 percent (7.5%) or more of the Settling Class, measured on a headcount or workweek basis.

20 35. BofA must exercise its option under Paragraph 34, if at all, within fifteen  
21 (15) business days after receipt of the list of all excluded Class members referenced in  
22 Paragraph 34.

23 36. In the event that the Agreement is voided pursuant to Paragraphs 34 or 63,  
24 then the following shall apply:

25 (a) Nothing in this Agreement shall be construed as a determination,  
26 admission, or concession of any substantive or procedural issue in the Lawsuit, and nothing  
27 in this Agreement may be offered into evidence in any hearing or trial, or in any subsequent  
28 pleading or in any subsequent judicial, arbitral, or administrative proceeding;

1 (b) This Agreement shall be without force or effect, and the Lawsuit will  
2 continue to be litigated as if this Agreement never existed; and

3 (c) The Settling Parties expressly reserve their rights with respect to the  
4 prosecution and defense of the Lawsuit as if this Agreement never existed; and

5 (d) BofA shall pay any costs for notice or claims administration incurred  
6 by the Claims Administrator through that date.

7 **IX.**  
8 **ATTORNEYS' FEES, COSTS AND EXPENSES, AND ENHANCEMENT**  
9 **AWARDS**

10 37. The Lawsuit alleges a potential claim for attorneys' fees and costs pursuant  
11 to, *inter alia*, the California Labor Code. The Settling Parties agree that any and all such  
12 claims for attorneys' fees and costs have been settled in this Agreement.

13 38. BofA recognizes that Class Counsel will apply to the Court for an award of:  
14 (i) attorneys' fees in an amount up to, but not more than, one million four hundred and  
15 sixteen thousand and five hundred twenty five U.S. dollars and no cents (\$1,416,525.00 );  
16 and (ii) reasonable and necessary costs and expenses (including expenses incurred by  
17 Named Plaintiff in the prosecution of this action) in an amount up to, but not more than,  
18 ten thousand U.S. dollars and no cents (\$10,000.00). BofA will not oppose Class Counsel's  
19 application under this Paragraph 38 and the Named Plaintiff, Class Counsel, and Settling  
20 Class Members shall not seek payment of attorneys' fees or reimbursement of costs or  
21 expenses except as set forth herein. Class Counsel's application under this Paragraph 38  
22 shall be scheduled for determination at the Final Approval Hearing, but Class Counsel's  
23 application shall be filed and served before the Class Notice is distributed and will be  
24 posted on Class Counsel's website and the Claims Administrator's website.

25 39. BofA recognizes that, at the same time the application under Paragraph 38 is  
26 made, Class Counsel will also apply to the Court for an additional award to Named  
27 Plaintiff, in an amount not to exceed thirty five thousand United States Dollars and no cents  
28 (\$35,000.00), as reasonable additional compensation for the time and effort expended by

1 her in connection with the initiation and maintenance of the Lawsuit and in consideration  
2 for the additional release set out in Paragraph 54 (the “Enhancement Award”). BofA will  
3 not oppose Class Counsel’s application under this Paragraph 39 and the Named Plaintiff,  
4 Class Counsel, and Settling Class Members shall not seek payment of any additional  
5 enhancement awards except as set forth herein. Any Enhancement Award will be in  
6 addition to any amount Rivas may be entitled to receive on account of her own individual  
7 claims pursuant to Section XI of this Agreement. Class Counsel’s application under this  
8 Paragraph 39 shall be scheduled for determination at the Final Approval Hearing, but Class  
9 Counsel’s application shall be filed and served before the Class Notice is distributed and  
10 will be posted on Class Counsel’s website and the Claims Administrator’s website.

11 40. Any awards pursuant to Paragraphs 38 and/or 39 will be funded solely and  
12 completely from the GSV.

13 41. If the Court does not approve the total amount of attorneys’ fees, costs, and/or  
14 Enhancement Award requested by Class Counsel pursuant to Paragraphs 38 and/or 39 of  
15 this Agreement, any remaining portion of requested amount will be added to the Net  
16 Settlement Value (as that term is defined in Paragraph 43(e) of this Agreement). The  
17 Claims Administrator shall recalculate the Class Member payments to account for any  
18 reduction in the amount of attorneys’ fees, costs, and/or Enhancement Award made by the  
19 Court.

20 42. Any proceedings or Court decisions related to Class Counsel’s application  
21 for attorneys’ fees, costs, and expenses, and/or Enhancement Award shall not terminate or  
22 cancel this Agreement, or otherwise affect the finality of the Court’s Order and Judgment  
23 Granting Final Approval or the settlement of this Lawsuit. However, if the Court approves  
24 a lesser amount of attorneys’ fees, litigation costs, or Enhancement Award than those  
25 sought by Named Plaintiff and her counsel, Named Plaintiff reserves the right to appeal  
26 any amount disallowed by the Court, with the understanding that regardless of the outcome  
27 of Plaintiff’s appeal, this Settlement shall still be binding.  
28

**X.**  
**PLAN OF ALLOCATION AND**  
**DISTRIBUTION OF THE SETTLEMENT**

43. The GSV shall be allocated, in order, as follows:

(a) First, to any attorneys' fees and reasonable and necessary costs and expenses of Class Counsel (including expenses incurred by Named Plaintiff in the prosecution of this action), as may be awarded by the Court pursuant to Paragraph 38 of this Agreement.

(b) Second, to any Enhancement Award, as may be awarded by the Court pursuant to Paragraph 39 of this Agreement.

(c) Third, to the costs and expenses incurred by, or fees imposed by, the Claims Administrator in performing its duties under this Agreement, pursuant to Paragraph 14 of this Agreement.

(d) Fourth, to the "Net Settlement Value" or "NSV." The Net Settlement Value shall be defined as the value of the GSV less the items described in Subparagraphs 43(a)-(c). The remainder of the Net Settlement Value shall be allocated to the Settling Class as described in Section XI. The Claims Administrator shall be responsible for the allocation and distribution of the Net Settlement Value to the Settling Class Members who submit timely Adjustment Forms as set forth in Paragraph 46 herein.

(e) Fifth, the amount of any settlement checks that are not cashed by Settling Class Members, as well as any portion of the GSV not otherwise allocated under this Settlement, shall be the Residual Amount. The Residual Amount shall be paid to the State of California as unclaimed wages under the name of the Settling Class Member pursuant to the escheat procedures set forth in the California Code of Civil Procedure section 1300, *et seq.*

44. The Claims Administrator shall make payments from the GSV pursuant to this Section X within five (5) business days after the Effective Date, but only after the Effective Date.

45. In light of the nature of the claims in the Lawsuit, for the purposes of determining and/or calculating applicable taxes, one hundred percent (100%) of each Class Member Payment (as that term is defined in Paragraph 51 of this Agreement) shall be classified as ordinary income and penalties, payable on a Form 1099. One hundred percent (100%) of the Named Plaintiff's Enhancement Award will be allocated to ordinary income, payable on a Form 1099. The Named Plaintiff and Settling Class Members shall be individually responsible for any and all tax implications or obligations attributable to receipt of the Enhancement Award and/or Class Member Payments. The Claims Administrator shall be responsible for generating any necessary or appropriate documents and remitting any necessary monies to the appropriate agencies in connection with payments hereunder. BofA shall provide the Claims Administrator with any information reasonably necessary to perform the calculations discussed in this Paragraph 45.

## XI. DETERMINATION OF THE AMOUNT, PROCESSING, AND PAYMENT OF CLASS MEMBER CLAIMS

46. The Settlement Class Notice sent to each Settling Class Member shall be accompanied by a separate Adjustment Form which is attached hereto as Exhibit C. The Adjustment Form shall be individualized for each Settling Class Member with information reflecting the number of workweeks worked during the Class Period in a class-qualifying capacity pursuant to the spreadsheet discussed in Paragraph 18 of this Agreement. Additionally, the Adjustment Form will contain the estimated dollar value of the Class Member Payment, as that term is defined in Paragraph 51 of this Agreement, assuming that Class Counsel's requests under Paragraphs 38 and 39 of this Agreement are granted in their entirety and that all information contained in the spreadsheet discussed in Paragraph 18 is correct. The Class Notice and Adjustment Form shall inform each Settling Class Member that the amount is an estimate only, which may increase or decrease without further notice to them, and shall further inform each Settling Class Member that they may submit a corrected Adjustment Form, along with supporting documentation, to the Claims

1 Administrator to the extent a Settling Class Member believes that any of the information  
2 pertaining to that individual on the Adjustment Form is incorrect. The Settlement Class  
3 Notice and Adjustment Form shall further inform each Settling Class Member that, to be  
4 valid, the completed Adjustment Form must bear a postmark reflecting a date within forty-  
5 five (45) calendar days from the date of first mailing of the Settlement Class Notice (the  
6 “Notice Period Deadline”). Settling Class Members bear the responsibility of ensuring that  
7 information on the Adjustment Form is correct and that any Adjustment Forms submitted  
8 to the Claims Administrator are actually received by the Claims Administrator in  
9 compliance with this Agreement.

10 47. The Settlement Class Notice shall contain the release and waiver of claims  
11 against BofA contained in Paragraphs 53, 55, and 56 of this Agreement, and an easily  
12 understood statement alerting Settling Class Members that by failing to submit a Request  
13 for Exclusion the individual is executing a release and waiver of all such claims the  
14 employee may have against BofA, whether or not they receive a payment.

15 48. As provided in Paragraph 18, BofA will provide the Claims Administrator  
16 with the information required to individualize the Adjustment Forms discussed in  
17 Paragraph 46 of this Agreement. The Claims Administrator will be solely responsible for  
18 resolving any discrepancies between BofA’s documentation and conflicting information  
19 provided by the Settling Class member in an Adjustment Form, and said resolution by the  
20 Claims Administrator shall be final and binding on all parties. Once the Claims  
21 Administrator resolves a given discrepancy, it will notify the Settling Class Member of its  
22 decision in writing and within fifteen (15) calendar days. BofA agrees to provide additional  
23 available information that is reasonable and necessary for the Claims Administrator to  
24 resolve any such discrepancies.

25 49. All putative Settling Class Members who have not returned a completed and  
26 timely Request for Exclusion shall be bound by the dismissal with prejudice of the Lawsuit  
27 and the release of claims set forth in Paragraphs 53, 55, and 56 of this Agreement.

28 50. As soon as practicable after the Notice Period Deadline, the Claims

1 Administrator shall calculate the “Per Workweek Payment” for use in the allocation and  
2 distribution of the NSV to the Settling Class. The Per Workweek Payment shall be  
3 determined as follows:

4 (a) The Claims Administrator will determine, from either the spreadsheet  
5 referenced in Paragraph 18 or the resolution of a dispute pursuant to Paragraph 48, the  
6 number of workweeks that a Settling Class member was actively employed during the  
7 Settling Class Period covered by the spreadsheet discussed in Paragraph 18 (the  
8 “Compensable Workweeks”).

9 (b) The total number of Compensable Workweeks attributable to all  
10 Settling Class members will then be divided into the NSV, with the number of  
11 Compensable Workweeks as the denominator and the NSV as the numerator, with the  
12 resulting number determined to two (2) decimal places.

13 (c) The product of this calculation will be the Per Workweek Payment.

14 51. The disbursement to each Settling Class Member shall be the number which  
15 results from dividing the NSV by the total Compensable Workweeks worked by all Settling  
16 Class Members and multiplying that number by the number of Compensable Workweeks  
17 for the individual Settling Class Member (the “Class Member Payment”).

18 52. The Claims Administrator shall provide counsel for the Settling Parties with  
19 a Final Accounting and Report not later than five (5) court days after the Effective Date.  
20 This Final Accounting and Report will include the calculations discussed in this Section  
21 XI.

## 22 XII. 23 RELEASES

24 53. **Release by Settling Class.** As of the Effective Date and in exchange for the  
25 consideration, undertakings, and covenants undertaken by BofA in this Agreement,  
26 including but not limited to the provisions of Paragraph 8 and Section XIII, and to the  
27 extent permitted by applicable law, the Settling Class hereby releases, discharges, and  
28 covenants not to sue Bank of America, National Association or Bank of America

1 Corporation, including its and their predecessors, successors, affiliates, parents,  
2 subsidiaries, related companies, employees, agents, shareholders, officers, directors,  
3 attorneys, insurers, and any entity which could be jointly liable with Bank of America,  
4 National Association, or Bank of America Corporation, or any of them (individually and  
5 collectively “the BofA Releasees,”) from and with respect to any and all actions, causes of  
6 action, suits, liabilities, claims, and demands whatsoever, whether known or unknown,  
7 during the Settling Class Period, which the Settling Class, or individual members thereof,  
8 has, or had against the BofA Releasees, or any of them, which are based on, or in any way  
9 related to any claims that were alleged in the Lawsuit or could have been alleged in the  
10 Lawsuit based on the current or prior pleadings therein, including without limitation claims  
11 for violation of California Labor Code § 2802; Business & Professions Code §§ 17200 *et*  
12 *seq.*, to the extent predicated in whole or in part on the foregoing alleged violations of the  
13 Labor Code; or any other California or local or federal law, ordinance, and/or  
14 administrative regulation relating to the reimbursement of, and payment for, reasonable  
15 and necessary business expenses, and any additional claims for penalties, wages, interest  
16 or other monies predicated on same (the “Released Claims”).

17 (a) The Released Claims include specifically, by way of further  
18 description, but not by way of limitation, any and all claims arising out of or in any way  
19 related to any and all attorneys’ fees, attorneys’ costs/expenses, fines, penalties, wages,  
20 interest, restitution, liquidated damages, general damages, special damages, consequential  
21 damages, punitive damages, declaratory relief, and/or injunctive relief allegedly due and  
22 owing by virtue of the allegations set out in the Lawsuit and/or the claims referenced in  
23 this Paragraph 53, whether based on statutory, regulatory, or common law (including but  
24 not limited to any such claims based on the California Labor Code, Business and  
25 Professions Code, Civil Code, Order of the Industrial Welfare Commission, and/or Code  
26 of Civil Procedure), and the Settling Class Members acknowledge and/or are deemed to  
27 acknowledge that they are waiving and releasing any right to bring such claims on their  
28 own behalf or on the behalf of any other individual or entity.

1 (b) The Settling Class Members acknowledge and/or are deemed to  
2 acknowledge that they may hereafter discover claims in addition to or different from those  
3 which they now know or believe to exist with respect to the subject matter of this  
4 Agreement and/or this release, and which, if known or suspected at the time of executing  
5 this Agreement, may have materially affected this release. Nevertheless, the Settling Class  
6 Members hereby waive any right, claim, or cause of action that might arise as a result of  
7 such different or additional claims or facts.

8 54. **Additional Release by Named Plaintiff.** In exchange for the consideration,  
9 undertakings, and covenants undertaken by BofA in this Agreement, including but not  
10 limited to the provisions of Paragraphs 8 and 39, and to the extent permitted by applicable  
11 law, the Named Plaintiff – in addition to the release set out in Paragraph 53 of this  
12 Agreement – further hereby releases, discharges, and covenants not to sue the BofA  
13 Releasees with respect to and from any and all claims, charges of discrimination, demands,  
14 liens, agreements, contracts, covenants, actions, suits, causes of action, disputed wages,  
15 obligations, debts, expenses, attorneys’ fees, damages, penalties, interest, judgments,  
16 orders, and liabilities of whatever kind or nature in law, equity, or otherwise, whether now  
17 known or unknown, suspected or unsuspected, and whether or not concealed or hidden,  
18 which they now own or hold or they have at any time heretofore owned or held, arising out  
19 of or in any way connected with her employment, separation of employment, or any other  
20 relationship with the BofA Releasees, or any other transactions, occurrences, acts or  
21 omissions, or any loss, damage, or injury whatever, known or unknown, suspected or  
22 unsuspected, resulting from any act or omission by or on the part of said BofA Releasees,  
23 or any of them, committed or omitted prior to the date of the Court’s order granting final  
24 approval; provided, however, that claims for additional short term disability benefits and  
25 under the Age Discrimination in Employment Act, as modified by the Older Workers  
26 Benefits Protection Act, are excluded (collectively, “Named Plaintiff’s Claims”). Aside  
27 from the aforementioned limitation, the parties intend the Named Plaintiff’s release to be  
28 general and comprehensive in nature and to release all Named Plaintiff’s Claims and

1 potential Named Plaintiff's Claims against the BofA Releasees to the maximum extent  
2 permitted at law. Named Plaintiff's Claims being released include specifically, by way of  
3 description, but not by way of limitation, any and all claims arising out of or in any way  
4 related to: (i) any interactions between Named Plaintiff and the BofA Releasees; (ii) Named  
5 Plaintiff's employment, separation of employment, contractual, and/or quasi-contractual  
6 relationship with the BofA Releasees; (iii) any allegations as to disputed wages,  
7 remuneration, and/or other compensation due by operation of statute, ordinance, contract,  
8 or quasi-contract; (iv) any federal, state, or local law prohibiting discrimination or  
9 retaliation on the basis of age, race, ethnicity, color, ancestry, religion, disability, sex,  
10 gender, national origin, or citizenship, including, without limitation, claims under Title VII,  
11 the California Fair Employment and Housing Act, the California Labor Code, the  
12 California IWC Orders, the Employee Retirement Income Security Act, and the Americans  
13 With Disabilities Act, or any other similar statutes whatever the city, county, state, or  
14 country of enactment; (v) any claims under the Family and Medical Leave Act of 1993  
15 and/or the California Family Rights Act; and (vi) any transactions, occurrences, acts,  
16 statements, disclosures, or omissions occurring prior to the date of the Court's order  
17 granting final approval.

18       55.    **Limited Waiver of California Civil Code Section 1542.** All Settling Class  
19 Members (including, without limitation, the Named Plaintiff) intend and/or are deemed to  
20 intend that this Agreement should be effective as a bar to any and all of the claims released  
21 by Paragraphs 53 and 54. In furtherance of this intention, all Settling Class Members  
22 expressly waive any and all rights or benefits conferred on them by the provisions of Section  
23 1542 of the California Civil Code, which provides as follows:

24                   **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
25                   **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**  
26                   **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**  
27                   **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**  
28                   **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR**  
                      **HER SETTLEMENT WITH THE DEBTOR.”**

1 All Settling Class Members understand fully the statutory language of Civil Code §  
2 1542, and, with this understanding, assume all risks for claims released hereunder that have  
3 already arisen or may in the future arise, whether known or unknown, suspected or  
4 unsuspected, and specifically waive all rights that they may have under California Civil  
5 Code § 1542. The Settling Class Members understand that, if any of the facts relating in  
6 any manner to the Lawsuit, or to the release and dismissal of claims as provided in this  
7 Agreement, are hereafter found to be other than or different from the facts now believed to  
8 be true, they have expressly accepted and assumed that risk and agree that this Agreement  
9 and the release of claims contained herein shall nevertheless remain effective. The Settling  
10 Class desires and intends, or is deemed to desire and intend, that this Agreement shall be  
11 given full force and effect according to each and all of its express terms and provisions,  
12 including those relating to unknown and unsuspected claims, if any, as well as those  
13 relating to the claims referred to above.

14 56. The waiver contained in Paragraph 55, above, is not intended to expand the  
15 nature of the claims released by the Settling Class beyond the Released Claims set out in  
16 Paragraph 53, but rather is intended to ensure that the release set out in Paragraph 53 is  
17 fully enforceable and is not impeded by Section 1542.

18 **XIII.**  
19 **ADDITIONAL TERMS AND CONDITIONS**

20 57. Settlement Fair and Reasonable

21 Class Counsel has considerable experience in litigating and settling wage-  
22 and-hour class actions of this type and is sufficiently familiar with the facts of this case and  
23 the applicable laws and regulations to make an informed judgment as to the fairness of this  
24 Settlement. In light of this experience, and for reasons that will be more fully explained in  
25 Class Counsel's motion for preliminary approval, Class Counsel and the Named Plaintiff  
26 believe that the settlement terms herein are fair and reasonable with regard to the interests  
27 of the Settling Class.  
28

1           58.   Settlement the Result of Arm's-Length Bargaining.

2           The terms of the settlement of this Lawsuit resulted from approximately two  
3 years of litigation generally, as well as a full day mediation before and many follow-up  
4 communications with a third-party neutral.

5           59.   Notices.

6           Except for Settling Class Member notices which are required herein to be  
7 made to or by the Claims Administrator, all notices, requests, demands, and other  
8 communications related to or in connection with this Agreement shall be in writing, and  
9 shall be provided by appropriate method depending on the urgency (*e.g.*, personal delivery,  
10 facsimile, overnight delivery, or first-class U.S. mail) to:

11           **TO THE SETTLING CLASS:**

12           Joshua H. Haffner  
13           Vahan Mikayelyan  
14           Haffner Law PC  
15           15260 Venture Blvd., Suite 1520  
16           Sherman Oaks, California 91403  
17           Telephone:   (213) 514-5681  
18           Facsimile:   (213) 514-5682

11           **TO BOFA:**

12           Adam P. KohSweeney  
13           Racquel B. Martin  
14           O'Melveny & Myers LLP  
15           Two Embarcadero Center  
16           San Francisco, CA 94111-3823  
17           Telephone:   415-984-8912  
18           Facsimile:   415-984-8701

19           60.   No Admission of Liability.

20           Nothing herein shall constitute any admission by BofA of wrongdoing or  
21 liability or of the truth of any factual allegations in the Lawsuit. Nothing herein shall  
22 constitute an admission by BofA that the Lawsuit was properly brought as a class action  
23 other than for settlement purposes. To the contrary, BofA has denied and continues to deny  
24 each and every material factual, procedural, and/or legal allegation and alleged claim  
25 asserted in the Lawsuit, and has contended throughout that it has employment policies in  
26 place that meet or exceed the requirements of applicable law. To this end, the settlement  
27 of the Lawsuit, the negotiation and execution of this Agreement, and all acts performed or  
28 documents executed pursuant to or in furtherance of this Agreement or the settlement are  
not, shall not be deemed to be, and may not be used as, an admission or evidence of any  
wrongdoing or liability on the part of BofA or of the truth of any of the factual allegations

1 in the Complaint in the Suit; and are not, shall not be deemed to be, and may not be used  
2 as, an admission or evidence of any fault or omission on the part of BofA in any civil,  
3 criminal or administrative proceeding in any court, administrative agency, or other tribunal.

4 61. Modification by Writing Only.

5 This Agreement, and its terms and Exhibits, may be modified only in a  
6 writing signed by all counsel of record for the parties, and will not become effective unless  
7 and until approved by the Court or otherwise as ordered by the Court.

8 62. Representations.

9 The Named Plaintiff and Class Counsel represent that they are presently unaware of  
10 any other lawsuit or administrative proceeding which alleges any of the claims asserted by  
11 the Lawsuit.

12 The Named Plaintiff, on behalf of herself and as the named representative of the  
13 Settling Class, has expressly authorized Class Counsel to take all appropriate action  
14 required or permitted to be taken pursuant to this Agreement to effectuate its terms.

15 Each attorney executing this Agreement or any of its Exhibits on behalf of any party  
16 hereto hereby warrants that full authority to do so has been given by his/her client(s).

17 BofA, Class Counsel, and Named Plaintiff waive their right to file an appeal, writ,  
18 or any challenge whatsoever to the terms of this Agreement; provided, however, that Class  
19 Counsel and the Named Plaintiff may appeal the Court's determinations with regard to the  
20 requests set out in Paragraphs 38 and 39. Consistent with Paragraph 42, however, any such  
21 appeal will have no effect whatsoever on the other terms and provisions of this Agreement,  
22 including, by way of example but not of limitation, the releases set out in Paragraphs 53,  
23 54, 55, and 56.

24 The Settling Parties represent and agree that neither have received and/or relied  
25 upon any advice and/or representations from the other party and/or its attorneys as to the  
26 necessity for withholding or the taxability of the consideration paid pursuant to this  
27 Agreement, whether pursuant to federal, state, or local income tax statutes or otherwise.

1           63.   Further Cooperation.

2           The Settling Parties and their respective counsel of record shall proceed  
3 diligently to prepare and execute all documents, to seek the necessary Court approvals, and  
4 to do all other things reasonably necessary to conclude this Settlement.

5           64.   Construction and Integration.

6           This Agreement, including its exhibits, constitutes the entire agreement and  
7 understanding between the Settling Parties, and supersedes any previous agreements or  
8 understandings between the Settling Parties. No representations, warranties, or  
9 inducements have been made to any party concerning the subject matter of this Agreement  
10 and/or exhibits other than the representations, warranties, and covenants contained in such  
11 documents. This Agreement and related exhibits shall be construed each as a whole, and  
12 with reference to one another, according to their fair meaning and intent. Each of the  
13 Settling Parties represent that its/her counsel has participated and cooperated in the drafting  
14 and preparation of this Agreement and related exhibits; hence, in any construction to be  
15 made of this Agreement and/or exhibits, the same shall not be construed against any party  
16 on the basis that said party was the drafter.

17          65.   Governing Law.

18          This Agreement and the Exhibits hereto shall be deemed to have been  
19 negotiated, executed, and delivered, and to be wholly performed, in the State of California.  
20 The rights and obligations of the parties under the Agreement shall be construed and  
21 enforced in accordance with, and be governed by, the substantive and procedural laws of  
22 the State of California without regard to California's choice of law principles.

23          66.   Counterparts.

24          This Agreement may be executed in one or more faxed or e-mailed  
25 counterparts, which may be filed with the Court. All executed counterparts, and each of  
26 them, shall be deemed to be one and the same instrument. Once available, a complete set  
27 of executed counterparts shall be filed with the Court. Copies of the complete set of  
28

1 executed counterparts may be used for all purposes in lieu of the originals and shall have  
2 the same force and effect as the originals.

3 67. Attorneys' Fees, Costs, and Expenses.

4 Except as otherwise specifically provided for herein, each party shall bear  
5 its/her own attorneys' fees, costs, and expenses, taxable or otherwise, incurred by them in  
6 or arising out of the Lawsuit, and shall not seek reimbursement thereof from any other  
7 party to this Agreement.

8 68. Publicity.

9 The Named Plaintiff and Class Counsel agree that they will not publicize or  
10 announce this Settlement in a press release or marketing materials or on the internet. This  
11 provision shall not bar: (i) the Named Plaintiff nor Class Counsel from responding to  
12 affirmative inquiries initiated by the press (in which case the response shall be limited to  
13 that fact that "the parties have mutually agreed to settle certain claims to avoid the  
14 uncertainties of litigation") and by Settling Class Members; (ii) the Settling Parties or their  
15 counsel from informing Class members about the Settlement and ensuring that all Class  
16 members have notice of the Settlement; or (iii) posting publicly available information on  
17 Class Counsels' websites.

18 69. Continuing Jurisdiction.


19 Except as otherwise specifically provided for herein, Department 21 of the  
20 Superior Court of the State of California, County of Alameda, shall retain jurisdiction to  
21 construe, interpret, and enforce this Agreement and the settlement; to supervise all notices,  
22 the administration of the settlement and this Agreement, and distribution of the GSV; and  
23 to hear and adjudicate any dispute arising from or related to the settlement and/or this  
24 Agreement.

25 70. Calculation of Time

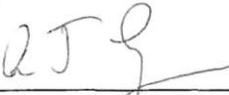
26 To the extent that any reference to days in this Agreement is not defined, it  
27 shall be understood to refer to business days. To the extent that any timeframe set out in  
28

1 this Agreement is ambiguous, said ambiguity shall be resolved by applying the conventions  
2 contained in California Code of Civil Procedure §§ 12-12c.

3  
4 **IN WITNESS WHEREOF**, the undersigned Settling Parties and their duly  
5 authorized representatives accept and agree to the terms of this Agreement and hereby  
6 execute it voluntarily and with a full understanding of its consequences:

7   
8 Susana Gomez Rivas (Sep 14, 2023 13:58 PDT)  
9 Susana Gomez Rivas  
10 Named Plaintiff and Class  
11 Representative

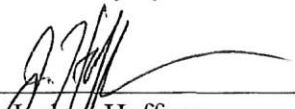
09/14/2023  
Date

12   
13 By: Aaron J. Longo  
14 SVP & Assistant General Counsel,  
15 for and on behalf of Bank of  
16 America, National Association

9/14/2023  
Date

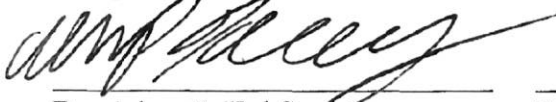
17 **APPROVED AS TO CONTENT AND**  
18 **FORM:**

19 **HAFFNER LAW PC**  
20 Joshua H. Haffner  
21 Vahan Mikayelyan

22   
23 By: Joshua Haffner  
24 Attorneys for Named Plaintiff  
25 Susana Gomez Rivas

9/15/23  
Date


26 **O'MELVENY & MYERS LLP**  
27 Adam P. KohSweeney  
28 Racquel B. Martin

  
By: Adam P. KohSweeney  
Attorneys for Defendant  
Bank of America, National  
Association

09/18/2023  
Date

1 this Agreement is ambiguous, said ambiguity shall be resolved by applying the conventions  
2 contained in California Code of Civil Procedure §§ 12-12c.

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4 **IN WITNESS WHEREOF**, the undersigned Settling Parties and their duly  
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6 execute it voluntarily and with a full understanding of its consequences:

7   
Susana Gomez Rivas (Sep 14, 2023 13:58 PDT)

8 Susana Gomez Rivas  
9 Named Plaintiff and Class  
Representative

09/14/2023


Date

10  
11 \_\_\_\_\_  
12 By: Aaron J. Longo  
13 SVP & Assistant General Counsel,  
14 for and on behalf of Bank of  
America, National Association

11 \_\_\_\_\_  
Date

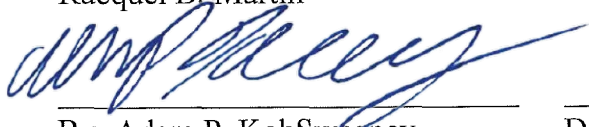
14 **APPROVED AS TO CONTENT AND**  
15 **FORM:**

16 **HAFFNER LAW PC**  
17 Joshua H. Haffner  
18 Vahan Mikayelyan

19   
20 By: Joshua Haffner  
21 Attorneys for Named Plaintiff  
Susana Gomez Rivas

19 9/15/23  
Date

22 **O'MELVENY & MYERS LLP**  
23 Adam P. KohSweeney  
24 Racquel B. Martin

25   
26 By: Adam P. KohSweeney  
27 Attorneys for Defendant  
28 Bank of America, National  
Association

09/18/2023

Date