



SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

DAVID WOODS, on behalf of himself and all)
others similarly situated,)

Plaintiff,)

v.)

BANK OF AMERICA, N.A.,)

Defendant.)

No. 05-2-39938-4 SEA

**SETTLEMENT AGREEMENT
OF CLASS ACTION CLAIMS**

I. SCOPE AND PURPOSE OF SETTLEMENT AGREEMENT

This Settlement Agreement of Class Action Claims ("Settlement," or "Agreement") is made by David Woods ("Named Plaintiff") on behalf of himself and a Settlement Class of similarly situated individuals (hereafter defined), on the one hand, and the defendant Bank of America, N.A. ("Bank of America", "the Bank" or "Defendant"), on the other hand, in the action pending in the Superior Court of Washington, County of King ("Superior Court"), Case No. 05-2-39938-4 SEA ("Class Action" or "Action"), and subject to the approval of the Superior Court.

A. Class Certification. Solely for purposes of this Settlement, the Parties stipulate and agree to define a single settlement class. The "Settlement Class" (or "Class") consists of

1 those who worked as “Mortgage Retail Lending Account Executives” (job code SM009) for
2 Bank of America, N.A (hereinafter referred to as “Account Executives”) in Washington State at
3 any time during the inclusive period of December 9, 2002 through the date of the Court’s
4 preliminary approval of the Settlement Agreement, (“Class Period”). The Class excludes those
5 Account Executives who participated in the settlements of the *Raquib Abdulllah and Phill*
6 *Graham v. Bank of America* litigation (U.S.D.C., Dist. Minn., Civil Action No. 04-2951
7 JMR/FLN) (the *Graham* litigation) or the *Franklin v. Bank of America, N.A.* litigation
8 (U.S.D.C., N.D. Cal., Civil Action No. C 05-00519 CRB) (the *Franklin* litigation).

9 B. Limited Purpose of Class Certification Agreement. The Parties stipulate and
10 agree to the certification of the Class Action for purposes of this Settlement only. Should for
11 whatever reason the Settlement not become final, the fact that the Parties were willing to
12 stipulate to class certification as part of the Settlement shall have no bearing on, and shall not
13 be admissible in connection with, the issue of whether a class should be certified in a non-
14 settlement context in this Action and shall have no bearing on, and shall not be admissible in
15 connection with, the issue of whether a class should be certified in any other lawsuit. Bank of
16 America expressly reserves its right to oppose class certification should this Settlement not
17 become final.

18 II. PROCEDURAL HISTORY

19 The Action was originally filed by Named Plaintiff in the Superior Court of the State of
20 Washington for the County of King on December 8, 2005 and served on Defendant on
21 December 9, 2005. The Complaint alleged class action causes of action against Defendant for
22 the alleged failure of Defendant to pay the rate of one-and-one-half times their regular rate of
23 pay to Account Executives who worked in Washington over forty (40) hours per work week in

1 violation of the Washington Minimum Wage Act (RCW 49.46.005 *et seq.*); and the alleged
2 failure of Defendant to pay premium pay required under California law to Account Executives
3 who worked in California. In addition to the alleged unpaid overtime, the Complaint alleged
4 liability for exemplary damages, attorneys' fees and costs. Subsequently, Named Plaintiff filed
5 an amended Complaint in which he dismissed the claims brought pursuant to California law.
6 During the course of settlement negotiations between the parties, the parties indicated a
7 willingness to settle all potential overtime liability claims regarding Account Executives who
8 worked in Washington during the liability period.

9 III. INVESTIGATION IN THE CLASS ACTION

10 The Parties have conducted significant investigations of the facts and law during the
11 prosecution of this Action. Such investigations have included: the exchange of information
12 pursuant to discovery; a review and analysis of Account Executive compensation data provided
13 by Bank of America regarding Washington Account Executives; review of the approved class
14 action settlements in the *Graham* litigation and the *Franklin* litigation; meetings and telephone
15 conferences, including a meeting involving all counsel for the parties in Seattle, Washington on
16 October 24, 2006, with Mediator Judge Terrence Carroll (Ret.) of Judicial Dispute Resolution,
17 LLC; and interviews of potential witnesses regarding their job duties, compensation and hours
18 of work. Counsel for the Parties have further investigated the applicable law regarding the
19 alleged claims of the Named Plaintiff and potential defenses thereto, and the damages claimed
20 by the Named Plaintiff on his own behalf and on behalf of Account Executives.

21 IV. BENEFITS OF SETTLEMENT TO CLASS MEMBERS

22 Named Plaintiff recognizes the expense and length of continued proceedings necessary
23 to continue the litigation against Bank of America through summary judgment and dismissal

1 motions, class certification, trial and through any possible appeals. Named Plaintiff has also
2 taken into account the uncertainty and risk of the outcome of further litigation, and the
3 difficulties and delays inherent in such litigation. Named Plaintiff is also aware of the burdens
4 of proof necessary to establish class certification and liability for the claims asserted in the
5 Action (the "Claims" or "Class Action Claims"), Bank of America's defenses thereto, and the
6 difficulties in establishing liability for the Plaintiff. Named Plaintiff has also taken into account
7 the extensive settlement negotiations conducted and documented in the *Graham* and the
8 *Franklin* litigation, and the settlement negotiations in the instant case, which included a
9 meeting of counsel and negotiations between counsel with the aid of an experienced mediator,
10 Judge Terrence Carroll (Ret.) that ended in a working settlement agreement on most terms in
11 October 2006. Based on the foregoing, Named Plaintiff has determined that the Settlement set
12 forth in this Agreement is a fair, adequate and reasonable settlement, and is in the best interests
13 of the Class.

14 **V. BANK OF AMERICA'S REASONS FOR SETTLEMENT**

15 Bank of America has concluded that any further defense of this litigation would be
16 protracted and expensive for the Parties. Substantial amounts of time, energy and resources of
17 Bank of America have been expended and, unless this Settlement is made, will continue to be
18 devoted to the defense of the claims asserted by Named Plaintiff and the Class. Without
19 admitting liability, Bank of America has, therefore, agreed to settle in the manner and upon the
20 terms set forth in this Agreement in order to put to rest the claims as set forth in the First
21 Amended Complaint.
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23

1 **VI. BANK OF AMERICA’S DENIAL OF WRONGDOING**

2 Bank of America has denied and continues to deny each of the claims and contentions
3 alleged by Named Plaintiff in the Action. Bank of America has repeatedly asserted and
4 continues to assert defenses thereto, and has expressly denied and continues to deny any
5 wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action.

6 Bank of America also has denied and continues to deny the allegations that the Named Plaintiff
7 and the Class have suffered damage; that Bank of America misclassified the Named Plaintiff
8 and Class Members as exempt from overtime; that Bank of America failed to pay Named
9 Plaintiff or any Class Members for all overtime to which they were entitled; that Bank of
10 America engaged in any wrongful conduct as alleged in the Action; or that Named Plaintiff or
11 the Class were harmed by the conduct alleged in the Action. Neither this Agreement, nor any
12 document referred to or contemplated herein, nor any action taken to carry out this Agreement,
13 may be construed as, or may be used as an admission, concession or indication by or against
14 Bank of America of any fault, wrongdoing or liability whatsoever.

15 **VII. NAMED PLAINTIFF’S CLAIMS**

16 Named Plaintiff has claimed and continues to claim that the Released Claims (as
17 defined below) have merit and give rise to liability on the part of Bank of America. Neither this
18 Agreement nor any documents referred to herein, or any action taken to carry out this
19 Agreement may be construed as or may be used as an admission by or against Named Plaintiff
20 or Class Counsel as to the merits or lack thereof of the claims asserted.

21 NOW, THEREFORE, IT IS HEREBY STIPULATED by the Named Plaintiff on behalf
22 of the Class, on the one hand, and Bank of America, on the other hand, and subject to the
23 approval of the Superior Court, that the Class Action is hereby being compromised and settled

1 pursuant to the terms and conditions set forth in this Agreement and that upon the Effective
2 Date (as defined below), the Class Action shall be settled, subject to the recitals set forth
3 hereinabove which by this reference become an integral part of this Agreement, and subject to
4 the following terms and conditions:

5 A. Effective Date. As used in this Settlement, the “Effective Date” is the date on
6 which the Court’s Final Judgment of the Class Action Settlement becomes final. For purposes
7 of this paragraph, the Superior Court’s Final Judgment “becomes final” upon the later of:
8 (i) the date of final affirmance on an appeal of the Final Judgment; (ii) the expiration of the
9 time for a petition for a writ of certiorari to review the Final Judgment and, if certiorari is
10 granted, the date of final affirmance of the Final Judgment following review pursuant to that
11 grant; (iii) the date of final dismissal of any appeal from the Final Judgment or the final
12 dismissal of any proceeding on certiorari to review the Final Judgment; or (iv) if no appeal is
13 filed, the expiration of the time for the filing or noticing of any appeal from the Superior
14 Court’s Final Judgment.

15 B. Full Investigation. Named Plaintiff and Class Counsel have fully investigated
16 the factual and legal bases for the causes of action asserted in the Class Action. As a result of
17 their investigation, Named Plaintiff continues to believe that Bank of America misclassified
18 some or all Account Executives and unlawfully failed to pay overtime to those individuals.
19 Bank of America denies that it misclassified the Account Executives as exempt from overtime
20 laws or failed to pay them for all overtime due. Given the disagreement between the Parties, as
21 to the viability of the claims raised by Named Plaintiff in the Class Action, the Parties believe
22 the Settlement provided for herein is a fair, adequate and reasonable settlement.

1 (1) Release As To All Class Members. As of the Effective Date, the Class
2 Members and the Named Plaintiff, release Bank of America and each of its past or present
3 officers, directors, shareholders, employees, agents, principals, representatives, accountants,
4 auditors, consultants, insurers and reinsurers, and their respective successors and predecessors
5 in interest, subsidiaries, affiliates, parent companies and attorneys and each of their company-
6 sponsored employee benefit plans and all of their respective officers, directors, employees,
7 administrators, fiduciaries, trustees and agents (the “Released Parties”), from the “Released
8 Claims.”

9 For purposes of this Agreement, the “Released Claims” are defined as: all claims,
10 demands, rights, liabilities, and causes of action of every nature and description whatsoever,
11 known or unknown, asserted or that might have been asserted, whether in tort, contract, or for
12 violation of any state or federal constitution, statute, rule or regulation, including state wage
13 and hour laws, the Washington Minimum Wage Act, RCW 49.46.005 *et seq.*, the federal Fair
14 Labor Standards Act of 1938, as amended (“FSLA”) and the federal Employee Retirement
15 Income Security Act, whether for economic damages, wages, non-economic damages,
16 restitution, penalties or liquidated damages, arising out of, relating to, or in connection with any
17 and all facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions
18 or failures to act, which are or could be the basis of claims that (a) Bank of America did not pay
19 Account Executives all amounts due for work that was performed by the Account Executives of
20 Bank of America; (b) that Bank of America owes wages, penalties, interest, waiting time
21 penalties, attorneys’ fees or other damages of any kind based on a failure to comply with any
22 state or federal wage and hour law or regulation related to overtime work that was performed
23 by Plaintiffs, as related to the foregoing, for alleged unlawful practices under the Washington

1 Minimum Wage Act, at any times on or before the last day of the Class Period (whether based
2 on Washington state wage and hour law, the FSLA, contract, or otherwise); and/or the causes
3 of action asserted in the Class Action, including any and all claims for alleged failure to pay
4 overtime.

5 The Released Claims include any unknown claims that the Named Plaintiff and/or Class
6 Members do not know or suspect to exist in their favor at the time of the release, which, if
7 known by them, might have affected their settlement with, and release of, the Released Parties
8 or might have affected their decision not to object to this Settlement. The Named Plaintiff
9 and/or Class Members may hereafter discover facts in addition to or different from those they
10 now know or believe to be true with respect to the subject matter of the Released Claims, but
11 upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall
12 have fully finally and forever settled and released any and all of the Released Claims, whether
13 known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist,
14 or heretofore have existed, upon any theory of law or equity now existing or coming into
15 existence in the future, including, but not limited to, conduct that is negligent, intentional, with
16 or without malice, or a breach of any duty, law, regulation or rule, without regard to the
17 subsequent discovery or existence of such different or additional facts.

18 The Named Plaintiff and/or Class Members agree not to sue or otherwise make a claim
19 against any of the Released Parties that is in any way related to the Released Claims.

20 C. Settlement Fund. The term "Settlement Fund" shall refer to the funds that Bank
21 of America will distribute in accordance with Paragraph J below.

22 D. Allocation of Settlement Fund. The Settlement Fund has a maximum payout
23 value of \$1,134,000, inclusive of payments to Class Members, attorneys' fees and costs of

