

SECOND CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Second Class Action and PAGA Settlement Agreement (“Agreement”) is between Plaintiffs Marcus Castro and Adam Harmoning (“Plaintiffs”) and First Bank, a Missouri Corporation (“Defendant”). Plaintiffs and Defendant collectively are referred to in this Agreement as the “Parties.” The Parties have entered into this Second Agreement in order to make changes to the initial Settlement Agreement that were required by the Court to obtain preliminary approval of the settlement.

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Actions” refers to *Marcus Castro v. First Bank, a Missouri Corporation*, Case no. 30-2019-01053407-CU-OE-CXC, filed in the Superior Court of the State of California, County of Orange and *Adam J. Harmoning v. First Bank*, Case No. 34 2017-00223939, filed in the Superior Court of the State of California, County of Sacramento.
- B. “Class” means persons employed by Defendant in California as Home Loan Consultants, Home Loan Advisors, Mortgage Bankers or other similarly situated employees of Defendant, however titled, including Plaintiffs, during the period of December 18, 2013 until September 30, 2022.
- C. “Class Counsel” means Cohelan Khoury & Singer, Clayeo C. Arnold, APC, and Darren Guez.
- D. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel as approved by the Court to compensate them for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures. Class Counsel Litigation Expenses Payment means an amount up to \$15,000, subject to proof.
- E. “Class Data” means, for each Class Member: name; last-known mailing address; telephone number; Social Security number; employee identification number; number of pay periods worked during the Class Period as a Class Member; number of pay periods worked during the PAGA Period as a PAGA Period Employee.
- F. “Class Member” is a member of the Class. “PAGA Period Employee” means a Class Member who worked during the PAGA Period.
- G. “Class Notice” means the Notice of Proposed Settlement of Class Action, in a form substantively similar to Exhibit A.

- H. “Class Notice Packet” means the Class Notice to be provided to the Class Members by the Settlement Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator), the Change of Address Form, in a form substantially similar to Exhibit B, and pre-printed return envelope.
- I. “Class Period” means the period from December 18, 2013 to September 30, 2022.
- J. “Class Representative Service Payment” means the service payment made to each of the Plaintiffs in their capacity as a Class Representative to compensate them for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses in the event they failed in the prosecution of the Action, and for the general release of all claims by them as set forth herein.
- K. “Court” means the Superior Court of California, County of Sacramento.
- L. “Defendant’s Counsel” means Joel Van Parys, Corey Cabral and Brent Giddens of CDF Labor Law LLP.
- M. “Effective Date” means the date by which all of the following have occurred:
1. This Agreement is approved by the Court; and
 2. The Judgment becomes Final as defined in Section I(O) of this Agreement.
- N. “Election Not to Participate in Settlement” or “Request for Exclusion” means the written request by a Class Member to exclude himself or herself from the Settlement submitted in accordance with the instructions in the Class Notice.
- O. “Final” means the last of the following dates, as applicable:
1. If there is no objection to the Settlement, the date the Court enters Judgment.
 2. If an objection to the Settlement is made and Judgment is entered, but no appeal is filed, the last date on which a notice of appeal from the Judgment may be filed and none is filed.
 3. If Judgment is entered and a timely appeal from the Judgment is filed, the date the Judgment is affirmed and is no longer subject to appeal.
- P. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- Q. “Gross Settlement Amount” or “GSA” means the sum of \$550,000. The Gross Settlement Amount is an all-in amount without any reversion to Defendant and shall be inclusive of all payments of Settlement Shares to the Class Members,

Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the LWDA Payment, but excluding any employer-side payroll taxes due on the portion of the Settlement Shares allocated to wages which Defendant shall pay separately in addition to the Gross Settlement Amount.

- R. “Judgment” means the Final Approval Order and Judgment entered by the Court, in a form substantively similar to Exhibit C.
- S. “Net Settlement Amount” means the Gross Settlement Amount less the Court-approved amounts for the Class Representative Service Payment, the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the LWDA Payment, Settlement Administration Expenses, and aggregate payment to the Prior Releasers.
- T. “Non-Participating Class Member” means a Class Member who submits a valid and timely Election Not to Participate in Settlement.
- U. “PAGA Period” means the period beginning on December 24, 2017 through September 30, 2022.
- V. “Participating Class Member” means a Class Member who does not submit a valid and timely Election Not to Participate in Settlement.
- W. “Preliminary Approval of the Settlement” means the Court’s Order Granting Preliminary Approval of the Settlement, in a form substantively similar to Exhibit D.
- X. “Released Class Claims” mean, any and all claims and/or causes of action alleged or that could have been alleged based on the facts asserted during the Class Period in the Operative Complaint filed on February 6, 2023, including (1) failure to indemnify-reimburse business expenses, Labor Code section 2802; (2) failure to pay regular/minimum wages, Labor Code sections 1182.12, 1194, 1194.2, 1197, and IWC Wage Order No. 4-2001, §4(A); (3) failure to pay overtime and double overtime compensation, Labor Code section 1194, and IWC Wage Order No. 4-2001, §(3)(A); (4) failure to provide compliant meal periods, Labor Code sections 226.7, 512, and IWC Wage Order 4-2001, §11; (5) failure to provide compliant rest periods, Labor Code section 226.7, and IWC Wage Order 4-2001, §12; (6) failure to make payments within the required time, Labor Code sections 201, 202, 203, 204; (7) failure to provide accurate wage statements, Labor Code section 226; (8) failure to maintain required records, Labor Code sections 1174, 1174.5, and IWC Wage Order No. 4, §7; and (9) unfair business practices, Business & Professions Code sections 17200, et seq. The release of these claims shall be effective for the Class Period upon the Effective Date of Settlement. The Released Class Claims expressly exclude all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and claims outside of the Class Period.

Class Members who do not exclude themselves from the Settlement will be considered to have accepted the Released Class Claims as against the Released Parties, and will be bound by the Judgment, whether or not they negotiate their Individual Settlement Payment check.

- Y. “Released PAGA Claims” means, any and all claims and/or causes of action alleged or that could have been alleged based on the facts asserted during the PAGA Period in the Operative Complaint filed on February 6, 2023, including (1) PAGA Civil Penalties pursuant to Labor Code sections 2802, 2699(f)(2); (2) PAGA Civil Penalties pursuant to Labor Code sections 1182.2, 1194, 1194.2, 1197, 2699(f)(2), and IWC Wage Order No. 4-2001, §4(A); (3) PAGA Civil Penalties pursuant to Labor Code sections 226.7, 512, 2699(f)(2), and IWC Wage Order No. 4-2001, §§11, 12; (4) PAGA Civil Penalties pursuant to Labor Code sections 203, 210, 256, 2699(f)(2); (5) PAGA Civil Penalties pursuant to Labor Code section 226.3; (6) PAGA Civil Penalties pursuant to Labor Code section 558(a). The release of these claims shall be effective for the PAGA Period upon the Effective Date of Settlement. The Released PAGA Claims expressly exclude all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and claims outside of the PAGA Period.

Regardless of whether any Class Member opts out of the Class Settlement, they will still be bound by the Released PAGA Claims if they are PAGA Period Employees. The period of the PAGA Release is the PAGA Period.

- Z. “Released Parties” means Defendant, together with all its insurers, parents, affiliates, subsidiaries, successors, assigns, and any individual or entity that could be jointly liable with them as to the any of the Released Class Claims or Released PAGA Claims.
- AA. “Settlement” means the disposition of the Actions and all related claims effectuated by this Agreement.
- BB. “Settlement Administrator” or “Administrator” means CPT Group, Inc., the administrator proposed by the Parties and appointed by the Court to administer the Settlement.
- CC. “Settlement Share” means each Participating Class Member’s share of the Net Settlement Amount as provided by this Agreement.

II. RECITALS

- A. On December 18, 2017, Plaintiff Adam Harmoning filed a Complaint naming Defendant in the Superior Court of the State of California, County of Sacramento. Harmoning asserted one cause of action pursuant to Labor Code section 2802 for Failure to Reimburse Business Expenses and a second cause of action for UCL

Violations pursuant to Business and Professions Code section 17200 – 17204. Plaintiff alleged class claims on behalf of “All persons who are or have been employed, at any time from December 18, 2013 through the date of the Court’s granting of class certification in this matter in California by Defendant under the job titles Loan Officer, Mortgage Loan Officer, and Branch Loan Officer, or Mortgage Home Loan Consultant...”

On February 26, 2019 Plaintiff Marcus Castro filed a Complaint (Case No. 30-2019-01053407-CU-OE-CXC) naming Defendant in the Superior Court of the State of California, County of Orange. Castro alleged the following causes of action: (1) Failure to Indemnify/Reimburse in Violation of Labor Code section 2802; (2) Failure to Pay Regular/Minimum Wages in Violation of California Labor Code sections 1182.12, 1194, 1194.2, 1197, and Wage Order No. 4-2001, section 4(A); (3) Failure to Pay Overtime and Double Time Overtime Compensation in Violation of Labor Code section 1194 and Wage Order No. 4-2001, section 3(A); (4) Failure to Provide Compliant Meal Periods in Violation of Labor Code section 226.7, 512, and IWC Wage Order 4-2001, section 12; (5) Failure to Provide Compliant Rest Peirods in Violation of Labor Code section 226.7 and IWC Wage Order 4-2001, section 12; (6) Failure to Make payments Within the Required Time in Violation of California Labor Code sections 201, 202 – 204; (7) Failure to Provide Accurate Wage Statements in Violation of Labor Code section 226; (8) Failure to Maintain Required Records in Violation of California Labor Code sections 1174, 1174.5 and Wage Order No. 4, section 7; and (9) Unfair Business Practices (Cal. Bus. & Prof. Code sections 17200 et seq.).

- B. On March 28, 2019, a First Amended Complaint in the Castro action was filed with the following causes of action: (1) Failure to Indemnify/Reimburse Business Expenses in Violation of California Labor Code § 2802; (2) Failure to Pay Regular/Minimum Wages in Violation of California Labor Code §§ 1182.12, 1194, 1194.2, 1197, and Wage Order No. 4-2001, § 4(A); (3) Failure to Pay Overtime and Double Overtime Compensation in Violation of Labor Code § 1194 and Wage Order No. 4-2001, § 3(A); (4) Failure to Provide Compliant Meal Periods in Violation of Labor Code §§ 226.7, 512, and IWC Wage Order 4-2001, § 11; (5) Failure to Provide Compliant Rest Periods in Violation of Labor Code § 226.7 and IWC Wage Order 4-2001, § 12; (6) Failure to Make Payments Within the Required Time in Violation of California Labor Code §§ 201, 202-204; (7) Statutory Penalties for Failure to Provide Accurate Wage Statements in Violation of Labor Code § 226; (8) Failure to Maintain Required Records in Violation of California Labor Code §§ 1174, 1174.5 and Wage Order No. 4, § 7; (9) Restitution for Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, et seq.); (10) PAGA Civil Penalties pursuant to Labor Code § 2699(f)(2) for Failure to Comply with Labor Code § 2802; (11) PAGA Civil Penalties pursuant to Labor Code § 2699(f)(2) for Failure to Comply with Labor Code §§ 1182.12, 1194, 1194.2, 1197, and Wage Order No. 4-2001, § 4(A); (12) PAGA Civil Penalties pursuant to Labor Code § 2699(f)(2) for Failure to Comply with Labor Code

§§ 226.7, 512, and IWC Wage Order 4-2001, §§ 11-12 ;(13) PAGA Civil Penalties pursuant to Labor Code § 2699(f)(2) and as permitted by Labor Code §§ 203, 210, and 256 for Untimely Separation Pay; (14) PAGA Civil Penalties pursuant to Labor Code § 226.3; (15) PAGA Civil Penalties pursuant to Labor Code § 558(a).

- C. On February 27, 2020, the Parties participated in an all-day mediation with Tripper Ortman, Esq., an experienced and respected mediator of wage and hour class actions. The Parties did not settle the Actions that day. They continued to negotiate and exchange information and eventually agreed to settle the Action in June 2021. The Parties memorialized the terms of the settlement in the form of a Memorandum of Understanding.
- D. As part of the Settlement embodied in this Agreement, the Parties stipulated to Plaintiffs Harmoning and Castro seeking and being granted leave to file a First Amended Class Action Class Action Complaint and Representative Action Under the Private Attorneys General Act in the Harmoning Action (“Operative Complaint”), to add Plaintiff Marcus Castro as a named plaintiff, to assert, in addition to the claims asserted in the Harmoning Complaint, causes of action Castro had alleged in *Marcus Castro v. First Bank, a Missouri Corporation*, Case no. 30-2019-01053407-CU-OE-CXC, filed in the Superior Court of the State of California, County of Orange, and to flesh-out facts and allegations that were investigated, litigated, mediated, and settled. The Operative Complaint was filed on February 6, 2023. All material allegations in the Operative Complaint shall be deemed denied by Defendant without the necessity of Defendant filing an Answer to the Operative Complaint or any other pleading in the Action.
- E. This Agreement represents a compromise and settlement of highly disputed claims. The Parties agree nothing in this Agreement is an admission by Defendant that the claims in the Action have merit or that Defendant bears any liability to Plaintiffs or the Class on those claims or any other claims, or as an admission by Plaintiffs that Defendant’s defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendant will pay under this Settlement is \$550,000. The Gross Settlement Amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Settlement Shares allocated to wages which will be separately paid, in addition to the Gross Settlement Amount, by Defendant to the Settlement Administrator. All of the Gross Settlement Amount will be disbursed pursuant to

this Agreement without the need to submit a claim form and none of the Gross Settlement Amount will revert to Defendant.

B. Payments from the Gross Settlement Amount. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments from the Gross Settlement Amount:

1. **To Plaintiff:** Each Plaintiff (Castro and Harmoning) will apply to the Court for an award of not more than \$10,000 in addition to his Settlement Share. The Settlement Administrator will pay the Class Representative Service Payment approved by the Court. It will not take payroll tax withholding and deductions from the Class Representative Service Payment and instead issue an IRS Form 1099 to Plaintiffs with respect to the payment. To receive the payment, the Plaintiffs agree to a Code of Civil Procedure section 1542 waiver and a general release of all claims, excluding any claims that they cannot release as a matter of law, such as claims for workers' compensation benefits.
2. **To Class Counsel:** Class Counsel will apply to the Court for an award of up to \$183,333 as their Class Counsel Fees Payment and an amount not more than \$15,000 for all costs and litigation expenses incurred, subject to proof, as Class Counsel Litigation Expenses Payment. Defendant will not oppose requests for a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment consistent with this Agreement and approved by the Court. The Settlement Administrator will not take payroll tax withholding and deductions, if any, from the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, and instead issue one or more IRS Forms 1099 with respect to those payments. Class Counsel Fees Payment shall be divided 45% to Cohelan Khoury & Singer, 27.5% to The Darren Guez Law Firm, and 27.5% to Clayeo C. Arnold, A.P.C. The Class Counsel Litigation Expenses Payment shall be allocated as based upon the Declarations as to incurred expenses by Class Counsel.
3. **PAGA Payment to LWDA.** The Parties will seek approval from the Court for the PAGA Payment of \$15,000, allocated 75% (\$11,250) to the LWDA ("LWDA Payment") as its share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA and 25% (\$3,750) to the Net Settlement Amount for distribution to the PAGA Period Employees.
4. **To the Settlement Administrator.** The Settlement Administrator will pay to itself its reasonable fees and expenses documented and approved by the Court. ("Settlement Administration Expenses").
5. If the Court approves any payment described above in Section B.1-4 in an amount less than requested, the Parties agree to retain the remainder in the Net Settlement Amount for distribution to Participating Class Members.

- C. **Settlement Share Payments** Following deduction of the Court-approved sums from the Gross Settlement Amount for Class Counsel’s attorney fees and litigation expenses, the Class Representative Service Payment, the Administrator’s expenses, and the PAGA Payment to the LWDA and PAGA Period Employees, the remaining Net Settlement Amount, estimated at \$309,417 shall be distributed to Participating Class Members on a pro rata basis based upon the number of pay periods worked during the Class Period in relation to the number of pay periods worked by all Participating Class Members during the Class Period. The \$3,750 PAGA Payment shall be distributed to PAGA Period Employees on a pro rata basis based upon the number of pay periods worked during the PAGA Period in relation to the number of pay periods worked by all PAGA Period Employees during the PAGA Period.
1. **Allocation of the Settlement Share Payment, and Tax Forms.**
 - a. The Settlement Administrator shall allocate 20% of each Participating Class Member’s Settlement Share to settlement of wage claims (“Wage Portion”). The Wage Portion is subject to employee wage withholdings. The Settlement Administrator shall report these payments on IRS Forms W-2.
 - b. The Settlement Administrator shall allocate 40% of each Participating Class Member’s Settlement Share is in settlement of claims for interest and 40% of each Participating Class Member’s Settlement Share is in settlement of claims for reimbursement of business expenses allegedly due to employees (collectively “Non-Wage Portion”). The Non-Wage Portion shall not be subject to wage withholdings. The Settlement Administrator shall report these payments on IRS Forms 1099.
 2. **Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no Settlement Share and their Election Not to Participate in Settlement will reduce neither the Gross Settlement Amount nor the Net Settlement Amount. Their respective Settlement Shares will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis relative to their Settlement Shares. However, if a Class Member elects not to participate in the Settlement, the Class Member will still receive a share of the PAGA Payment.
 3. **Pay Periods Modification.** Defendant represents the Class consists of no more than 176 Class Members who collectively worked approximately 5,776 pay periods during the Class Period.
- D. **Appointment of Settlement Administrator.** The Parties agree to use CPT Group, Inc., to serve as the Settlement Administrator, which, as a condition of appointment, will agree to follow this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator’s duties will include

preparing, printing, and mailing the Class Notice Packet to all Class Members in English; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address as located upon skip-tracing or as provided by Counsel for the Parties; setting up a toll-free telephone number to receive calls from Class Members; receiving and reviewing for validity completed Elections Not to Participate in Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of completed Elections Not to Participate in Settlement; calculating Settlement Shares payments; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; handling uncashed checks, and providing declarations as requested by the Parties, and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the authority to resolve all disputes concerning the calculation of a Participating Class Member's Settlement Share, subject to the dollar limitations and calculations set forth in this Agreement. The Settlement Administration Expenses, including the cost of printing and mailing the Class Notice Packet, will come from the Gross Settlement Amount.

The Settlement Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll withholdings for taxes and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

E. Procedure for Approving Settlement.

1. Motion for Preliminary Approval of Settlement by the Court.

- a. After execution of this Settlement Agreement, Plaintiffs will file a Motion for Preliminary Approval seeking preliminary approval, approval of the Class Notice, and appointment of Class Counsel, Plaintiffs as the Class Representative, and the CPT Group, Inc., as the Administrator, and setting a date for the Final Approval Hearing.
- b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit an Order Granting Preliminary Approval of the Settlement substantially in the form evidenced by Exhibit D to this Agreement and incorporated by reference into this Agreement.
- c. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect

of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval.

2. **Notice to Class Members.** After the Court enters an Order Granting Preliminary Approval of the Settlement, the Class Notice Packet will be mailed to all members of the Class as follows:
 - a. No later than 14 days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendant will provide the Class Data list to the Settlement Administrator. This list will otherwise remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities, in order to carry out the reasonable efforts described in Section III.E.2.c., or pursuant to Defendant's express written authorization or by order of the Court. All Class Data will be used for settlement notification and settlement administration and shall not be used for any other purpose by Class Counsel.
 - b. Using best efforts to mail it as soon as possible, and in no event later than 14 court days after receiving the Class Data list, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement, or from the Class Member, or from Class Counsel.
 - c. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not longer than 10 days from receipt of the returned packet, search for a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Data and otherwise work with Defendant to find the most current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, Court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the Settlement Administrator will note for its own records and notify to Counsel for the Parties of the date of each

such re-mailing as part of a weekly status report provided to the Parties.

- d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Elections Not to Participate in Settlement it receives (including the numbers of valid and deficient), number of disputed claims, and number of objections received, and will provide any written objections upon receipt to Counsel for the Parties.
- e. No later than 10 days before the date Plaintiffs will file the Motion for Final Approval of the Settlement, the Settlement Administrator will provide its declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the Elections Not to Participate in Settlement received (including the numbers of valid and deficient Elections), number of disputed claims, and objections received. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. **Objections to Settlement; Disputes as to the Number of Pay Periods; and Requests for Exclusion.** Class Members may submit objections as to any term of the Settlement, dispute the number of pay periods allocated to them, and request exclusion pursuant to the following procedures:

- a. **Object to Settlement.** The Class Notice will provide that only Participating Class Members may object to the Settlement. Participating Class Members must submit a written objection to the Settlement Administrator no later than 60 days after the Settlement Administrator mails the Class Notice Packets, or 15 days after re-mailing, whichever is later. Written objections should set forth the grounds for each objection made. Class Members may also appear at the final approval hearing to orally object, even if they have not submitted a written objection.
- b. **Dispute the Number of Pay Periods.** Class Members shall have 60 days after the initial date of mailing the Class Notice Packet to a dispute of the number of pay periods the Class Notice allocates to them during the Class Period. Class Members may submit a dispute to the Settlement Administrator. The Settlement Administrator will resolve any such dispute, subject to the Court's review if requested.
- c. **Election Not to Participate in Settlement.** The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must postmark and mail to the Settlement

Administrator no later than 60 days, or 15 days after re-mailing, whichever is later, after the initial mailing of the Class Notice Packets, a signed Election Not to Participate in Settlement.

(i) To be valid, an Election Not to Participate must be timely and must comply with the instructions in the Class Notice. If a question is raised about the authenticity of a signed Election Not to Participate in Settlement, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity.

(ii) A Non-Participating Class Member will not participate in or be bound by the Released Class Claims and the Judgment with respect to the Class Claims. Defendant will remain free to contest any claim brought by the Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendant has or could assert against such a claim. However, even if a Class Member elects not to participate in the Settlement, the Class Member will still receive a share of the PAGA Payment. The Settlement Administrator will determine the Class Member's share of the PAGA Payment by comparing the number of pay periods the Class Member worked during the PAGA Period to the total number of pay periods during the PAGA Period. The Class Member will release only the PAGA claims.

(iii) A Class Member who does not complete and mail a timely Election Not to Participate in Settlement in the manner and by the deadline specified above will automatically become a Participating Class Member, will receive a Settlement Share payment, and be bound by all terms and conditions of the Settlement, including the Released Class Claims if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement.

(iv) Persons who submit an Election Not to Participate in Settlement shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement.

(v) All Participating Class Members who do not submit a valid and timely Election Not to Participate in Settlement will receive a Settlement Share payment, without the need to file a claim form, and the terms of the Settlement will bind them, including without limitation, the release of the Released Class Claims set forth in this Agreement.

- d. **Report.** No later than 10 days after the deadline for submission of Elections Not to Participate in Settlement, the Settlement Administrator will provide Counsel for the Parties with a complete and accurate count of Participating Class Members and Non-Participating Class Members.
4. **Right of Defendant to Reject Settlement.** If more than 10 percent of the Class Members timely submit valid Elections Not to Participate in Settlement, Defendant will have the right, but not the obligation, to void the Settlement and the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Defendant will pay the Settlement Administration Expenses incurred as of the date that Defendant exercises the right to void the Settlement. Defendant will notify Class Counsel and the Court whether it is exercising this right to void no later than 10 days after the Settlement Administrator notifies the Parties, for the final time, of the number of valid Elections Not to Participate in Settlement it has received.
5. **No Solicitation.** The Parties and their counsel represent that neither the Parties nor their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement. If a Class Member submits an Election Not to Participate in Settlement, Class Counsel will not solicit, represent, or otherwise encourage that Non-Participating Class Member to participate in separate litigation against Defendant.
6. **Additional Briefing and Final Approval.**
 - a. No later than 16 court days before the Final Approval Hearing, the Plaintiffs will file with the Court a Motion for Final Approval of the Settlement, the PAGA Payment, and Payment of the Settlement Administration Expenses. The Motion for Final Approval will also include Class Counsel's application for Class Counsel Fees and Litigation Expenses Payment and Class Representative Service Payment.
 - b. If any opposition is filed, then no later than five court days before the Final Approval Hearing, both Parties may file a reply in support of the Motion for Final Approval of the Settlement, the PAGA Payment, and Payment of the Settlement Administration Expenses; and Plaintiffs and Class Counsel may also file a reply in support of their Motion for the Class Representative Service Payment, the

Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.

- c. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. But an award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the PAGA Payment, Class Representative Service Payment, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this paragraph.
- d. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry the Judgment substantially in the form attached hereto as Exhibit C. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiffs and Participating Class Members who did not timely submit an objection to the Settlement, Defendant, and their respective counsel waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ, except as to a reduction in attorney fees or service payment. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If there is an appeal from the Judgment, it suspends the time for consummation of the Settlement (including making payments under the Settlement) until the appeal is finally resolved and the Judgment becomes final.

8. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then the Parties shall work together

in good faith to address any concerns raised by the reviewing Court and propose a revised Settlement for the approval of the Court no later than 14 days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Class Representative Service Payment or the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendant's obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount.

9. **Timing of Provision of Settlement Shares and Other Payments.** Defendant will transmit to the Administrator the Gross Settlement Amount and the amount necessary to pay Defendant's share of payroll taxes within 21 days of the Effective Date. Within 15 days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will pay to Participating Class Members, their Settlement Shares; to Plaintiff, the Class Representative Service Payment; to Class Counsel, the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment; to the LWDA, their LWDA Payment; individual PAGA shares, and to the Settlement Administrator, the Settlement Administration Expenses.
10. **Uncashed Settlement Share Checks.** A Participating Class Member must cash his or her Settlement Share check within 180 days after the Settlement Administrator mails it to him or her. This is the "Void Date". If the Settlement Administrator receives a returned check, it will make all reasonable efforts to re-mail it to the Participating Class Member at his or her correct address. If a Participating Class Member's Settlement Share check is not cashed within 45 days after its mailing, the Settlement Administrator will send the Participating Class Member a postcard informing him or her that unless the check is cashed by the Void Date, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the Void Date, the Settlement Administrator will pay the funds from such uncashed checks to Legal Aid at Work in accordance with California Code of Civil Procedure section 384. The Settlement binds Participating Class Members, regardless of whether their checks remain uncashed.
11. **Final Report by Settlement Administrator to Court.** Within 10 calendar days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will serve on the Parties and file with the Court a declaration proving a final report on the disbursements of all funds from the Gross Settlement Amount pursuant to California Code of Civil Procedure section 384. Thereafter, the Court shall set a date for a final review hearing when the Parties shall report to the Court the amount paid to

Class Members, and the Settlement Administrator transmit the amount resulting from uncashed checks to Legal Aid at Work. After the Court receives the report, it shall amend the judgment to direct payment of the sum of uncashed checks to Legal Aid at Work in accordance with California Code of Civil Procedure section 384, as approved by the Court.

F. **Release of Claims.**

1. **Participating Class Members.** As of the date Defendant funds the Gross Settlement Amount, Defendant and the other Released Parties shall be entitled to a full and final accord, satisfaction, settlement, and release of the Released Class Claims and Released PAGA Claims.
2. **Plaintiffs.** As of the date the Defendant funds the Gross Settlement Amount, Plaintiffs hereby fully and finally release Defendant and the other Released Parties from any and all claims, losses, debts, charges, damages, demands, obligations, causes of action, lawsuits, liabilities, breaches of duty, misfeasance, malfeasance, promises, controversies, contracts, judgments, awards, penalties, costs, and expenses of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any local, state, or federal statute, rule, regulation, ordinance or common law, including but not limited to those claims raised in the Actions and/or that could have been raised in the Actions, and those arising from or related to their work with Defendant (“Plaintiff’s Released Claims”). This release excludes only the release of claims not permitted by law.
3. **Plaintiffs’ Waiver of Rights Under California Civil Code Section 1542.** As partial consideration for the Class Representative Service Payment, Plaintiffs’ Released Claims shall include all such claims, whether known or unknown by the releasing party. Thus, even if Plaintiffs discover facts and/or claims in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Plaintiffs’ Released Claims, those claims will remain released and forever barred. Therefore, with respect to Plaintiffs’ Released Claims, Plaintiffs expressly waive and relinquish the provisions, rights and benefits of California Civil Code section 1542, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

4. **Class Counsel.** As of the date the Defendant funds the Gross Settlement Amount, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against Defendant arising from or related to the Action.
- G. **No Effect on Other Benefits.** The Settlement Shares will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiffs or Participating Class Members, and Plaintiffs and Participating Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.
- H. **Limitation on Public Statements About Settlement.** Plaintiffs and Class Counsel represent that they have not and will not issue any press, publications, or other media releases about the Settlement (including, but not necessarily limited to advertising or marketing materials or on social media) or have any communication with the press or media regarding the Settlement. This provision shall not prohibit Class Counsel from communicating with Class Members after preliminary approval is granted for the sole purpose of administering the Settlement. This provision also does not limit Class Counsel from complying with ethical obligations or from posting court-filed documents on a website for viewing by Class Members.
- I. **Miscellaneous Terms.**
 1. **No Admission of Liability or Class Certification for Other Purposes.**
 - a. Defendant and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Actions, or that but for the Settlement a class should be certified in the Actions. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant or the Released Parties, or an admission by Plaintiffs that any of the claims were non-meritorious or any defense asserted by Defendant was meritorious.
 - b. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiffs or Defendant or any of the Released Parties, including, but not limited to, evidence of a

presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.

c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.

2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits. This Integration provision includes and covers the Parties' initial Class Action and PAGA Agreement. In reviewing Plaintiff's initial motion for preliminary approval of the settlement, the Court required several changes to the Parties initial Class Action and PAGA Agreement. This Second Class Action and PAGA Agreement includes those changes and is thus the operative Agreement.
3. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effectuate the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the mediator for resolution.
4. **No Prior Assignments:** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity and

portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

5. **No Tax Advice:** Neither Class Counsel nor Defendant's Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
6. **Modification of Agreement.** Except as set forth in Section III.I.3 above, and any parts of it, the Parties or their representative may only amend, modify, change, or waive by an express written instrument signed by all Parties and approved by the Court.
7. **Agreement Binding on Successors.** This Agreement is binding upon, and inure to the benefit of, the successors of each of the Parties. The Parties warrant they understand and have full authority to enter this Agreement, and intend it to be fully enforceable and binding on all Parties, pursuant to California Code of Civil Procedure section 664.6, and agree it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions which might otherwise apply under federal or state law.
8. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
10. **Fair and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
11. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within 30 days after the Judgment becomes Final, Class Counsel will return or destroy and confirm in writing to Defendant the destruction of all such documents and data.

12. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
13. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiffs and the Class:

Cohelan Khoury & Singer
Isam C. Khoury
ikhoury@ckslaw.com
605 C Street, Suite 200
San Diego, CA 92101
Tel.: (619) 595-3001 / Fax: (619) 595-3000

The Darren Guez Law Firm
Darren Guez
darren@guezlaw.com
930 Tahoe Blvd. Ste. 802 #44
Incline Village, NV 89451
Tel.: (916) 520-0988 / Facsimile: (916) 490-3714
Clayo C. Arnold A.P.C.
John T. Stralen
jstralen@justice4you.com
865 Howe Ave.
Sacramento, CA 95825
Tel.: (916) 777-7777 / Facsimile: (916) 924-1829

To Defendant:

CDF Labor Law LLP
Corey Cabral
ccabral@cdflaborlaw.com
Joel Van Parys
jvanparys@cdflaborlaw.com
Brent Giddens
bgiddens@cdflaborlaw.com
900 University Avenue, Suite 200
Sacramento, CA 95825
Tel.: (916) 361-0991

14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
15. **Stay of Litigation.** The Parties agree that upon the signing of this Agreement by the Parties hereto the continuing litigation of the Action shall be stayed and the time to bring the Action to trial shall be extended pending the outcome of the settlement process.
16. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action to ensure the continuing implementation of this Agreement.
17. **Court Filings.** The Parties agree not to object to any Court filings consistent with this Settlement Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

[Signatures on next page]

Dated: 4/5/2023
_____, 2023

Marcus Castro

Marcus Castro, Plaintiff

Dated: _____, 2023

Adam Harmoning, Plaintiff

Dated: _____, 2023

Defendant
First Bank, A Missouri Corporation

By: _____

Dated: 4/5, 2023

COHELAN KHOURY & SINGER

By:  _____
Isam Khoury
Attorneys for Plaintiffs

Dated: _____, 2023

THE DARREN GUEZ LAW FIRM

By: _____
Darren Guez
Attorneys for Plaintiffs

Dated: _____, 2023

CLAYEO C. ARNOLD, A.P.C.

By: _____
John T. Stralen
Attorneys for Plaintiffs

Dated: _____, 2023

CDF LABOR LAW LLP

By: _____
Corey Cabral
Joel Van Parys
Brent Giddens
Attorneys for Defendant

Dated: _____, 2022

Marcus Castro, Plaintiff

03 / 31 / 2023

Dated: _____, 2022

Adam Harmoning

Adam Harmoning, Plaintiff

Dated: _____, 2022

Defendant
First Bank, A Missouri Corporation

By: _____

Dated: _____, 2022

COHELAN KHOURY & SINGER

By: _____
Isam Khoury Attorneys for Plaintiffs

Dated: 3/31/23, 2022

THE DARREN GUEZ LAW FIRM

By: 

Darren Guez
Attorneys for Plaintiffs

Dated: 3/31/23, 2022

CLAYEO C. ARNOLD, A.P.C.

By: 

John T. Stralen
Attorneys for Plaintiffs

Dated: _____, 2022

CDF LABOR LAW LLP

By: _____
Corey Cabral
Joel Van Parys
Brent Giddens
Attorneys for Defendant

Dated: _____, 2023

Marcus Castro, Plaintiff

Dated: _____, 2023

Adam Harmoning, Plaintiff

Dated: April 11, 2023

Defendant
First Bank, A Missouri Corporation

By: 

Executive Vice President & General Counsel

Dated: _____, 2023

COHELAN KHOURY & SINGER

By: _____
Isam Khoury
Attorneys for Plaintiffs

Dated: _____, 2023

THE DARREN GUEZ LAW FIRM

By: _____
Darren Guez
Attorneys for Plaintiffs

Dated: _____, 2023

CLAYEO C. ARNOLD, A.P.C.

By: _____
John T. Stralen
Attorneys for Plaintiffs

Dated: April 12, 2023

CDF LABOR LAW LLP

By: 

Corey Cabral
Joel Van Parys
Brent Giddens
Attorneys for Defendant

EXHIBIT A

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION]

Harmoning et al. v. First Bank
Superior Court of California, County of County of Sacramento
Case No. 34-2017-00223939

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected whether you act or don't act.*

NOTICE OF CLASS ACTION SETTLEMENT

To: All persons employed by First Bank as a mortgage loan officer, home loan consultant, home loan advisor, or mortgage banker in the State of California at any time during the period from December 18, 2013 through September 30, 2022, but excluding those former employees who have previously reached an individual settlement with First Bank that is a full general release of all claims (the “Class Members” or “Settlement Class”).

PLEASE READ THIS NOTICE CAREFULLY.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING TO RECEIVE A PAYMENT	To receive your Individual Settlement Payment, you do not need to do anything. Your payment will be automatically mailed to you at the address on file if the Court grants final approval of the Settlement.
CHANGE CONTACT INFORMATION	If you need to change your address and contact information, you must provide the Settlement Administrator with updated contact information to ensure your Individual Settlement Payment is mailed to the correct mailing address. A Change of Address Form and return envelope are enclosed.
EXCLUDE YOURSELF	If you ask to be excluded from the Settlement, and money is later awarded, you will not receive a share of the Class funds. But, you will keep any rights as an individual to sue First Bank separately about the same legal claims that are being settled in this case. If you now have an action pending against First Bank you must speak with your attorney immediately about the impact this Settlement and its releases may have on your individual case. You may exclude yourself from this Settlement and Class by submitting a written Request for Exclusion according to the instructions contained in this Notice. The deadline to submit a Request for Exclusion is _____, 202__. [60 calendar days from date of mailing] However, PAGA does not allow individuals to exclude themselves, so if you exclude yourself from the Settlement and are a PAGA Period Employee, you will still receive your share of the PAGA Payment and release your PAGA Claims.
OBJECT	Object to the Settlement if you think the Settlement is not fair by sending your written objection to the Settlement Administrator and, if you wish, appear at the Final Approval Hearing. You may also appear at the Final Approval Hearing to orally object, even if you have not submitted a written objection. If you submit a Request for Exclusion from the Settlement, you cannot also object to it because the settlement no longer affects you. The deadline to submit an objection is _____, 202__. [60 calendar days from date of mailing]

- **YOUR RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE.**
- **DEFENDANT SUPPORTS THE SETTLEMENT AND WILL NOT RETALIATE IN ANY MANNER AGAINST ANY CLASS MEMBER WHO REMAINS IN THE CLASS AND RECEIVES A SETTLEMENT PAYMENT.**

WHAT THIS NOTICE CONTAINS

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BASIC INFORMATION

1. **Why was this notice issued?**

A Court authorized this notice because you have a right to know about a proposed Settlement of the class action lawsuit, and about all of your options, before the Court decides whether to approve it. This notice explains the lawsuit, the Settlement, your legal rights, the payments that are available, who is eligible to receive them, and how to get them.

The Court in charge of the case is the Superior Court of the State of California, County of Sacramento, and the case is known as *Harmoning et al. v. First Bank*, Case No. 34-2017-00223939 (the “Action”).

2. **What are these lawsuits about?**

On December 18, 2017, Adam Harmoning filed this Action in the Sacramento County Superior Court on behalf of all mortgage loan officers, home loan consultant, home loan advisor, or mortgage banker employed by First Bank (“Defendant”) in the State of California at any time during the period from December 18, 2013 through September 30, 2022 (“Class Period”). On February 27, 2019 Marcus Castro filed a similar action in the Orange County Superior Court. In these Actions together, Plaintiffs alleged Defendant did not pay all compensation for involuntarily forfeited meal and rest periods; did not reimburse for all necessary business expenses; did not provide accurate wage statements; failed to timely pay employees; did not pay minimum wage for all hours worked; did not pay overtime; that employees were improperly classified as exempt; and failed to maintain accurate employment records, among other allegations. The Castro Complaint was subsequently amended on to include civil penalty claims for Labor Code violations under the Private Attorneys General Act (“PAGA”). A first amended complaint was filed in this Action on February 6, 2023 in order to include Marcus Castro as a class and PAGA representative plaintiff and to include those claims which had been asserted by Mr. Castro in the similar action which had been filed in Orange County.

Defendant denies all of the claims. However, Defendant has agreed to settle the Action to avoid continued litigation. The Settlement is not an admission of any wrongdoing by Defendant or an indication that any law was violated.

3. **What is a class action?**

In a class action lawsuit, one or more people called Class Representatives (in this case, Plaintiffs Adam Harmoning and Marcus Castro) sue on behalf of others who may have similar claims, who are called a class or class members.

4. **Why is there a Settlement?**

The Court did not decide in favor of Plaintiffs, nor did the Court decide in favor of Defendant. Instead, both sides agreed to a no-fault settlement of the Action (“Settlement”). That way, they avoid the cost of further litigation, including a trial, and the people affected will get compensation from the Settlement.

5. **Who are the Parties in these Lawsuits?**

Plaintiffs Adam Harmoning and Marcus Castro were employed by Defendant as mortgage loan officers during a portion of the Class Period.

First Bank is the Defendant.

6. Who are the Attorneys representing the Plaintiff and the Class?

CLAYEO C. ARNOLD, APLC Clayeo C. Arnold John T. Stralen 865 Howe Avenue Sacramento, CA 95825 Telephone: (916) 777-7777	THE DARREN GUEZ LAW FIRM Darren Guez 930 Tahoe Blvd., Suite 802 #44 Incline Village, NV 89451 Telephone: (916) 520-0988	COHELAN KHOURY & SINGER Isam C. Khoury 605 C Street, Suite 200 San Diego, CA 92101 Telephone: (619) 595-3001
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THE TERMS OF THE SETTLEMENT

7. What is the Settlement Amount?

The proposed Settlement provides for a maximum payment of \$550,000.00 to fully and finally resolve all claims in the Action (referred to as the “Gross Settlement Amount”). Class Counsel will apply to the Court for attorneys’ fees of up to \$183,333.00 (33.33% of the Gross Settlement Amount); litigation costs not to exceed \$15,000.00; a Class Representative Service Payment of up to \$10,000.00 each for Plaintiffs Adam Harmoning and Marcus Castro for their work and effort in prosecuting this case, risks taken for the payment of costs in the event of loss, and a general release of all claims; settlement administration expenses to CPT Group Inc., not to exceed \$7,250.00; and a PAGA payment in the sum of \$15,000.00 (75% or \$11,250.00 to be paid to the California Labor Workforce and Development Agency and the remaining 25% or \$3,750.00 to be distributed to the PAGA Period Employees). The exact amount of the attorneys’ fees, litigation costs, Class Representative Service Payment, and settlement administration expenses will be determined by the Court at the Final Approval hearing if the Settlement is approved.

Following the Court-approved deductions, the remaining portion of the Settlement, the Net Settlement Amount (“NSA”), is estimated to be \$309,417.00. The NSA will be apportioned and will automatically be paid out entirely to all Participating Class Members. No portion of the NSA will revert to Defendant under any circumstances. Class Members, who worked any time during the PAGA Period (defined below) will also receive a proportionate share of the \$3,750.00 PAGA Payment regardless of whether they request exclusion from the Settlement.

8. How will the Settlement Payments be calculated and how much will my award be?

Class Members will receive their pro-rata share of the NSA based on the number of eligible pay periods they worked during the Class Period. “Pay Periods” are defined as seven consecutive calendar days beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m. A Class Member is deemed to have worked during a “Pay Period” if such Class Member worked for Defendant at least one (1) shift during a given Pay Period.

Here’s how it works – the NSA will be entirely distributed to the members of the Class. The NSA allocated to each individual Class Member will be based on the individual Class Member’s total number of eligible pay periods worked during the Class Period, in relation to the total number of eligible pay periods worked by all Class Members. Eligible pay periods will be calculated by the Settlement Administrator according to Defendant’s records. It is estimated Class Members will be paid approximately \$xx.xx per eligible pay period worked during the Class Period, less applicable tax withholdings, although the actual amount that is paid may be lower or higher than the amount estimated.

Based on Defendant’s records, you worked [redacted] eligible pay periods as a Class Member during the Class Period. If you wish to dispute your number of pay periods during the Class Period noted above, you must notify the Settlement Administrator in writing, no later than _____, 202__ [sixty (60) days after the

mailing of this notice]. Please provide any proof you may have that you worked a different number of pay periods during the Class Period.

PAGA Period Employees, defined as members of the Class employed at any time during the PAGA Period (from December 24, 2017 to September 30, 2022), regardless of whether they exclude themselves from the Settlement, will receive a proportionate share of the \$3,750.00 PAGA Payment allocated to PAGA Period Employees based on their number of pay periods employed during the PAGA Period in relation to the aggregate number of pay periods that all PAGA Period Employees worked, estimated to be **xxxx**. It is estimated PAGA Period Employees will received approximately **\$xx.xx** per pay period during the PAGA Period.

Based on Defendant’s records, you worked [redacted] pay periods during the PAGA Period. If you wish to dispute your number of pay periods worked during the PAGA Period, you must notify the Settlement Administrator in writing, no later than _____, **202__** [*sixty (60) days after the mailing of this notice*]. Please provide any proof you may have that you worked a different number of pay periods during the PAGA Period.

Settlement Payments based on the number of pay periods shall be subject to applicable withholding taxes on that portion of the payment allocated to wages. Settlement Payments will be allocated 20% to wages for which an IRS W-2 form will be issued, and 80%, plus any share of the PAGA Payment, to penalties and interest, for which an IRS 1099 form will be issued. You will be responsible for the tax consequences of your Settlement Share, for filing your own returns and reporting all income received to state and federal taxing authorities, and for payment of any other applicable taxes due.

HOW TO GET A PAYMENT

9. How can I get my Settlement Payment?

If the Settlement is finally approved, you do not need to do anything to receive your Individual Settlement Payment check. If the Court approves the Settlement at the Final Approval hearing, your Individual Settlement Payment will be mailed to the address on file with the Settlement Administrator. **It is your responsibility to keep the Settlement Administrator informed of any change in your address, as your Individual Settlement Payment will be mailed to the last known address it has on file for you if the Court approves the settlement.** A Change of Address Form, and preprinted return envelope are enclosed for your convenience.

10. When can I expect to receive my Settlement Award?

If the Court approves the settlement, and there are no pending objections, your Individual Settlement Payment will be paid approximately 60 days after the Court grants final approval of the Settlement. **It will be mailed to the address on file for you.** Again, if this address is not correct, or if you move after you receive this Notice, you should notify the Settlement Administrator by mail or by calling the Settlement Administrator at toll free 800-_____, or by returning the enclosed Change of Address Form.

11. What am I giving up to get a Settlement Payment?

Class Members will be giving up or “releasing” the claims described below:

Released Class Claims: any and all claims and/or causes of action alleged or that could have been alleged based on the facts asserted during the Class Period in the Operative Complaint filed on February 6, 2023, including (1) failure to indemnify-reimburse business expenses, Labor Code section 2802; (2) failure to pay regular/minimum wages, Labor Code sections 1182.12, 1194, 1194.2, 1197, and IWC Wage Order No. 4-2001, §4(A); (3) failure to pay overtime and double overtime compensation, Labor Code section 1194, and IWC Wage

Order No. 4-2001, §(3)(A); (4) failure to provide compliant meal periods, Labor Code sections 226.7, 512, and IWC Wage Order 4-2001, §11; (5) failure to provide compliant rest periods, Labor Code section 226.7, and IWC Wage Order 4-2001, §12; (6) failure to make payments within the required time, Labor Code sections 201, 202, 203, 204; (7) failure to provide accurate wage statements, Labor Code section 226; (8) failure to maintain required records, Labor Code sections 1174, 1174.5, and IWC Wage Order No. 4, §7; and (9) unfair business practices, Business & Professions Code sections 17200, et seq. The release of these claims shall be effective for the Class Period upon the Effective Date of Settlement. The Released Class Claims expressly exclude all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and claims outside of the Class Period.

Class Members who do not exclude themselves from the Settlement will be considered to have accepted the Release Class Claims as against the Released Parties, and will be bound by the Judgment, whether or not they negotiate their Individual Settlement Payment check.

Regardless of whether a Class Member opts out of the Class Settlement, they will still be bound by the Released PAGA Claims if they are PAGA Period Employees. PAGA Period Employees will be giving up or "releasing" the claims described below:

Released PAGA Claims: any and all claims and/or causes of action alleged or that could have been alleged based on the facts asserted during the PAGA Period in the Operative Complaint filed on February 6, 2023, including (1) PAGA Civil Penalties pursuant to Labor Code sections 2802, 2699(f)(2); (2) PAGA Civil Penalties pursuant to Labor Code sections 1182.2, 1194, 1194.2, 1197, 2699(f)(2), and IWC Wage Order No. 4-2001, §4(A); (3) PAGA Civil Penalties pursuant to Labor Code sections 226.7, 512, 2699(f)(2), and IWC Wage Order No. 4-2001, §§11, 12; (4) PAGA Civil Penalties pursuant to Labor Code sections 203, 210, 256, 2699(f)(2); (5) PAGA Civil Penalties pursuant to Labor Code section 226.3; (6) PAGA Civil Penalties pursuant to Labor Code section 558(a). The release of these claims shall be effective for the PAGA Period upon the Effective Date of Settlement. The Released PAGA Claims expressly exclude all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and claims outside of the PAGA Period.

EXCLUDING YOURSELF FROM THE SETTLEMENT

12. Can I exclude myself from the Settlement?

If you wish to pursue your own separate lawsuit or arbitration against Defendant for the claims asserted in the Action, or if you otherwise wish not to participate in the Settlement for whatever reason, you can exclude yourself from this Settlement (that is, "opt out" of the Settlement). To opt out and exclude yourself from the Class and this Settlement, you must provide a signed and dated letter to the Administrator requesting to be excluded from the Class and Settlement. The letter must state in substance:

"I have read and understand the Notice of Class Action Settlement of Class and I wish to exclude myself from the Settlement described in the Notice."

Your letter requesting to exclude yourself must include the case name: *Harmoning et al. v. First Bank*, Sacramento Superior Court Case No. 34-2017-00223939, your full name, current address, telephone number and the last four digits of your Social Security Number, and must be signed. It must be addressed to the Administrator at *Harmoning et al. v. First Bank Class Action Settlement Administrator, c/o CPT Group, P. O. Box _____, Irvine, CA 9____*, and must be postmarked on or before _____. [60 days from mailing of Notice Packet] Requests for exclusion postmarked after this date may be disregarded. If you are a PAGA Period

Employee and return a valid and timely request for exclusion, you will still receive a share of the PAGA Penalties and will release PAGA claims.

13. If I don't exclude myself, can I sue Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendant for the claims that this Settlement resolves. *If you have a separate arbitration or lawsuit already filed against the Defendant, or plan to separately file your own action, you should speak to your lawyer in that case immediately.* You may need to exclude yourself from this Action, Class and Settlement by _____, 202__ [60 days from mailing of Notice Packet] in order to continue your separate arbitration or lawsuit.

14. If I exclude myself, can I get money from this Settlement?

No. If you request to be excluded from the Settlement, you will not receive a Settlement Payment, however, you will still receive the Individual PAGA Payment if you were employed during the PAGA Period. If you request to be excluded from the Settlement, you also will not be able to object to the Settlement because the Settlement no longer affects you. The Individual Settlement Payment you would have been entitled to receive will be redistributed to Participating Class Members. No portion of the Settlement monies will go back to Defendant as a result of any person requesting to be excluded from the Settlement.

OBJECTING TO THE SETTLEMENT

15. How do I tell the Court that I don't like the Settlement?

If you don't think the Settlement is fair, and you don't request to be excluded from the Settlement, you may object to the Settlement and tell the Court that you don't agree with the Settlement or some part of it before the Court decides whether to grant final approval of the Settlement.

To object, you must submit a timely written objection to the Administrator. Your objection must state that you object to the proposed Settlement of the case entitled *Harmoning et al. v. First Bank*, Sacramento Superior Court Case No. 34-2019-00255123. Your objection must include your name, address, telephone number and signature, and include the specific reasons you object to the Settlement. If you intend to appear at the Final Approval hearing, you must also indicate your intention to appear in person at the hearing. Your written objection must be mailed to the Administrator at *Harmoning et al. v. First Bank Class Action Settlement Administrator, c/o CPT Group*, P. O. Box _____, Irvine, CA 9____, postmarked on or before _____, 202__. [60 days from mailing of Notice Packet] Objections postmarked after this date may be disregarded.

Class Counsel will ensure that any timely postmarked Notice of Objection received by the Settlement Administrator will be filed with the Court.

If you have submitted a timely objection, you may also appear at the Final Approval hearing on the Settlement, set for _____, 202__ at in Department 28 of the Superior Court of California, County of Sacramento, Gordon D. Schaber Courthouse located at 720 9th Street, Sacramento, California 95814 to state your objection. The date and time of the hearing may change without notice. If you have returned a written objection, Class Counsel will notify you of any changes in the date and time of the Final Approval hearing.

You may also appear at the Final Approval Hearing to object orally even if you have not objected in writing.

If you have questions regarding this Settlement, you should contact attorneys for Plaintiff and the Class (see Paragraph 6) or the Settlement Administrator. Please **DO NOT** contact attorneys for Defendant or any of the Defendant's managers and supervisors, etc. Do not contact the Court.

THE COURT'S FINAL FAIRNESS HEARING

16. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval hearing in Department 28 of the Superior Court of California, County of Sacramento, Gordon D. Schaber Courthouse located at 720 9th Street, Sacramento, California 95814, on _____, 202__ at 9:00 a.m. At this hearing the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and litigation costs, the Class Representative's Service Payment, and the Settlement Administrator's fees and expenses. The Court may reschedule the Final Approval hearing without further notice to Class Members. However, any Class Member who has submitted a written objection will be notified by Class Counsel of any rescheduling of the date and time of the Final Approval hearing.

17. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Judge may have. But you are welcome to come at your own expense to support or object to the settlement. If you send an objection, you don't have to come to Court to object but you can if you wish to. As long as you mailed your written objection on time, the Court will consider it. You may also hire and if required pay your own lawyer to attend if you so desire.

18. May I speak at the hearing?

You may appear at the Final Approval Hearing and ask the Court for permission to speak

GETTING MORE INFORMATION

19. Who may I contact if I have questions about the settlement?

This Notice is a summary of the basic terms of the Settlement. For more information, you may review the settlement pleadings in this case, including the Settlement Agreement, at any time during regular business hours in the Superior Court of California, County of Sacramento, located at 720 Ninth Street, Sacramento, California 95814. You may also examine case records online on the Sacramento County Superior Court's website, www.saccourt.ca.gov by clicking on "Online Services," "Public Case Access," "Civil," Search by Case," and, under "Case Number, YYYY-12345678 Format," type in case number "2017-00223939" and click, "Search." The documents filed in this case are listed in the Register of Actions, some may be available to view at a minimal charge.

You may also see a copy of the Settlement Agreement, Notice of Class Action Settlement, the Court's Order Granting Preliminary Approval, the operative complaint filed in the Action, and other important documents relating to the Action by visiting [**insert website address**].

You may also contact any of the attorneys representing Plaintiff and the Class shown in Paragraph 6 above, if you need more information or have questions. You may also contact the Settlement Administrator by calling toll free 1-_____, or you can write to the Settlement Administrator, at _____ [**insert address**].

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANT OR ANY OF THEIR MANAGERS, SUPERVISORS, OR ATTORNEYS FOR INFORMATION.

ADDITIONAL IMPORTANT INFORMATION

A. **It is your responsibility to ensure that the Settlement Administrator** has your current mailing address and telephone number on file, as this will be the address to which your Settlement Award will be sent if the Settlement is approved.

B. **Settlement Award checks should be cashed promptly upon receipt**. Proceeds of checks which remain uncashed after 180 days from the date of issuance will be donated to the organization Legal Aid at Work, a non-profit organization which provides free or reduced legal assistance to persons, depending on need. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

C. The Settlement Administrator's contact information and mailing address are:

Harmoning et al. v. First Bank Class Action Settlement Administrator
c/o CPT Group,
P. O. Box _____,
Irvine, CA 9____,
Toll Free: (800) _____

Website: **[insert website address]**

EXHIBIT B

[CHANGE OF ADDRESS FORM]

Superior Court of the State of California
County of Sacramento

Harmoning et al. v. First Bank
Case No. 34-2017-00223939

CHANGE OF ADDRESS FORM

I wish to change my name and/or mailing address and/or other contact information, for purposes of receiving communications related to this Lawsuit and Settlement to the following:

Name (First, Middle, Last): _____

Former Names (if any): _____

Home Street Address: _____

City, State, Zip Code: _____

Telephone Number(s): Home: _____ Work: _____

Email: _____

Last 4 digits of Social Security Number: XXX-XX-____-____ [Required]

I understand all future correspondence in this Lawsuit, including but not necessarily limited to important notices or settlement payments, will be sent to the address listed above and not to the address previously used. I hereby request and consent to the use of the address listed above for these purposes.

Dated: _____, 2023

Signature [Required]

**PLEASE RETURN THIS FORM BY FAX OR IN THE ENVELOPE PROVIDED
OR VIA UNITED STATES FIRST CLASS MAIL TO:**

Harmoning et al. v. First Bank Class Action
Class Action Settlement Administrator
c/o CPT Group
P. O. Box _____
_____, _____

EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

1 **CLAYEO C. ARNOLD**
2 **A PROFESSIONAL LAW CORPORATION**

3 Clayeo C. Arnold (SBN 65070)
4 carnold@justice4you.com
5 John T. Stralen (SBN 171227)
6 jstralen@justice4you.com
7 865 Howe Avenue
8 Sacramento, CA 95825
9 Telephone: (916) 777-7777/Facsimile: (916) 924-1829

7 **THE DARREN GUEZ LAW FIRM**

8 Darren Guez (SBN 282023)
9 darren@guezlaw.com
10 930 Tahoe Blvd., Suite 802 #44
11 Incline Village, NV 89451
12 Telephone: (916) 520-0988/ Facsimile: (916) 490-3714

11 **COHELAN KHOURY & SINGER**

12 Isam C. Khoury (SBN 58759)
13 ikhoury@ckslaw.com
14 Michael D. Singer (SBN 115301)
15 msinger@ckslaw.com
16 605 C Street, Suite 200
17 San Diego, CA 92101
18 Telephone: (619) 595-3001/Facsimile: (619) 595-3000

16 Attorneys for Plaintiff ADAM J. HARMONING and MARCUS CASTRO

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF SACRAMENTO**

19 ADAM J. HARMONING and MARCUS
20 CASTRO,

21 Plaintiffs,

22 vs.

23 FIRST BANK; FIRST BANKS, INC.; and
24 DOES 1 through 50 inclusive

25 Defendants.

Case No. 34-2019-00255123

CLASS ACTION

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT AND ENTERING
JUDGMENT THEREON**

Date:
Time:
Dept: 28
Judge: Hon. Lauri A. Damrell

Complaint filed: April 24, 2019
Trial date: Not set

1 This matter came on for hearing on _____, 2023 in Department 28 of the
2 above-captioned Court on Plaintiffs’ Motion for Order Granting Final Approval of Class Action
3 and PAGA Settlement and Entering Judgment (“Motion”) pursuant to California Rule of Court
4 3.769, this Court’s Order Granting Preliminary Approval of Class Action and PAGA
5 Settlement, the Second Class Action and PAGA Settlement Agreement (“Agreement”),

6 Having received and considered the Agreement, the supporting papers filed by the
7 Parties, and the evidence and argument received by the Court in conjunction with the Motion
8 for Preliminary Approval of Class and PAGA Representative Action Settlement, and the
9 supporting papers, and evidence and argument received by the Court in conjunction with the
10 Motion for Order Granting Final Approval of Class Action Settlement, the Court grants final
11 approval of the Settlement and HEREBY ORDERS AND MAKES THE FOLLOWING
12 DETERMINATIONS:

13 1. Except as otherwise specified herein, the Court, for purposes of this Final
14 Approval Order, adopts all defined terms set forth in the Parties’ Agreement.

15 2. Pursuant to the Preliminary Approval Order filed _____2023, a Notice of
16 Class Action Settlement, Change of Address form, and pre-printed return envelope (“Notice
17 Packet”) were mailed to each Class Member by first-class U.S. mail. The Notice Packet
18 informed the Class of the terms of the Settlement, their right to receive an Individual Settlement
19 Payment without any required action, their right to comment upon or object to the Settlement,
20 and their right to appear in person or by counsel at the final approval hearing and to be heard
21 regarding approval of the Settlement. Adequate periods of time were provided for each of these
22 procedures.

23 3. No member of the Class filed a request to be excluded from the Settlement or a
24 written objection to the proposed Settlement as part of this notice process or stated an intention
25 to appear at the final approval hearing. *[Will be updated prior to filing with Final Approval*
26 *Motion]*.

27 4. The Court finds and determines this notice procedure afforded adequate
28 protections to Class Members and provides the basis for the Court to make an informed decision

1 regarding approval of the Settlement based on the responses of the Class. The Court finds and
2 determines that the notice provided in this case was the best notice practicable, which satisfies
3 the requirements of law and due process.

4 5. With respect to the Class and for purposes of approving this Settlement only, this
5 Court confirms certification of the Class defined as: persons employed by Defendant in
6 California as Home Loan Consultants, Home Loan Advisors, Mortgage Bankers or other
7 similarly situated employees of Defendant, however titled, including Plaintiffs Adam
8 Harmoning and Marcus Castro, during the period of December 18, 2013 until September 30,
9 2022.

10 6. The Court finds and determines the terms set forth in the Agreement are fair,
11 reasonable, and adequate and, having found that the Settlement was reached as a result of
12 informed and non-collusive arms'-length negotiations facilitated by a neutral and experienced
13 mediator, directs the Parties to effectuate the Settlement according to the terms set forth in the
14 Agreement. The Court further finds the Parties conducted extensive investigation, research, and
15 discovery, and that their attorneys were able to reasonably evaluate their respective positions.
16 The Court also finds that Settlement will enable the Parties to avoid additional and potentially
17 substantial litigation costs, as well as delay and risks if the Parties were to continue to litigate
18 the case. The Court has reviewed the monetary recovery and recognizes the significant value
19 provided to the Class.

20 7. The Court further finds and determines that the terms of the Settlement are fair,
21 reasonable and adequate to the Class and to each Class Member and that the Settlement is
22 ordered finally approved, and that all terms and provisions of the Settlement should be and
23 hereby are ordered to be consummated.

24 8. The Court finds and determines that the Settlement Payments to be paid to
25 Participating Settlement Class Members as provided for by the Settlement are fair and
26 reasonable. The Court hereby grants final approval to and orders the payment of those amounts
27 be made to the Participating Class Members in accordance with the Agreement.

28 ///

1 9. The Court finds and determines that the fees and expenses in administrating the
2 Settlement incurred by CPT Group, Inc., in the amount of \$7,250.00 are fair and reasonable.
3 The Court hereby grants final approval to and orders that the payment of that amount in
4 accordance with the Agreement.

5 10. The Court finds and determines the Class Representative Service Payment of
6 \$10,000.00 to Plaintiff Adam Harmoning is fair and reasonable. The Court hereby orders the
7 Administrator to make this payment to the Plaintiff Adam Harmoning, in accordance with the
8 terms of the Agreement.

9 11. The Court finds and determines the Class Representative Service Payment of
10 \$10,000.00 to Plaintiff Marcus Castro is fair and reasonable. The Court hereby orders the
11 Administrator to make this payment to the Plaintiff Marcus Castro, in accordance with the terms
12 of the Agreement.

13 11. The Court finds and determines that payment to the California Labor and
14 Workforce Development Agency of \$11,250.00 (75% of 15,000.00) as its share of the
15 Settlement of civil penalties under the Private Attorneys Generals Act is fair, reasonable, and
16 appropriate. The Court hereby grants final approval to and orders that amount be paid in
17 accordance with the Agreement.

18 12. Pursuant to the terms of the Settlement, and the authorities, evidence and
19 argument submitted by Class Counsel, the Court hereby awards Class Counsel attorneys' fees of
20 \$183,833.00 and litigation costs of \$XX,XXX.XX. The Court finds such amounts to be fair and
21 reasonable. The Court hereby orders the Administrator to make these payments in accordance
22 with the terms of the Agreement.

23 13. Upon the Effective Date of the Agreement, the Plaintiffs and all Class Members
24 who did not timely exclude themselves from the Settlement shall be deemed to have waived the
25 Released Class Claims against the Released Parties. Upon the Effective Date of the Agreement,
26 the release for PAGA claims shall be effective. Those who did validly exclude themselves are
27 nonetheless bound by the Agreement's release of civil penalties under the Private Attorneys'
28 General Act ("PAGA").

1 14. Without affecting the finality of this Order or the entry of judgment in any way,
2 the Court retains jurisdiction of all matters relating to the interpretation, administration,
3 implementation, effectuation, and enforcement of this Order and the Agreement.

4 15. Neither Defendant nor any Released Parties shall have any further liability for
5 costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability, except as
6 provided for by the Agreement.

7 16. Nothing in this Order shall preclude any action to enforce the Parties' obligations
8 under the Agreement or under this Order, including the requirement that Defendants make
9 payments to the Participating Class Members in accordance with the Settlement.

10 17. The Court hereby enters final judgment in accordance with the terms of the
11 Agreement, and the Court's Preliminary Approval Order, and this Order.

12 18. The Parties will comply with Cal. Rules of Court Rule 3.771(b), by providing
13 notice of entry of judgment with the posting of the Order Granting Final Approval and Entering
14 Judgment on the Administrator, CPT Group, Inc.'s website.

15 19. The Parties will bear their own costs and attorneys' fees except as otherwise
16 provided by this Court's Order awarding Class Counsels' attorneys' fees and litigation costs.

17 **IT IS SO ORDERED.**

18
19 Dated: _____

Honorable Lauri A. Damrell
Judge of the Superior Court of California

EXHIBIT D

[ORDER GRANTING PRELIMINARY APPROVAL]

1 **CLAYEO C. ARNOLD**
2 **A PROFESSIONAL LAW CORPORATION**

3 Clayeo C. Arnold (SBN 65070)
4 arnold@justice4you.com
5 John T. Stralen (SBN 171227)
6 jstralen@justice4you.com
7 865 Howe Avenue
8 Sacramento, CA 95825
9 Tele: (916) 924-3100/Fax: (916) 924-1829

7 **THE DARREN GUEZ LAW FIRM**

8 Darren Guez (SBN 282023)
9 darren@guezlaw.com
10 930 Tahoe Blvd., Suite 802 #44
11 Incline Village, NV 89451
12 Tele: (916) 520-0988/Fax: (916) 490-3714

11 **COHELAN KHOURY & SINGER**

12 Isam C. Khoury (SBN 58759)
13 ikhoury@ckslaw.com
14 Michael D. Singer (SBN 115301)
15 msinger@ckslaw.com
16 605 C Street, Suite 200
17 San Diego, CA 92101
18 Tele: (619) 595-3001/Fax: (619) 595-3000

16 Attorneys for Plaintiff ADAM J. HARMONING and MARCUS CASTRO

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **COUNTY OF SACRAMENTO**

19 ADAM J. HARMONING and MARCUS
20 CASTRO,

21 Plaintiffs,

22 vs.

23 FIRST BANK; FIRST BANKS, INC.; and
24 DOES 1 through 50 inclusive

25 Defendants.

Case No. 34-2017-00223939

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: May 5, 2023
Time: 9:00 a.m.
Dept: 28
Judge: Hon. Lauri A. Damrell
Reservation: 2697651

1 This matter came on for hearing on May 5, 2023 in Department 28 of the above-captioned
2 Court on Plaintiffs’ Renewed Motion for Order Granting Preliminary Approval of Class Action and
3 PAGA Settlement (“Motion”). Having fully reviewed the Motion, supporting memorandum of
4 Points and Authorities, Declarations of Class Counsel Isam C. Khoury, Darren Guez, and John T.
5 Stralen, Declarations of Plaintiffs Marcus Castro and Adam Harmoning, the Second Class Action
6 and PAGA Settlement Agreement (“Agreement”), and the proposed Notice of Class Action
7 Settlement, (“Class Notice”), attached as Exhibit A to the Agreement, having carefully analyzed the
8 Agreement and the Class Notice, and in recognition of the Court’s duty to make a preliminary
9 determination as to the reasonableness of any proposed class action settlement, and if preliminarily
10 determined reasonable, to ensure proper notice is provided to Class Members in accordance with
11 due process requirements, and to set a Final Approval Hearing to consider the good faith, fairness,
12 adequacy and reasonableness of the proposed Settlement, THE COURT MAKES THE
13 FOLLOWING DETERMINATIONS AND ORDERS:

14 1. The Court conditionally finds, for purposes of approving this settlement only, the
15 proposed Class meets the requirements for certification under section 382 of the California Code of
16 Civil Procedure: (a) the proposed Class is ascertainable and so numerous joinder of all members of
17 the Class is impracticable; (b) there are questions of law or fact common to the proposed Class, and
18 a well-defined community of interest among members of the proposed Class with respect to the
19 subject matter of the class action; (c) the claims of the Class Representatives are typical of the claims
20 of the members of the proposed Class; (d) the Class Representatives have and will fairly and
21 adequately protect the interests of the Members of the Class; (e) a class action is superior to other
22 available methods for an efficient adjudication of this controversy in the context of settlement; and
23 (f) counsel of record for Class Representatives are qualified to serve as their counsel individually
24 and in their capacity Class Representatives.

25 2. The Court finds on a preliminary basis the Agreement, incorporated, and made a part
26 of this Order of preliminary approval, appears to be within the range of reasonableness of a
27 settlement which could ultimately be given final approval by this Court.

28 ///

1 3. It appears to the Court on a preliminary basis: (a) the Gross Settlement Amount is
2 fair and reasonable to Class Members when balanced against the probable outcome of further
3 litigation relating to class certification, liability and damages issues, and potential appeals; (b)
4 significant investigation, research, and informal discovery, were conducted and counsel for the
5 Parties are able to reasonably evaluate their positions; (c) settlement will avoid substantial costs,
6 delays, and risks of further prosecution of the case; and (d) the proposed Settlement was reached
7 through serious, non-collusive negotiations facilitated by an experienced mediator.

8 4. Accordingly, good cause appearing, the Motion for Order Granting Preliminary
9 Approval of Class Action Settlement is GRANTED, and the Court incorporates the Agreement.

10 5. For purposes of this Settlement, Class Members are defined as:

11 “persons employed by Defendant in California as Home Loan Consultants,
12 Home Loan Advisors, Mortgage Bankers or other similarly situated
13 employees of Defendant, however titled, including Plaintiffs, during the
period of December 18, 2013 until September 30, 2022.”

14 6. The Court finds the proposed Class Notice fairly and adequately advises Class
15 Members of (a) pendency of the Class Action Settlement; (b) conditional Class certification for
16 settlement purposes only; (c) preliminary Court approval of the proposed Settlement; (d) the date,
17 time and place of the Final Approval Hearing; (e) the terms of the proposed Settlement and the
18 benefits available to Class Members under the Settlement; (f) their right to receive a proportionate
19 share of the Net Settlement Amount without returning a claim form; (g) their right to request
20 exclusion, and procedures and deadline for doing so; (h) their right to object to the Settlement, and
21 the procedures and deadline for doing so; and, (i) their right to file documents in opposition to the
22 Settlement, and appear at the Hearing.

23 7. The Court finds the proposed Class Notice provides the best practicable notice to the
24 Class and comports with all constitutional requirements, including those of due process.
25 Accordingly, good cause appearing, the Court APPROVES the Class Notice.

26 8. The Court further finds mailing the Class Notice, Change and Address Form, and
27 pre-printed return envelope, collectively, (“Class Notice Packet”), to the last known address of Class
28 Members with measures taken for address verification and skip tracing of bad addresses, as

1 described in the Agreement, is an effective method of notifying Class Members of their rights in the
2 class action and the Settlement. Accordingly, it is ORDERED:

3 A. CPT Group, Inc. be appointed the Settlement Administrator to administer the
4 Settlement of this matter as more specifically set forth in the Agreement;

5 B. Isam C. Khoury and Michael Singer of Cohelan Khoury & Singer, Clayeo C.
6 Arnold and John T. Stralen of Clayeo C. Arnold, A Professional Law Corporation and Darren Guez
7 of The Darren Guez Law Firm be appointed as Class Counsel;

8 C. Plaintiffs Marcus Castro and Adam Harmoning be appointed as Class
9 Representatives;

10 D. Within fourteen (14) calendar days (or, if that date falls on a weekend or
11 holiday, the next business day) after the date the Court enters and Order Granting Preliminary
12 Approval of the Settlement, Defendant shall provide to the Settlement Administrator for each Class
13 Member the following information in a Microsoft Office Excel format: (i) full name; (ii) last known
14 address; (iii) last known telephone number; (iv) social security number; (v) employee identification
15 number; and (vi) number of pay periods worked during the Class Period as a Class Member and
16 number of pay period worked during the PAGA Period as a PAGA Period Employee (Class Data
17 List”).

18 E. Within fourteen (14) court days (or, if that date falls on a weekend or holiday,
19 the next business day) days after receipt of the Class Data List, the Settlement Administrator shall
20 mail the Class Notice Packet to each member of the Class by first class, regular U.S. mail, using the
21 most current mailing address information available, with measures taken for updating an address as
22 provided by the terms of the Agreement.

23 F. On or before sixty (60) calendar days from the date the Settlement
24 Administrator first mails the Class Notice Packet (or, if the 60th day falls on a Sunday or holiday,
25 the next business day that is not a Sunday or holiday), Class Members who wish to exclude
26 themselves from the Class must submit a written request for exclusion in the manner set forth in the
27 Class Notice. If the Class Notice is remailed to a Class Member, the date for that Class Member to
28 send a written Request for Exclusion will be the later of 15 calendar days from remailing, or 60 days

1 from the initial mailing. To be considered valid, a Request for Exclusion must be timely and must
2 comply with the instructions in the Class Notice. Class Members who submit a valid Request for
3 Exclusion will still be deemed a PAGA Period Employee, will still receive a pro rata share of the
4 PAGA Payment, and will be bound by any release of claims under PAGA related to the Released
5 PAGA Claims.

6 G. On or before sixty (60) calendar days from the date the Settlement
7 Administrator first mails the Class Notice Packet (or, if the 60th day falls on a Sunday or holiday,
8 the next business day that is not a Sunday or holiday), Class Members who wish to dispute the
9 number of pay periods upon which their Settlement Payment will be calculated must postmark and
10 return to the Settlement Administrator a letter of dispute as set forth in the instructions in the Class
11 Notice. If the Class Notice is remailed to a Class Member, the date for that Class Member to send a
12 written dispute will be the later of 15 calendar days from re-mailing, or 60 days from the initial
13 mailing.

14 H. On or before sixty (60) calendar days from the date the Settlement
15 Administrator first mails the Class Notice Packet (or, if the 60th day falls on a Sunday or holiday,
16 the next business day that is not a Sunday or holiday), Class Members who to Object to the
17 Settlement must submit a written objection in the manner set forth in the Class Notice. If the Class
18 Notice is remailed to a Class Member, the date for that Class Member to send a written objection
19 will be the later of 15 calendar days from re-mailing, or 60 days from the initial mailing. Written
20 objections should set forth the grounds for each objection made. Class Members may also appear at
21 the final approval hearing to orally object, even if they have not submitted a written objection.

22 9. IT IS FURTHER ORDERED that the Final Approval Hearing shall be held before
23 the undersigned at ____ .m. on _____, 2023 in Department 28 of the Superior Court of
24 California, County of Sacramento located at 720 9th Street, Sacramento, California, 95814 to
25 consider the fairness, adequacy, and reasonableness of the proposed Settlement preliminarily
26 approved by this Order of Preliminary Approval, and to consider the application for Class
27 Representative Payments, Settlement Administrator expenses, and for Class Counsel's attorneys'
28 fees and litigation expenses incurred.

1 10. IT IS FURTHER ORDERED that if for any reason the Court does not execute and
2 file an Order Granting Final Approval, or if the Effective Date, as defined in the Agreement, does
3 not occur for any reason whatsoever, the Agreement and the proposed Settlement that is the subject
4 of this Order, and all evidence and proceedings in connection with the Order, shall be restored
5 without prejudice to the status quo ante as forth in the Agreement.

6 11. IT IS FURTHER ORDERED that pending further order of this Court, all
7 proceedings in this matter, except those contemplated by this Order and the Agreement are stayed.

8 12. The Court expressly reserves the right to adjourn or continue the Final Approval
9 Hearing from time to time without further notice to Class Members. However, if written objections
10 are submitted, Class Counsel shall notify objecting Class Members of the new date and time set for
11 the Final Approval Hearing.

12 IT IS SO ORDERED.

13
14 Date: _____

Honorable Lauri A. Damrell
Judge of the Superior Court