

Irma Frausto v. Bank of America, N.A., No. 3:18-cv-01983-LB (N.D. Cal.)
Arianna Suarez v. Bank of America, N.A., No. 3:18-cv-01202-LB (N.D. Cal.)
UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA
NOTICE OF CLASS ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully.

Why Am I Receiving This Notice

On September 7, 2023, the Honorable Laurel M. Beeler of the United States District Court, Northern District of California (the “Court”) granted preliminary approval of a class action settlement (“Settlement”) in *Frausto v. Bank of America, N.A.* (3:18-cv-01983-LB) and *Suarez v. Bank of America* (3:18-cv-01202-LB) (the “Lawsuits”). You have received this notice because the records of Bank of America, N.A. (“Bank of America”) indicate that you fall within one or both of the following groups, and therefore entitled to a payment from the Settlement:

“Settlement Class Members:” Current and former non-exempt employees who worked for Bank of America in California at any time from January 1, 2017 through October 31, 2022, excluding (a) any employee who has filed a separate lawsuit asserting the same or similar claims to those alleged in the Lawsuits that was pending as of the date of the Court granted preliminary approval; and (b) any employee who has previously released all the Released Claims and Released PAGA Claims (as defined below).

“Aggrieved Employees:” Current and former non-exempt employees who worked for Bank of America in California at any time from February 14, 2017 through October 31, 2022, whose PAGA claims being settled and released in the Settlement have not all been released previously as part of another court-approved PAGA settlement.

This is not a notice of a lawsuit against you. **You are not being sued.** The Lawsuits were brought on behalf of all persons who are Settlement Class Members and/or Aggrieved Employees for their benefit. Your participation, or nonparticipation, in the Settlement will not affect your employment with Bank of America in any way whatsoever.

The notice is intended (i) to describe the Settlement, including how the Net Settlement Fund will be allocated and how the Settlement may affect you, and (ii) to advise you of your rights and options with respect to the Settlement.

The Final Fairness and Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at 9:30 a.m. on January 11, 2024 in Courtroom B of the United States District Court, Northern District of California located at 450 Golden Gate Avenue, San Francisco, California 94102.

Please also note that the Final Fairness and Approval Hearing may be rescheduled by the Court to another date and/or time. Please visit <https://www.cptgroupcaseinfo.com/FraustoSuarezSettlement> for any scheduling changes.

If you move, you must send the Settlement Administrator your new address; otherwise, you may never receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator.

Summary of the Litigation

Plaintiffs Irma Frausto and Arianna Suarez, on their behalf and on behalf of other current and former non-exempt employees in two separately filed actions, allege that Bank of America violated California state labor laws as a result of, among other things, its alleged: (1) failure to pay minimum wage for all hours worked; (2) failure to pay overtime compensation properly; (3) failure to provide compliant meal periods and failure to pay meal period premium wages properly; (4) failure to provide compliant rest breaks and failure to rest break period premium wages properly; (5) failure to timely pay all wages owed to employees during each pay period and upon termination of their employment; (6) provide

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employees with accurate, itemized wage statements; and (7) unfair business practices. Plaintiffs also seek civil penalties for the above alleged violations pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

Bank of America contends that it has complied with all applicable state and federal laws, and Bank of America continues to deny each and all of the claims of the Lawsuits.

For the purpose of avoiding the time and expense of further litigation, on August 2, 2022, the parties participated in a mediation with Jeffrey Krivis, Esq., an experienced and well-respected class action mediator. With Mr. Krivis’ guidance, the parties were able to negotiate a complete settlement of Plaintiffs’ claims.

Counsel for Plaintiffs, and the attorneys appointed by the Court to represent the class, Wilshire Law Firm, PLC and Ilg Legal Office, P.C. (“Class Counsel”), have investigated and researched the facts and circumstances underlying the issues raised in the cases and the applicable law. While Class Counsel believe that the claims alleged in the Lawsuits have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Settlement Class Members.

Bank of America believes the claims alleged in the Lawsuits have no merit, but has agreed to settle the Lawsuits in order to avoid the expense of continued litigation. By agreeing to settle, Bank of America is **not** admitting liability on any of the factual allegations or claims in the Lawsuits, and is not admitting that class certification would have been appropriate in either of the Lawsuits.

Summary of The Proposed Settlement Terms

Under the terms of the Settlement, Bank of America will pay a total amount of \$1,890,000. This amount is inclusive of: (1) Individual Settlement Payments to all Settlement Class Members and the payroll taxes associated therewith; (2) Enhancement Awards of \$10,000, each, to Plaintiffs Irma Frausto and Arianna Suarez for their services on behalf of the class, and for a release of all claims against Defendant; (3) Class Counsels’ attorneys’ fees in an amount up to \$630,000 and Plaintiffs’ litigation costs and expenses in an amount up to \$250,000; (4) a \$100,000 settlement of claims under PAGA (“PAGA Amount”), inclusive of a \$75,000 payment to the California Labor and Workforce Development Agency (“LWDA”) (“LWDA Payment”), and a \$25,000 payment (“Employee Payment”) to be divided amongst all Aggrieved Employees (regardless of whether they opt-out of the Settlement); and (5) reasonable Settlement Administrator’s fees and expenses currently estimated at \$70,000. After deducting the above payments, a total of approximately \$820,000 (the “Net Settlement Fund”) will be allocated to Settlement Class Members who do not opt out of the Settlement.

A Settlement Administrator – CPT Group – has been appointed by the Court to administer the Settlement, including distributing this notice and the payments described above.

Individual Settlement Payments to Settlement Class Members. Bank of America will calculate the number of pay periods during which the employee was a Settlement Class Member minus any pay periods for which all claims being settled and released in this Settlement have already been released (“Unreleased Individual Pay Periods”). To determine each Settlement Class Member’s estimated share of the Net Settlement Fund, the Settlement Administrator will use the following formula: The Net Settlement Fund will be divided by the total number of Unreleased Individual Pay Periods for all Settlement Class Members, resulting in the “Estimated Pay Period Value.” Each Settlement Class Member’s share of the Net Settlement Fund will be calculated by multiplying each individual Settlement Class Member’s Unreleased Individual Pay Periods by the Estimated Pay Period Value. The Individual Settlement Payment will be reduced by any required deductions for each Class Members as specifically set forth herein, including employee-side tax withholdings or deductions. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase the share of the Net Settlement Fund for each Settlement Class Member who does not opt out of the

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Settlement (“Participating Class Members”) according to their number of Unreleased Individual Pay Periods, so that 100% of the Net Settlement Fund is distributed.

According to Defendant’s records, you worked a total of <<PayPeriods>> Unreleased Individual Pay Periods. Please note that if you previously released the Released Claims in a previous individual release or a collective or class settlement that has been factored into the number of Unreleased Individual Pay Periods. Your estimated Individual Settlement Payment is <<SettAmount>>. This is an estimate only.

Aggrieved Employee PAGA Payments. Bank of America will calculate the number of pay periods during which the employee was an Aggrieved Employee minus any pay periods for which PAGA claims being settled and released in the Settlement have already been released (“Unreleased PAGA Pay Periods”). To determine the Aggrieved Employee PAGA Payments, the Settlement Administrator will use the following formula: The Employee Payment will be divided by the total number of Unreleased PAGA Pay Periods for all Aggrieved Employees, resulting in the “PAGA Pay Period Value.” Each Aggrieved Employee’s share of the Employee Payment will be calculated by multiplying each individual Aggrieved Employee’s Unreleased PAGA Pay Periods by the PAGA Pay Period Value. A Request for Exclusion does not exclude an Aggrieved Employee from the release of claims under California Labor Code §§ 2698, *et seq.*, and the Aggrieved Employee will receive their portion of the Employee Payment even if he or she submits a valid Request for Exclusion.

According to Defendant’s records, you worked a total of <<PAGAPeriods>> Unreleased PAGA Pay Periods. Please note that if you previously participated in another settlement that resulted in you and the LWDA releasing the PAGA Released Claims that has been factored into the number of Unreleased PAGA Pay Periods. Your estimated Aggrieved Employee PAGA Payment is <<PAGAAmnt>>. This is an estimate only.

Your Estimated Payment: Based on the above, your estimated payment from the settlement is approximately <<EstAmount>>. If you believe the pay period information provided above is incorrect, you may dispute the calculation by sending payroll records or documentation in support of your dispute to the Settlement Administrator. Please remember that the number of pay periods used to calculate the payments is impacted by any applicable previous individual release or collective or class settlement where you previously released the Released Claims and/or PAGA Released Claims. All disputes must be postmarked or faxed on or before November 30, 2023, and must be sent to:

Frausto/Suarez Settlement Administrator
c/o CPT Group, Inc.
50 Corporate Park, Irvine, CA 92606
Fax No. (949) 419-3446

If you dispute the information stated above, Bank of America’s records will control unless you are able to submit payroll records that establish otherwise.

Taxes on Settlement Payments. For purposes of this settlement, the Individual Settlement Payments will be allocated 40% for unpaid wages, 40% for statutory or other non-wage damages, and 20% for interest, and the Aggrieved Employee PAGA Payments will be treated as civil and/or statutory penalties. IRS Form W-2s and IRS Form 1099s, as appropriate, will be distributed to Participating Class Members, Aggrieved Employees, and the appropriate taxing authorities. You should consult your tax advisor concerning the tax consequences of the payments you receive under the Settlement.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If want to receive your payment from the Settlement, then no further action is required on your part. You will automatically receive your payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

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If you choose **Option 1**, and if the Court grants final approval of the Settlement, you will be mailed a check for your Individual Settlement Payment and Aggrieved Employee PAGA Payment. In addition, you will be deemed to have released or waived the Released Claims and Released PAGA Claims:

Released Claims: Each Participating Class Member will release Bank of America, N.A., and any of its affiliates, parent companies (including Bank of America Corporation), subsidiaries, shareholders, officers, officials, partners, directors, members, owners, servants, employees, employers, agents, contractors, attorneys, insurers, predecessors, representatives, accountants, executors, personal representatives, successors and assigns, past, present, and future, and each and all of their respective officers, partners, directors, members, owners, servants, agents, shareholders, employees, employers, agents, contractors, representatives, executors, personal representatives, accountants, insurers, attorneys, pension, profit sharing, retirement savings, health and welfare, and any other employee benefit plans of any nature and the respective trustees, administrators, sponsors, fiduciaries, successors, agents and employees of all such plans, predecessors, successors and assigns, past, present, and future, and all persons acting under, by, through, or in concert with any of them (collectively, the “Released Parties”), from the following “Released Claims:” any and all allegations, claims, debts, rights, demands, charges, complaints, actions, causes of action, guarantees, costs, expenses, attorneys’ fees, damages, obligations or liabilities of any and every kind (including without limitation under theories of successor liability, joint employer liability, agency and/or conspiracy), contingent or accrued, that are, were, or reasonably could have been asserted based on the facts, theories, and/or statutory or other violations alleged in the Consolidated Complaint, all other pleadings filed in the Lawsuits, and the notices sent to the LWDA pursuant to PAGA by or on behalf of the Plaintiffs, including but not limited to, any claims for unpaid and/or underpaid wages of any type, failure to provide or pay for missed or non-compliant meal breaks, failure to provide or authorize and permit or pay for missed or non-compliant rest breaks, failure to pay meal and rest break premiums at the regular rate of pay, failure to furnish accurate itemized wage statements, failure to timely pay wages during employment and/or upon the termination of employment, violations of any federal, state, local or administrative constitution, charter, law, rule, regulation or ordinance (including but not limited to the Fair Labor Standards Act, the California Labor Code, any California Industrial Welfare Commission Wage Orders, and the California Unfair Competition Law), and/or civil or other penalties under PAGA or otherwise, whether for economic damages, noneconomic damages, restitution, statutory penalties, civil penalties, liquidated damages, punitive damages, interest, attorneys’ fees, costs of suit or other monies, through October 31, 2022, including a waiver of rights under California Civil Code Section 1542 only with respect to all such claims, to the extent it is otherwise applicable, which states as follows:

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.

Released PAGA Claims: The LWDA and the Aggrieved Employees will release the Released Parties from the following “Released PAGA Claims:” any and all allegations, claims, debts, rights, demands, charges, complaints, actions, causes of action, guarantees, costs, expenses, attorneys’ fees, damages, obligations or liabilities of any and every kind (including without limitation under theories of successor liability, joint employer liability, agency and/or conspiracy), contingent or accrued, arising out of the facts, theories, and/or statutory or other violations alleged in the Consolidated Complaint, all other pleadings filed in the Lawsuits, and the notices sent to the LWDA pursuant to PAGA by or on behalf of the Plaintiffs, including but not limited to, civil penalties under the Private Attorney General Act of 2004, Cal. Labor Code § 2698 et seq., related to any claims for unpaid and/or underpaid wages of any type, failure to provide or pay for missed or non-compliant meal breaks, failure to provide or authorize and permit or pay for missed or non-compliant rest breaks, failure to pay meal and rest break premiums at the regular rate of pay, failure to furnish accurate itemized wage statements, failure to timely pay

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wages during employment and/or upon the termination of employment, violations of any federal, state, local or administrative constitution, charter, law, rule, regulation or ordinance (including but not limited to the California Labor Code and any California Industrial Welfare Commission Wage Orders), whether for economic damages, noneconomic damages, restitution, statutory penalties, civil penalties, liquidated damages, punitive damages, interest, attorneys' fees, costs of suit or other monies, through October 31, 2022.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the Settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the Settlement, and desire to be excluded from the Settlement. The written request for exclusion must include your full name, signature, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Frausto/Suarez Settlement Administrator
c/o CPT Group, Inc.
50 Corporate Park, Irvine, CA 92606
Fax No. (949) 419-3446

The Request for Exclusion must be postmarked or faxed not later than November 30, 2023, If you submit a Request for Exclusion which is not postmarked or faxed by November 30, 2023, or that does not include all of the required information, your Request for Exclusion will be rejected, and you will be included in the Settlement Class.

If you choose **Option 2**, you will not receive an Individual Settlement Payment and you will not release the Released Claims. However, if you are an Aggrieved Employee, you will still receive your Aggrieved Employee PAGA Payment and release the Released PAGA Claims.

Option 3 – Object to the Settlement

If you decide to object to the Settlement because you find it unfair or unreasonable, you may submit a written objection stating why you object to the settlement. Written objections must provide: (1) your full name and signature; (2) a written statement of all grounds for the objection accompanied by any legal and factual grounds for such objection; and (3) a statement indicating whether you are represented by counsel and identifying any such counsel. The objection must be mailed to the administrator at *Frausto/Suarez Settlement Administrator, c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606*.

The Court retains final authority with respect to the consideration and admissibility of any objections. Counsel for the parties shall file any response to the objections submitted by objecting Settlement Class Members at least ten (10) court days before the date of the Final Fairness and Approval Hearing.

All written objections must be received by the Settlement Administrator by not later than November 30, 2023, By submitting an objection, you are not excluding yourself from the Settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the Settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Fairness and Approval Hearing set for January 11, 2024, at 9:30 a.m. in the United States District Court, Northern District of California and discuss your objection with the Court and the parties at your own expense. You may also retain an attorney to represent you at the hearing.

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If you choose **Option 3**, you will still be entitled to the money from the Settlement and be deemed to have released the Released Claims and Released PAGA Claims if the Court grants final approval.

Additional Information

This Notice of Class Action Settlement is only a summary of the Lawsuits and the Settlement. For a more detailed statement of the matters involved in the Lawsuits and the Settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator, Class Counsel, or counsel for Bank of America:

Counsel for Plaintiffs:

Justin F. Marquez, Esq.
Wilshire Law Firm, PLC
3055 Wilshire Blvd., 12th FL,
Los Angeles, CA 90010
Phone: (213) 784-3830

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South San Francisco, CA 94080
Phone: (415) 580-2574

Counsel for Bank of America:

Sabrina Beldner, Esq.
McGuireWoods LLP
1800 Century Park East
8th Floor
Los Angeles, CA 90067
Phone: (310) 315-8200

PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE WITH INQUIRIES.

Questions? Contact the Settlement Administrator toll free at 1-888-910-2927