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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

STEVE JOHNSON and SCOTT
SOLLITT, as individuals and on
behalf of all others similarly situated,

Plaintiffs,

vs.

U.S. BANK NATIONAL
ASSOCIATION,

Defendant.

Case No. 3:19-cv-0286-JLS-LL

[Hon. Janis L. Sammartino presiding]

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

Complaint Filed: February 7, 2019

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ASSOCIATION

STIPULATION OF CLASS AND REPRESENTATIVE ACTION

SETTLEMENT AND RELEASE

I. INTRODUCTION

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4 1. This Stipulation of Class and Representative Action Settlement and
5 Release (“Agreement” or “Settlement”) is made and entered into by and between the
6 following Parties: Plaintiffs James Loud (“Loud”), Steve Johnson (“Johnson”), and
7 Scott Sollitt (“Sollitt”) (Loud, Johnson, and Sollitt are collectively the “Plaintiffs”),
8 individually and on behalf of all class members, and Defendant U.S. Bank National
9 Association (“U.S. Bank”).

10 2. This Agreement is made for the sole purpose of settling the following
11 three lawsuits asserted on behalf of mortgage loan originators that worked for U.S.
12 Bank in California:

- 13 • *Loud v. U.S. Bank National Association*, Case No. 8:18-cv-01235-DOC-
14 DFM, pending in the United States District Court for the Central District
15 of California (“*Loud*”);
- 16 • *Johnson et al. v. U.S. Bank National Association*, Case No. 3:19-cv-
17 0286-JLS-LL, pending in the United States District Court for the
18 Southern District of California (“*Johnson I*”); and
- 19 • *Johnson v. U.S. Bank National Association*, Case No. 37-2019-
20 00020364-CU-OE-NC, pending in the Superior Court of the State of
California for the County of San Diego (“*Johnson II*”).

21 3. As detailed below, if the Court does not enter an order granting final
22 approval of the settlement, or if the associated judgment does not become final for any
23 reason, this Agreement shall be deemed null and void and shall be of no force or
24 effect whatsoever.

II. DEFINITIONS

25
26 4. “Actions” means the pending *Loud*, *Johnson I*, and *Johnson II* lawsuits.

27 5. “Agreement” and “Settlement” means this Joint Stipulation of Class and
28

1 Representative Action Settlement and Release.

2 6. “Class Counsel Expenses” means an amount of actual litigation costs and
3 expenses Class Counsel incurred in connection with the Actions, not to exceed
4 \$30,000.00, including their pre-filing investigation, their filing of the Actions and all
5 related litigation activities, this Settlement, and all post-Settlement compliance
6 procedures.

7 7. “Class Counsel Fees” means an amount not to exceed \$2,145,000.00
8 (33% of the Gross Settlement Amount) to compensate Class Counsel for their
9 attorneys’ fees incurred in connection with the Actions, including their pre-filing
10 investigation, their filing of the Actions and all related litigation activities, this
11 Settlement, and all post-Settlement compliance procedures.

12 8. “Class Counsel” means: Joshua H. Haffner and Graham G. Lambert of
13 Haffner Law PC (“Haffner”); Paul Stevens of Stevens, L.C. (“Stevens”); Malte L. L.
14 Farnaes, Christina M. Lucio, and Mitchell J. Murray of Farnaes & Lucio, APC
15 (“Farnaes”); and Jason S. Hartley and Jason M. Lindler of Hartley, LLP (“Hartley”).

16 9. “Class Information” means information regarding Settlement Class
17 Members that Defendant will in good faith compile from its electronic records. It shall
18 include each Settlement Class Member’s name, most recent mailing address, social
19 security number, and number of Qualifying Workweeks.

20 10. “Class Period” means the period from July 13, 2014 until the date the
21 Court enters an order granting preliminary approval of the Settlement.

22 11. “Class Notice” means the Notice of Proposed Class Action Settlement
23 (substantially in the form attached as **Exhibit 1**).

24 12. “Class Representative Service Award” means an amount not to exceed
25 \$25,000.00 for Plaintiff James Loud and not to exceed \$15,000.00 each for Plaintiffs
26 Steve Johnson and Scott Sollitt (\$55,000.00 total) that the Court authorizes to be paid
27 to Plaintiffs, in recognition of their efforts and risks in assisting with the prosecution
28 of the Actions and exchange for executing a General Release in favor of Defendant.

1 13. “Class Representatives” and “Plaintiffs” refer to James Loud, Steve
2 Johnson, and Scott Sollitt.

3 14. “Complaints” mean the operative Complaints filed in each of the
4 Actions, including any amendments thereto.

5 15. “Court” means the United States District Court for the Southern District
6 of California.

7 16. “Defendant’s Counsel” means Winston & Strawn LLP.

8 17. “Defendant” refers U.S. Bank National Association.

9 18. “Effective Date” means the date on which all of the following become
10 final: (a) the United States District Court for the Southern District of California’s
11 order giving final approval to the global settlement of the Actions; (b) the United
12 States District Court for the Southern District of California’s entry of judgment; and
13 (c) the United States District Court for the Central District of California’s dismissal
14 with prejudice of the *Loud* action; (d) the Superior Court of the State of California for
15 the County of San Diego’s dismissal with prejudice of the *Johnson II* action; and
16 (e) seven (7) days after the last date on which any Plaintiff signs below if not revoked
17 in writing by him before the expiration of the revocation period in accordance with the
18 Age Discrimination in Employment Act.

19 19. “Gross Settlement Amount” means the maximum amount of
20 \$6,500,000.00 to be paid by U.S. Bank to settle the Actions, inclusive of the total
21 settlement value for all damages, restitution, penalties, taxes and interest, all payments
22 to Participating Class Members, Class Counsel Fees, Class Counsel Expenses,
23 Settlement Administration Costs, PAGA Payment, and the Class Representative
24 Service Awards. The Gross Settlement Amount shall also include any interest that
25 accrues in the escrow account created by the Settlement Administrator.

26 20. “Individual Settlement Payment” means the total, gross amount payable
27 from the Net Settlement Amount to a Participating Class Member, which shall be
28 calculated for each Participating Class Member as described in this Agreement.

1 21. “Net Settlement Amount” means the portion of the Gross Settlement
2 Amount remaining after deduction of: (1) Class Counsel Fees, (2) Class Counsel
3 Expenses, (3) Class Representative Service Awards, (4) the portion of the PAGA
4 Payment to be paid to the Labor and Workforce Development Agency (“LWDA”),
5 and (5) Settlement Administration Costs.

6 22. “PAGA Payment” means an amount of up to \$325,000.00, the amount
7 attributable to Plaintiffs’ claims pursuant to the California Private Attorneys General
8 Act of 2004, Cal. Labor Code § 2698 *et seq.* (“PAGA”).

9 23. “Participating Class Member” means a Settlement Class Member who
10 does not notify the Settlement Administrator in writing that they want to exclude
11 themselves (*i.e.*, opt out) from this Settlement.

12 24. “Parties” means Plaintiffs and Defendant, collectively, and “Party” shall
13 mean either Plaintiffs or Defendant, individually.

14 25. “Preliminary Approval” means the Court’s preliminary approval of the
15 Settlement without material change to this Agreement.

16 26. “Qualifying Workweeks” means all weeks in which a Settlement Class
17 Member worked for U.S. Bank as a mortgage loan originator in California at any time
18 during the period from July 13, 2014, to and including the date the Court enters an
19 Order granting preliminary approval of the Settlement, excluding weeks when the
20 Settlement Class Member was on leave for the entire week.

21 27. “Released Claims” means any and all claims, known or unknown, that
22 were asserted in any and/or all of the Complaints in all of the Actions and/or that
23 could have been asserted in any Complaint in any of the Actions based on the facts
24 and/or allegations alleged in any Complaint in any of the Actions including: minimum
25 wages; overtime wages; pay for all hours worked, including but not limited to alleged
26 nonproductive time and/or off-the-clock work; commissions and/or incentive pay;
27 lawfulness of pay/commission plan; rest periods; meal periods; timeliness of wages;
28 payment of wages at termination; itemized wage statements; unfair competition

1 related to any or all of the foregoing; any unpaid wages or compensation related to
2 any or all of the foregoing; any premium payments related to any or all of the
3 foregoing; restitution for any of the foregoing; any penalties, including statutory or
4 civil penalties, related to any or all of the foregoing; attorneys' fees or costs related to
5 any or all of the foregoing; and/or any other damages or amounts related to any or all
6 of the foregoing. The release includes any and all claims pursuant to: California
7 Business and Professions Code section 17200 *et seq.*; California Labor Code sections
8 201, 202, 203, 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 510, 512, 1192, 1194,
9 1194.2, 1197, 1197.1, 2751, 2698 *et seq.* (PAGA); the California IWC Wage Orders;
10 and the Fair Labor Standards Act ("FLSA").

11 28. "Released Parties" means Defendant, its parent or subsidiary
12 corporations; each of their present, former, or future owners, officers, directors,
13 shareholders, partners, employees, insurers, successors, predecessors, contractors,
14 assigns, and managing agents; any and all agents, legal representatives, and/or
15 attorneys of all of the foregoing entities and individuals; and any entities that Plaintiffs
16 or any Settlement Class Member may assert are joint employers with Defendant.

17 29. "Response Deadline" means the date forty-five (45) days after the
18 Settlement Administrator mails the Class Notices to Settlement Class Members and
19 the last date on which Settlement Class Members may: (a) postmark written requests
20 to be excluded from this Settlement, or (b) file and serve a Notice of Objection to the
21 Settlement.

22 30. "Settlement Administration Costs" means the amount to be paid to the
23 Settlement Administrator from the Gross Settlement Amount for administration of this
24 Settlement. The Settlement Administration Costs are estimated to be \$14,500.00.

25 31. "Settlement Administrator" means CPT Group, Inc.

26 32. "Settlement Class Member" means any individual in the Settlement Class
27 (or if any such person is incompetent or deceased, the person's legal representative or
28 successor in interest evidenced by reasonable verification).

1 pay all wages due upon separation; g) failure to provide accurate wage statements;
2 and h) unfair competition. On March 5, 2019, Defendant filed its Answer. On March
3 27, 2019, Defendant filed a Notice of Related Case to the *Loud* action. On May 3,
4 2019, Johnson and Sollitt filed a Motion to Amend their Complaint. On May 20,
5 2019, Johnson and Sollitt filed a First Amended Complaint. On June 3, 2019,
6 Defendant filed its Answer to the First Amended Complaint.

7 c. Johnson II: Johnson filed *Johnson II* in the Superior Court of the
8 State of California for the County of San Diego on April 19, 2019. The only claim
9 asserted in the *Johnson II* action is a PAGA claim asserted on behalf of “all other
10 aggrieved employees employed by U.S. Bank in California as non-exempt employees
11 paid in whole or in part on a commission basis.” The factual allegations in *Johnson II*
12 are substantially similar to the factual allegations alleged in *Johnson I*.

13 35. Mediation. Loud and Defendant participated in a private mediation with
14 Michael Loeb, an experienced and neutral mediator. After further discussions
15 involving all Parties, Mr. Loeb made a mediator’s proposal for an omnibus settlement
16 of all of the Actions. All Parties accepted the mediator’s proposal and, as a result,
17 agreed to all material terms for this Settlement.

18 36. Benefits of Settlement to Class Members. Plaintiffs and Class Counsel
19 recognize the expense and length of continued proceedings necessary to litigate their
20 disputes through trial and through any possible appeals. Plaintiffs and Class Counsel
21 have also taken into account the uncertainty and risk of the outcome of further
22 litigation, and the difficulties and delays inherent in such litigation. Plaintiffs and
23 Class Counsel are also aware of the burdens of proof necessary to establish liability
24 for the claims asserted in the Actions, both generally and in response to Defendant’s
25 defenses thereto (many of which have been shared at the mediation and in settlement
26 discussions), and the difficulties in establishing liability and damages for the
27 Settlement Class Members. Plaintiffs and Class Counsel have also taken into account
28 the extensive settlement negotiations conducted. Further, Plaintiffs and Class Counsel

1 have taken into account Defendant's agreement to enter into a settlement that confers
2 substantial relief upon the Settlement Class Members. Based on the foregoing,
3 Plaintiffs and Class Counsel have determined that the settlement set forth in this
4 Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of
5 the Settlement Class Members.

6 37. Defendant's Reasons for Settlement. Defendant has concluded that any
7 further defense of this litigation would be protracted and expensive for all Parties.
8 Substantial amounts of time, energy, and resources of Defendant will be devoted to
9 the defense of the claims asserted by Plaintiffs unless this Settlement is made.
10 Defendant has also taken into account the risks of further litigation in reaching its
11 decision to enter into this Settlement. Despite continuing to contend that it is not liable
12 for any of the claims set forth by Plaintiffs, Defendant has, nonetheless, agreed to
13 settle in the manner and upon the terms set forth in this Agreement to put to rest the
14 claims as set forth in the Actions. Defendant claims and continues to claim that the
15 Released Claims have no merit and do not give rise to liability. This Agreement is a
16 compromise of disputed claims. Nothing contained in this Agreement and no
17 documents referred to herein and no action taken to carry out this Agreement may be
18 construed or used as an admission by or against Defendant as to the merits or lack
19 thereof of the claims asserted.

20 IV. TERMS OF AGREEMENT

21 38. Class Certification. The Parties stipulate to class certification for
22 purposes of settlement only. The Parties stipulate that class certification will be
23 revoked if the Court does not approve this Settlement, the Court does not enter
24 judgment, and/or if the Effective Date does not occur. The fact that the Parties were
25 willing to stipulate to class certification as part of the Settlement shall have no bearing
26 on, and shall not be admissible as evidence in connection with, the issue of whether
27 the Settlement Class or any other putative class could be certified in a non-settlement
28 context or be considered admissible for any other purpose in any matter.

1 39. Release as to All Class Members. The Participating Class Members,
2 including Plaintiffs, release Defendant and all Released Parties from the Released
3 Claims.

4 40. Release of FLSA Claims as to All Class Members. The release of claims
5 pursuant to the Fair Labor Standards Act against the Released Parties will be
6 incorporated into a restrictive endorsement on the back of each check for each
7 Individual Settlement Payment. The restrictive endorsement shall read substantially
8 as follows: “This check is issued in full and final settlement of United States District
9 Court for the Central District of California Case Number 8:18-cv-01235-DOC-DFM
10 and United States District Court for the Southern District of California Case Number
11 3:19-cv-0286-JLS-LL. By endorsing or negotiating this check, I: (1) consent to join
12 the Actions as a party under the Fair Labor Standard Act; and (2) release U.S. Bank
13 National Association and all other Released Parties from the Released Claims set forth
14 in the Settlement Agreement.”

15 41. Tax Liability. The Parties make no representations as to the tax treatment
16 or legal effect of the payments called for hereunder, and Settlement Class Members
17 are not relying on any statement or representation by the Parties in this regard.
18 Defendant shall pay any amounts owed for employer-side payroll taxes, separate and
19 apart from the Gross Settlement Amount. Each Participating Class Member shall be
20 solely responsible for any and all additional federal, state and local taxes and/or
21 penalties that may be due from payment of any Individual Settlement Payment made
22 to him/her, whether it is determined that any additional taxes are owed based on the
23 taxation laws in effect on the date of execution of this Agreement or that may become
24 due at any time in the future because of a change to the laws governing the taxation of
25 such settlement proceeds. Each Participating Class Member will hold the Parties free
26 and harmless from and against any claims resulting from the treatment of such
27 payments as non-taxable damages, including the treatment of such payment as not
28 subject to withholding or deduction for payroll and employment taxes. Each Party to

1 this Agreement acknowledges and agrees that no provision of this Agreement, and no
2 written communication or disclosure between or among the Parties or their attorneys
3 and other advisers, is or was intended to constitute or be construed or be relied upon
4 as, tax advice.

5 42. Preliminary Approval of Settlement. Plaintiffs will file a Motion for
6 Preliminary Approval requesting the Court to grant preliminary approval of this class
7 action Settlement, certify the Settlement Class for settlement purposes only, and set a
8 date for the final settlement approval hearing. The order for Preliminary Approval
9 shall direct the Class Notice to be sent to all Settlement Class Members as specified
10 herein. At the same time that Plaintiffs file the Motion for Preliminary Approval,
11 Plaintiffs shall also submit to the LWDA a copy of the proposed settlement pursuant
12 to Labor Code § 2699. Class Counsel shall draft the Motion for Preliminary Approval
13 and shall provide the draft of the motion to Defendant's Counsel at least five (5) court
14 days before filing the motion with the Court.

15 43. Amendment of Complaints. On or before the date Plaintiffs file the
16 Motion for Preliminary Approval, Plaintiffs will file a Second Amended Complaint in
17 *Johnson I* that includes all of the factual allegations and claims alleged in *Loud* and
18 *Johnson II* solely for the purpose of facilitating the settlement of the Actions on a
19 consolidated basis.

20 44. Dismissal of Loud and Johnson II Actions. Within three (3) business days
21 of the United States District Court for the Southern District of California's order
22 giving final approval to this Settlement, Plaintiff James Loud shall dismiss with
23 prejudice the *Loud* action and Plaintiff Steve Johnson shall dismiss with prejudice the
24 *Johnson II* action.

25 45. Dismissal of Division of Labor Standards Enforcement Claim. Plaintiff
26 James Loud represents that he has already dismissed without prejudice his action
27 pending before the Division of Labor Standards Enforcement, State Case No. WC-
28 CM-487500 ("DLSE Claim"). Plaintiff James Loud shall dismiss the DLSE Claim

1 with prejudice within three (3) business days of the United States District Court for
2 the Southern District of California's order giving final approval to this Settlement and
3 entry of judgment.

4 46. Class List. Within fourteen (14) calendar days after the Court grants
5 Preliminary Approval of this Agreement, Defendant shall send only the Settlement
6 Administrator the Class Information for purposes of administering the Settlement. The
7 Class Information shall be kept confidential by the Settlement Administrator.

8 47. Calculation of Individual Settlement Payments. Within twenty-one (21)
9 calendar days after receiving the Class Information from Defendant, the Settlement
10 Administrator shall calculate the estimated Individual Settlement Payment for each
11 Settlement Class Member and provide the calculations to Defendant. These Individual
12 Settlement Payment amounts will be estimates because the final Individual Settlement
13 Payment amounts will depend upon the number of Settlement Class Members who
14 decide to opt out of this Settlement.

15 48. Notice by First Class U.S. Mail. Upon receipt of the Class Information,
16 the Settlement Administrator will perform a search based on the National Change of
17 Address Database to update and correct any known or identifiable address changes.
18 Within twenty-one (21) calendar days after receiving the Class Information from
19 Defendant as provided herein, the Settlement Administrator shall mail copies of the
20 Class Notice to all Settlement Class Members via regular First Class U.S. Mail. The
21 Settlement Administrator shall exercise its best judgment to determine the current
22 mailing address for each Settlement Class Member. The address identified by the
23 Settlement Administrator as the current mailing address shall be presumed to be the
24 best mailing address for each Settlement Class Member.

25 49. Undeliverable Notices. Any Class Notices returned to the Settlement
26 Administrator as non-delivered on or before the Response Deadline shall be re-mailed
27 to any forwarding address affixed thereto. If no forwarding address is provided, the
28 Settlement Administrator shall promptly attempt to determine a correct address by use

1 of skip-tracing, or other search using the name, address and/or Social Security number
2 of the Settlement Class Member involved, and shall then perform a re-mailing, if
3 another mailing address is identified by the Settlement Administrator. Settlement
4 Class Members who receive a re-mailed Class Notice shall have their Response
5 Deadline extended fifteen (15) days from the original Response Deadline. If a
6 Settlement Class Member's Class Notice is returned to the Settlement Administrator
7 more than once as non-deliverable on or before the Response Deadline, then an
8 additional Class Notice shall not be re-mailed.

9 50. Participating Class Members. Any Settlement Class Member who does
10 not submit a valid and timely written request to be excluded (*i.e.*, opt out) from this
11 Settlement ("Request for Exclusion") will receive an Individual Settlement Payment
12 and be subject to the terms of the Settlement.

13 51. Request for Exclusion Procedure. The Class Notice shall instruct
14 Settlement Class Members how to exclude themselves, or "opt out," from this
15 Settlement. Settlement Class Members who wish to opt out of this Settlement shall
16 send to the Settlement Administrator a Request for Exclusion. The Request for
17 Exclusion sent to the Settlement Administrator must be postmarked no later than the
18 Response Deadline, or fifteen (15) days from the original Response Deadline in the
19 event of a re-mailed Class Notice. Settlement Class Members shall be permitted to
20 rescind their Requests for Exclusion in writing by submitting a rescission statement to
21 the Settlement Administrator not later than ten (10) business days before the Court's
22 final approval hearing, orally at the final approval hearing, or as otherwise ordered by
23 the Court. The proposed order granting preliminary approval of this Settlement will
24 provide and the Class Notice will instruct Settlement Class Members that, to be valid,
25 a Request for Exclusion must include the Settlement Class Member's name, signature,
26 address, telephone number, and the last four digits of the Social Security number of
27 the person requesting exclusion and state that the following: I wish to opt-out of the
28 settlement of the lawsuit *Johnson, et al. v. U.S. Bank National Association*, pending in

1 the United States District Court in and for the Southern District of California, Case
2 No. 3:19-cv-0286-JLS-LL. The Request for Exclusion will be rejected if it does not
3 contain a Settlement Class Member's telephone number and/or the last four digits of
4 the Social Security number. The date of the postmark on the Request for Exclusion
5 shall be the exclusive means to determine whether a Request for Exclusion has been
6 timely submitted. Any Settlement Class Member who requests to be excluded from
7 the Settlement Class will not be entitled to any recovery under the Settlement and will
8 not be bound by the terms of the Settlement or have any right to object, appeal, or
9 comment thereon. Settlement Class Members who do not submit a valid and timely
10 Request for Exclusion on or before the Response Deadline shall be bound by all terms
11 of the Settlement, bound by the release(s), and any Judgment entered in the Actions if
12 the Settlement is approved by the Court, even if they do not cash or otherwise
13 negotiate their Individual Settlement Payment check. No later than twenty (20)
14 calendar days after the Response Deadline (including any extended Response
15 Deadline pursuant to Section 49 of this Agreement), the Settlement Administrator
16 shall provide counsel for the Parties with a number of all Settlement Class Members
17 who have timely submitted Requests for Exclusion.

18 52. Objections. The Class Notice shall state that Settlement Class Members
19 who wish to object to the Settlement must file with the Court and serve on all Parties a
20 written statement of objection ("Notice of Objection") by the Response Deadline. The
21 date of filing shall be deemed the exclusive means for determining that a Notice of
22 Objection was timely filed and served. The Notice of Objection must be signed by the
23 Settlement Class Member and state: (1) the full name of the Settlement Class
24 Member; (2) the dates of employment of the Settlement Class Member; (3) the last
25 four digits of the Settlement Class Member's Social Security number and any
26 Employee ID number; (4) the basis for the objection; and (5) whether the Settlement
27 Class Member intends to appear at the final approval hearing. Settlement Class
28 Members who fail to make objections in the manner specified above shall be deemed

1 to have waived any objections and shall be foreclosed from making any objections
2 (whether by appeal or otherwise) to the Settlement. Settlement Class Members who do
3 not submit a Request for Exclusion and submit a timely Notice of Objection will have
4 a right to appear at the final settlement approval hearing to have their objections heard
5 by the Court.

6 53. No Solicitation of Settlement Objections or Exclusions. The Parties agree
7 to use their best efforts to carry out the terms of this Settlement. At no time shall any
8 of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class
9 Members to submit either Notices of Objections or Requests for Exclusion from the
10 Settlement, or to appeal from the Court’s judgment.

11 54. Weekly Reporting. On a weekly basis during the administration of the
12 Settlement, the Settlement Administrator will provide both Class Counsel and
13 Defendant’s Counsel a status update.

14 55. Funding and Allocation of Gross Settlement Amount. This is a non-
15 reversionary, opt-out Settlement. Within ten (10) calendar days after the Effective
16 Date, Defendant shall transfer the Gross Settlement Amount to a Qualified Settlement
17 Fund (“QSF”) to be established by the Settlement Administrator to fund the
18 Settlement. The QSF will be controlled by the Settlement Administrator subject to the
19 terms of this Settlement and the Court’s order(s). Interest, if any, earned on monies in
20 the QSF will be added to the Gross Settlement Amount. The Settlement Administrator
21 shall serve as Trustee of the QSF and shall act as a fiduciary with respect to the
22 handling, management, and distribution of the Gross Settlement Amount, including
23 the handling of tax related issues and payments. The Settlement Administrator shall
24 act in a manner as necessary to qualify the settlement fund as a QSF and to maintain
25 the qualification.

26 56. Individual Settlement Payments. Individual Settlement Payments will be
27 paid from the Net Settlement Amount and shall be paid pursuant to the settlement
28 formula set forth herein. Individual Settlement Payments shall be mailed by regular

1 First Class U.S. Mail to Participating Class Members' last known mailing address
2 within thirty (30) calendar days after the Effective Date. Individual Settlement
3 Payments will be allocated as follows: Thirty Percent (30%) as wages; Seventy
4 Percent (70%) as penalties and interest. The Settlement Administrator shall issue to
5 Plaintiffs and Participating Class Members a form W-2 for amounts paid under this
6 Settlement deemed wages, and a Form 1099 – MISC for the amounts allocated to
7 penalties and/or interest.

8 57. Calculation of Individual Settlement Payments. The Settlement
9 Administrator will calculate the Individual Settlement Payment amount for each
10 Settlement Class Member. To make this calculation (the "Settlement Formula"), the
11 Settlement Administrator shall calculate the total aggregate number of Qualifying
12 Workweeks attributable to all Participating Class Members ("Total Qualifying
13 Workweeks"). The value of an individual Qualifying Workweek shall then be
14 determined by dividing the proceeds of the Net Settlement Fund by the Total
15 Qualifying Workweeks, resulting in the "Qualifying Workweek Value." Each
16 Participating Class Member's Individual Settlement Payment shall then be determined
17 by multiplying the individual Participating Class Member's number of Qualifying
18 Workweeks by the Qualifying Workweek Value.

19 a. If any Settlement Class Members submit timely and valid Requests
20 for Exclusion, the Settlement Administrator shall reallocate their Individual
21 Settlement Payment amounts to the Net Settlement Fund for distribution to
22 Participating Class Members pursuant to the Settlement Formula. The Settlement
23 Administrator shall provide the final Individual Settlement Payment calculations to
24 Defendant. The Settlement Administrator shall withhold any legally mandated
25 withholdings or deductions (e.g., payroll taxes, etc.) from the Individual Settlement
26 Payment for each Participating Class Member and remit tax withholdings to the
27 applicable tax authorities. However, Defendant's (i.e., the employer's) share of
28 payroll taxes for the Individual Settlement Payments shall be paid by Defendant

1 separate and apart from the Gross Settlement Amount.

2 b. Settlement Class Members are not eligible to receive any
3 compensation other than their Individual Settlement Payment(s), except that Plaintiffs
4 shall receive Class Representative Service Awards as set forth in this Agreement.

5 c. If a Settlement Class Member seeks information from Class
6 Counsel regarding the Settlement, the Settlement Administrator shall share
7 information with Class Counsel that is contained in the Class Information regarding
8 that particular Settlement Class Member to the extent necessary to respond to the
9 question or issue, except that the Settlement Administrator will not share Social
10 Security Numbers with Class Counsel.

11 58. Cy Pres: Any Individual Settlement Payments issued to Participating
12 Class Members shall remain valid and negotiable for one hundred eighty (180) days
13 from the date of their issuance. The total amount of any such uncashed checks shall be
14 donated to Legal Aid at Work, a Section 501(c)(3) corporation, as a *cy pres*
15 beneficiary within thirty (30) days of the last day any issued check remains valid and
16 negotiable, subject to Court approval.

17 59. Class Representative Service Awards. Subject to Court approval, in
18 exchange for General Releases, releases of all Released Claims, and for their time and
19 effort in bringing and prosecuting this matter, the Class Representative Service
20 Awards paid to Loud, Johnson, and Sollitt shall be \$25,000.00, \$15,000.00, and
21 \$15,000.00, respectively. The Settlement Administrator shall issue an IRS Form 1099
22 – MISC to each Plaintiff for the Class Representative Service Awards. Plaintiffs shall
23 be solely and legally responsible to pay any and all applicable taxes on their respective
24 Class Representative Service Awards and shall hold harmless Defendant from any
25 claim or liability for taxes, penalties, or interest arising as a result of the Class
26 Representative Service Awards. The Class Representative Service Awards shall be in
27 addition to the Plaintiffs' Individual Settlement Payments as Settlement Class
28 Members. Any amounts requested by Plaintiffs for the Class Representative Service

1 Awards and not granted by the Court shall return to the Net Settlement Amount and
2 be distributed to Participating Class Members pursuant to the Settlement Formula.

3 60. Class Counsel Fees and Class Counsel Expenses. Defendant agrees not to
4 oppose or object to any application or motion by Class Counsel for attorneys' fees not
5 to exceed thirty-three percent (33%), or \$2,145,000.00, to be paid out of the Gross
6 Settlement Amount. Defendant further agrees not to oppose any application or motion
7 by Class Counsel for the reimbursement of actual costs and expenses associated with
8 Class Counsel's prosecution of this matter not to exceed \$30,000.00 from the Gross
9 Settlement Amount. The total Class Counsel Fees awarded or approved by the Court
10 shall be allocated between Class Counsel as follows: sixty percent (60%) to Haffner
11 and Stevens and forty percent (40%) to Farnaes and Hartley. The Class Counsel
12 Expenses awarded or approved by this Court shall be reimbursed to the law firm that
13 incurred the expense(s). Class Counsel shall be solely and legally responsible to pay
14 all applicable taxes on the payment made pursuant to this paragraph. The Settlement
15 Administrator shall issue an IRS Form 1099 – MISC to Class Counsel for the
16 payments made pursuant to this paragraph. This Settlement is not contingent upon the
17 Court awarding Class Counsel any particular amount in attorneys' fees and costs. Any
18 amount requested by Class Counsel for the Class Counsel Fees and Class Counsel
19 Expenses and not granted by the Court shall return to the Net Settlement Amount and
20 be distributed to Participating Class Members pursuant to the Settlement Formula.

21 61. PAGA Payment. Subject to Court approval, \$325,000.00 from the Gross
22 Settlement Amount shall be designated for satisfaction of Plaintiffs' and Settlement
23 Class Members' claims pursuant to PAGA. Pursuant to PAGA, Seventy-Five Percent
24 (75%), or \$243,750.00, of this amount shall be paid to the LWDA and Twenty-Five
25 Percent (25%), or \$82,250.00, shall be distributed to Participating Class Members as
26 part of the Net Settlement Amount on a per workweek basis. If the PAGA Payment is
27 adjusted by the Court, it shall be adjusted by using funds from the Gross Settlement
28 Amount and in no event shall increase the Gross Settlement Amount.

1 62. Settlement Administration Costs. The Settlement Administrator shall be
2 responsible for: establishing the QSF; establishing a website; calculating, processing
3 and mailing payments to Plaintiffs, Class Counsel, Participating Class Members, and
4 the LWDA; preparing, printing, and mailing the Class Notices to the Settlement Class
5 Members; receiving and reporting the Requests for Exclusion submitted by Settlement
6 Class Members; withholding any legally mandated withholdings or deductions (e.g.,
7 payroll taxes, etc.) from the Individual Settlement Payments and remitting tax
8 withholding payroll taxes to the applicable tax authorities; performing all tax reporting
9 duties required by law, including distributing all necessary tax forms; providing
10 declaration(s) as necessary in support of preliminary and/or final approval of this
11 Settlement; and other tasks as the Parties mutually agree or the Court orders the
12 Settlement Administrator to perform. The Settlement Administrator shall be paid for
13 the costs of administration of the Settlement from the Gross Settlement Amount, as
14 approved by the Court. No fewer than ten (10) days prior to the filing of a motion for
15 final approval of the Settlement, the Settlement Administrator shall provide the Parties
16 with a statement detailing the costs of administration of the Settlement as well as a
17 declaration detailing the administration process.

18 63. Distribution Timing. Within thirty (30) days of the Effective Date, the
19 Settlement Administrator shall issue payments to: (1) Participating Class Members;
20 (2) the LWDA; (3) Plaintiffs; (4) Class Counsel; and (5) itself, for Court-approved
21 services performed in connection with the Settlement.

22 64. General Release by Plaintiffs.

23 a. Plaintiffs individually hereby unconditionally waive and forever
24 release any and all demands, damages, debts, liabilities, actions, causes of action and
25 claims of every kind and nature whatsoever, whether now known or unknown,
26 suspected or unsuspected, which they ever had or now have against the Released
27 Parties arising or accruing at any time before the Effective Date. Plaintiffs may
28 hereafter discover facts in addition to or different from those which they now know or

1 believe to be true, but stipulate and agree that, upon the Effective Date, they fully,
2 finally, and forever settle and release any and all claims, known or unknown,
3 suspected or unsuspected, contingent or non-contingent, whether or not concealed or
4 hidden, which now exist, or heretofore have existed, upon any theory of law or equity
5 and without regard to the subsequent discovery or existence of such different or
6 additional facts. Plaintiffs are deemed by operation of the order granting Final
7 Approval to have agreed not to sue or otherwise make a claim against any of the
8 Released Parties for any claim arising or accruing at any time before the Effective
9 Date.

10 b. Plaintiffs acknowledge that they have had the opportunity to
11 review and have reviewed California Civil Code section 1542, which provides:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
13 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
14 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
15 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
16 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
17 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

18 Being fully informed of this provision of the California Civil Code and understanding
19 its provisions, Plaintiffs agree to waive any rights under Section 1542, and
20 acknowledge that this Agreement and the release contained herein extends to all
21 claims that they have or might have against the persons and entities released,
22 including those which are presently unknown to them.

23 65. No Reemployment. In exchange for the Class Representative Service
24 Award, Plaintiffs agree not to seek reemployment with any of the Released Parties.

25 66. Johnson's Release of Age Discrimination in Employment Act Claim.
26 Johnson understands and acknowledges that:

27 a. He is voluntarily waiving any and all rights and claims he has
28 against the Released Parties as of the date he signs this Agreement arising pursuant to

1 the Age Discrimination in Employment Act, 29 U.S.C. §§ 623, *et seq.* (“ADEA”);

2 b. He is waiving these substantive rights or claims pursuant to this
3 Agreement in exchange for consideration, the value of which exceeds the payment or
4 remuneration to which he was already entitled;

5 c. He is hereby advised in writing to consult with an attorney of his
6 choosing concerning this Agreement prior to executing it. He further acknowledges
7 that he sought such advice, that his counsel advised him to sign this Agreement, and
8 that his execution of this Agreement is voluntary and without coercion;

9 d. He has been given at least twenty-one (21) days to consider the
10 terms of this Agreement, and in the event he should decide to sign this Agreement in
11 fewer than twenty-one (21) days, he has done so with the express understanding that
12 he has been given and declined the opportunity to consider this Agreement for a full
13 twenty-one (21) days;

14 e. He may revoke his waiver of claims arising pursuant to the ADEA
15 at any time during the seven (7) days following the date he signs this Agreement.
16 Johnson understands and agrees that should he revoke his waiver of claims arising
17 pursuant to the ADEA at any time during the seven (7) days following the date he
18 signs this Agreement, he will receive fifty percent (50%) of the Court-approved Class
19 Representative Service Award– and that such amount will be the consideration for a
20 release of all his rights and claims addressed in this Agreement except any claims he
21 may have pursuant to the ADEA. Plaintiff Steve Johnson further understands and
22 agrees that should he not revoke his waiver of claims arising pursuant to the ADEA
23 during the seven (7) days following the date he signs this Agreement, he will receive
24 one hundred percent (100%) of the Class Representative Service Award– and that
25 such amount will be consideration for the release of all his rights and claims addressed
26 in this Agreement, including any claims he may have pursuant to the ADEA; and

27 f. Any revocation must be in writing and delivered by hand or
28 certified mail to Emilie C. Woodhead, Winston & Strawn LLP, 333 S. Grand Ave.,

1 Suite 3800, Los Angeles, CA 90071;

2 g. Any changes to this Agreement, whether material or immaterial,
3 do not restart the twenty-one-day (21-day) consideration period.

4 67. Option to Terminate Settlement. If the number of individuals who
5 submitted timely and valid Requests for Exclusion from the Settlement is greater than
6 five percent (5%) of all potential Settlement Class Members, Defendant shall have, in
7 its sole discretion, the option to terminate this Settlement. U.S. Bank represents that, as
8 of the Early Neutral Evaluation Conference in *Johnson I* on April 30, 2019, there were
9 no more than 776 Settlement Class Members with no more than 61,444 workweeks
10 worked during the Class Period. U.S. Bank derived this data, in part, by extrapolating
11 data to and including April 30, 2019.

12 68. Final Settlement Approval Hearing. Upon expiration of the Response
13 Deadline, a Final Settlement Approval Hearing shall be conducted to determine final
14 approval of the Settlement along with the amounts properly payable for (1) the Class
15 Counsel Fees; (2) the Class Counsel Expenses; (3) the Class Representatives Service
16 Awards; (4) the Settlement Administration Costs; and (5) PAGA Payment.

17 69. Nullification of Settlement Agreement. In the event: (i) the Court does
18 not enter the order for Preliminary Approval as provided herein; (ii) the Court does
19 not finally approve the Settlement as provided herein; (iii) the Court does not enter a
20 Judgment as provided herein; (iv) the Settlement does not become final for any other
21 reason; (v) the United States District Court for the Central District of California does
22 not dismiss with prejudice the *Loud* action; (vi) the Superior Court of the State of
23 California for the County of San Diego does not dismiss with prejudice the *Johnson II*
24 action; or (vii) the Effective Date does not occur, this Settlement shall be null and void
25 and any order or judgment entered by the Court in furtherance of this Settlement shall
26 be treated as void from the beginning. In such a case, the Parties and any funds to be
27 awarded under this Settlement shall be returned to their respective statuses as of the
28 date and time immediately prior to the execution of this Agreement, and the Parties

1 shall proceed in all respects as if this Agreement had not been executed and the
2 Second Amended Complaint had not been filed. The Second Amended Complaint
3 filed in *Johnson I* will be deemed revoked and stricken as of the date of the earliest
4 event in (i)-(vii) above and the operative complaint in *Johnson I* will be the First
5 Amended Complaint. If an appeal is filed from the Court's judgment, or any other
6 appellate review is sought, administration of the Settlement shall be stayed pending
7 final resolution of the appeal or other appellate review.

8 70. No Effect on Employee Benefits. Amounts paid to Plaintiffs or other
9 Participating Class Members pursuant to this Agreement shall be deemed not to be
10 pensionable earnings and shall not have any effect on the eligibility for, or calculation
11 of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of
12 Plaintiffs or Participating Class Members.

13 71. Publicity and Communications Regarding Settlement.

14 a. Plaintiffs and Class Counsel agree not to publicize the Settlement
15 at any time, including but not limited to not filing a press release regarding the
16 Settlement, posting information about the Settlement on their websites or in social
17 media, responding to press/media inquiries regarding the Settlement (except to refer
18 the person inquiring to the Court file), or otherwise publicizing the terms or fact of
19 this Settlement.

20 b. The Settlement shall remain confidential until a Motion for
21 Preliminary Approval is filed with the Court. Plaintiffs and Class Counsel agree not to
22 discuss this Settlement with anyone, including Settlement Class Members, until after
23 the Motion for Preliminary Approval is filed. This provision does not apply to the
24 Class Notice or to Class Counsel's ability to describe the Settlement in declarations
25 filed with the Court for approval.

26 72. No Admission By the Parties. Defendant denies any and all claims
27 alleged in the Actions and denies any and all alleged wrongdoing whatsoever. This
28 Agreement is not a concession or admission, and shall not be used against Defendant

1 as an admission or indication with respect to any claim of any fault, concession or
2 omission by Defendant.

3 73. Disposition of Data. The Parties expressly agree that all data and
4 information shared by the Parties in the negotiations leading up to this Settlement is
5 considered confidential settlement communications. The Parties and their counsel
6 expressly agree to destroy all confidential data that was exchanged, including, but not
7 limited to, such data that was designated as confidential by any Party, and not use any
8 copies of such data.

9 74. Exhibits and Headings. The terms of this Agreement include the terms set
10 forth in any attached Exhibits, which are incorporated by this reference as though fully
11 set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement.
12 The descriptive headings of any paragraphs or sections of this Agreement are inserted
13 for convenience of reference only and do not constitute a part of this Agreement.

14 75. Interim Stay of Proceedings. The Parties have agreed to stay all
15 proceedings in the Actions, except such proceedings necessary to implement and
16 complete the Settlement.

17 76. Amendment or Modification. This Agreement may be amended or
18 modified only by a written instrument signed by counsel for all Parties or their
19 successors-in-interest.

20 77. Entire Agreement. This Agreement and any attached Exhibits constitute
21 the entire Agreement among these Parties, and no oral or written representations,
22 warranties, or inducements have been made to any Party concerning this Agreement
23 or its Exhibits other than the representations, warranties, and covenants contained and
24 memorialized in the Agreement and its Exhibits.

25 78. No Prior Assignments. The Parties represent, covenant, and warrant that
26 they have not directly or indirectly assigned, transferred, encumbered, or purported to
27 assign, transfer, or encumber to any person or entity any portion of any claims, causes
28 of action, demands, rights, and liabilities of every nature and description released

1 under this Settlement.

2 79. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
3 warrant and represent they are expressly authorized by the Parties whom they
4 represent to negotiate this Agreement and to take all appropriate actions required or
5 permitted to be taken by such Parties pursuant to this Agreement to effectuate its
6 terms, and to execute any other documents required to effectuate the terms of this
7 Agreement. The Parties and their counsel will cooperate with each other and use their
8 best efforts to effect the implementation of the Settlement. In the event the Parties are
9 unable to reach agreement on the form or content of any document needed to
10 implement the Settlement, or on any supplemental provisions that may become
11 necessary to effectuate the terms of this Settlement, the Parties may seek the
12 assistance of the Court to resolve such disagreement. The person signing this
13 Agreement on behalf of Defendant represents and warrants that he or she is authorized
14 to sign this Agreement on behalf of Defendant. Plaintiffs represent and warrant that
15 they are authorized to sign this Agreement and that they have not assigned any claim,
16 or part of a claim, covered by this Settlement to a third-party.

17 80. Binding on Successors and Assigns. This Agreement shall be binding
18 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as
19 previously defined.

20 81. California Law Governs. All terms of this Agreement and the Exhibits
21 hereto shall be governed by and interpreted according to the laws of the State of
22 California.

23 82. Counterparts. This Agreement may be executed in one or more
24 counterparts. All executed counterparts and each of them shall be deemed to be one
25 and the same instrument provided that counsel for the Parties to this Agreement shall
26 exchange among themselves original signed counterparts.

27 83. This Settlement Is Fair, Adequate and Reasonable. The Parties believe
28 this Settlement is a fair, adequate and reasonable settlement of the Actions and have

1 arrived at this Settlement after extensive arms-length negotiations, taking into account
2 all relevant factors, present and potential.

3 84. Jurisdiction of the Court. The Court shall retain jurisdiction with respect
4 to the interpretation, implementation, and enforcement of the terms of this Agreement
5 and all orders and judgments entered in connection therewith, and the Parties and their
6 counsel hereto submit to the jurisdiction of the Court for purposes of interpreting,
7 implementing, and enforcing the settlement embodied in this Agreement and all orders
8 and judgments entered in connection therewith.

9 85. Invalidity of Any Provision. Before declaring any provision of this
10 Agreement invalid, the Court shall first attempt to construe the provisions valid to the
11 fullest extent possible so as to define all provisions of this Agreement valid and
12 enforceable.

13 Dated: September ^{09/05} ____, 2019



14 Steve Johnson

15
16 Dated: September ^{9/05/2019} ____, 2019



17 Scott Sollitt

18
19 Dated: September ____, 2019

20 James Loud

21 Dated: September ____, 2019

22 U.S. BANK NATIONAL ASSOCIATION

23
24 By:
25 Its:

26 ///

27 ///

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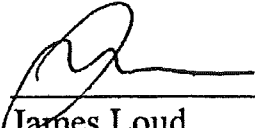
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11 fullest extent possible so as to define all provisions of this Agreement valid and
12 enforceable.

13 Dated: September __, 2019 _____
14 Steve Johnson

15
16 Dated: September __, 2019 _____
17 Scott Sollitt

18
19 Dated: September 5, 2019 _____
20 
James Loud

21 Dated: September __, 2019 U.S. BANK NATIONAL ASSOCIATION

22
23
24 _____
By:
25 Its:

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28

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2 all relevant factors, present and potential.

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7 implementing, and enforcing the settlement embodied in this Agreement and all orders
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11 fullest extent possible so as to define all provisions of this Agreement valid and
12 enforceable.

13 Dated: September ____, 2019 _____
14 Steve Johnson

15
16 Dated: September ____, 2019 _____
17 Scott Sollitt

18
19 Dated: September ____, 2019 _____
20 James Loud

21 Dated: September 6, 2019 U.S. BANK NATIONAL ASSOCIATION

22
23 
24 _____
25 By: Jeffrey Bruckmann
Its: VP + Assistant General Counsel

26 ///

27 ///

28

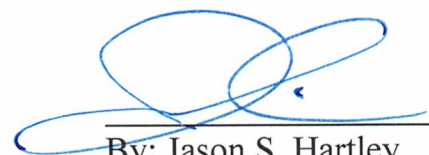
1 APPROVED AS TO FORM:

2 Dated: September ⁵ __, 2019 FARNAES & LUCIO, APC

3 

4 _____
5 By: Malte L. L. Farnaes
6 Attorneys for Plaintiffs
7 Steve Johnson and Scott Sollitt

8 Dated: September ⁹ __, 2019 HARTLEY LLP

9 

10 _____
11 By: Jason S. Hartley
12 Attorneys for Plaintiffs
13 Steve Johnson and Scott Sollitt

14 Dated: September __, 2019 HAFFNER LAW PC

15 _____
16 By: Joshua H. Haffner
17 Attorneys for Plaintiff
18 James Loud

19 Dated: September __, 2019 STEVENS LC

20 _____
21 By: Paul D. Stevens
22 Attorneys for Plaintiff
23 James Loud

24 Dated: September __, 2019 WINSTON & STRAWN LLP

25 _____
26 Joan B. Tucker Fife
27 Attorneys for Defendant
28 U.S. Bank National Association

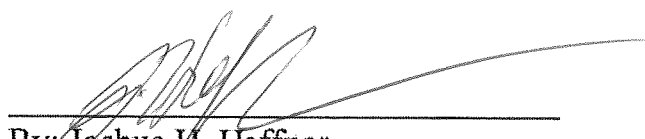
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Date: September __, 2019 FARNAES & LUCIO, APC
By: Malte L. L. Farnaes
Attorneys for Plaintiffs
Steve Johnson and Scott Sollitt

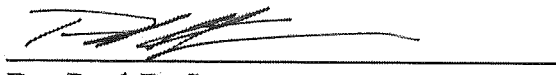
Dated: September __, 2019 HARTLEY LLP

By: Jason S. Hartley
Attorneys for Plaintiffs
Steve Johnson and Scott Sollitt

Dated: September 6, 2019 HAFFNER LAW PC


By: Joshua H. Haffner
Attorneys for Plaintiff
James Loud

Dated: September 5, 2019 STEVENS LC


By: Paul D. Stevens
Attorneys for Plaintiff
James Loud

Dated: September __, 2019 WINSTON & STRAWN LLP

Joan B. Tucker Fife
Attorneys for Defendant
U.S. Bank National Association

1 APPROVED AS TO FORM:

2 Dated: September ____, 2019 FARNAES & LUCIO, APC
3

4
5 _____
6 By: Malte L. L. Farnaes
7 Attorneys for Plaintiffs
8 Steve Johnson and Scott Sollitt

9 Dated: September ____, 2019 HARTLEY LLP

10
11 _____
12 By: Jason S. Hartley
13 Attorneys for Plaintiffs
14 Steve Johnson and Scott Sollitt


15 Dated: September ____, 2019 HAFFNER LAW PC

16
17 _____
18 By: Joshua H. Haffner
19 Attorneys for Plaintiff
20 James Loud

21 Dated: September ____, 2019 STEVENS LC

22
23 _____
24 By: Paul D. Stevens
25 Attorneys for Plaintiff
26 James Loud

27 Dated: September 9, 2019 WINSTON & STRAWN LLP

28
29 _____
30  for
31 Joan B. Tucker Fife
32 Attorneys for Defendant
33 U.S. Bank National Association