

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
Charlotte Division  
Civil Action No. \_\_\_\_\_**

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<b>G. PEREZ, J. PEREZ and</b>	:	
<b>M. SOSA,</b>	:	<b>CLASS ACTION COMPLAINT</b>
	:	
<b>Plaintiffs,</b>	:	<b><u>DEMAND FOR JURY TRIAL</u></b>
	:	
<b>vs.</b>	:	
	:	
	:	
<b>MERRILL LYNCH &amp; CO., INC. and</b>	:	
<b>MERRILL LYNCH, PIERCE, FENNER</b>	:	
<b>&amp; SMITH, INC.,</b>	:	
	:	
<b>Defendants.</b>	:	
	:	
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COME NOW Plaintiffs G. Perez, J. Perez and M. Sosa (“Plaintiffs”) on behalf of themselves and the Class of others similarly situated as defined herein, and hereby file this Class Action Complaint against Defendants Merrill Lynch & Co., Inc. and Merrill Lynch, Pierce, Fenner & Smith, Inc. (collectively, “Merrill Lynch”), and state as follows:

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury.

**I. PARTIES**

1. Plaintiff G. Perez is an adult citizen of Florida and resides in Dade County, Florida. G. Perez was employed as a Financial Advisor (“FA”) by Merrill Lynch in Miami, Florida from August, 1996 through resignation in November, 2015.

2. Plaintiff J. Perez is an adult citizen of Florida and resides in Dade County, Florida. J. Perez was employed as a Financial Advisor (“FA”) by Merrill Lynch in Miami, Florida from August, 2003 through resignation in November, 2015.

3. Plaintiff M. Sosa is an adult citizen of Florida and resides in Dade County, Florida. M. Sosa was employed as a Financial Advisor (“FA”) by Merrill Lynch in Miami, Florida from August, 1982 through resignation in January, 2016

4. Defendant Merrill Lynch & Co., Inc. is a financial services holding company incorporated in Delaware, whose subsidiaries provide financial and investment services. Its subsidiary, Defendant Merrill Lynch, Pierce, Fenner & Smith, Inc. is a full service securities firm engaged in the retail and institutional sale of securities and various other financial products. Defendants Merrill Lynch & Co., Inc. and Merrill Lynch, Pierce, Fenner & Smith, Inc. employ approximately 17,000 persons in the United States as Financial Advisors (“FAs”) who sell its products and services at its offices located throughout the country.

## **II. JURISDICTION AND VENUE**

5. This Court has original jurisdiction over this matter under the Class Action Fairness Act and 28 U.S.C. §1332. This is a putative class action in which: (1) there are 100 or more members in the Class, and (2) at least some members of the proposed class have different citizenship from at least one Defendant and the claims of the proposed class members exceed \$5,000,000.00 in the aggregate.

6. The Court has original subject matter jurisdiction over the Title VII claims pursuant to 28 U.S.C. Section 1331, because they arise under the laws of the United States and are brought to recover damages for deprivation of equal rights.

7. Venue is appropriate as: Bank of America, the parent of Merrill Lynch has its headquarters in Mecklenburg County, NC; the majority of the witnesses relevant to this matter work and reside in Mecklenburg County, NC or the immediate vicinity; Defendants conduct business and can be found in this district; a substantial part of the events and omissions giving rise to the claims alleged herein occurred in this district; and employment records related to employment are maintained and administered in this district.

8. Plaintiffs have substantially complied with the statutory prerequisites to file a claim under Title VII. Plaintiffs G. Perez, J. Perez and M. Sosa filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) on behalf of themselves and those similarly situated. Upon information and belief, the EEOC has issued a Notice of Right to Sue to those similarly situated with Plaintiffs.

### **III. FACTUAL ALLEGATIONS**

9. Prior to its merger with Bank of America, Merrill Lynch employed a robust work force of approximately 700 financial advisors who serviced international customers or Non-Resident Clients (“NRC”). Approximately 400 of these financial advisors worked from offices located outside of the United States and the remaining approximately 300 financial advisors were/are employed at various international Merrill Lynch “hubs” or other offices within the United States.

10. On April 17, 2012, Reuters reported that Merrill Lynch had placed its international business for sale, which was confirmed by Merrill Lynch.

11. In August, 2012, Merrill Lynch announced that Swiss firm, Julius Baer, would purchase the offshore offices only. The remaining international financial advisors located in the

United States were not part of the sale and would be rolled into the domestic business of Merrill Lynch.

12. The general belief was that Merrill Lynch would no longer fully support the international business that remained after the sale was completed in 2013. With knowledge of such sentiment, Merrill Lynch attempted to convince financial advisors and their clients to remain with the firm, indicating that it would fully support and grow the remaining international business going forward.

13. After the Julius Baer sale, considerable international expertise left the Merrill Lynch “back office” and the domestic “back office” was not a proper replacement. This caused a significant impact with regard to international customers.

14. Upon information and belief, through the Summer of 2015, Merrill Lynch unsuccessfully attempted to sell the remaining domestic international business.

15. Merrill Lynch initiated numerous, harmful policy changes prior to and after the sale to Julius Baer through the Summer of 2015. Additionally, On July 29, 2015, Merrill Lynch announced many additional changes and restrictions to its international business as part of its Global Client Strategy (“GCS”) initiative.

16. The policy changes had a discriminatory impact upon the Merrill Lynch domestic international financial advisors under Title VII.

17. Many international financial advisors were harmed after the announcement of the sale through loss of existing business and difficulty securing new business.

18. Through the various policy changes prior to and after the sale and additional policy changes that were announced in 2015, financial advisors were further harmed due to the loss of existing business and/or the ability to secure new business.

19. Based upon the various policy changes, many financial advisors were forced to leave Merrill Lynch in order to preserve and service their international business and clientele. Such departing financial advisors were damaged through the loss of business, loss of opportunity, loss of unvested deferred compensation, paying back promissory notes prior to expiration of the term, emotional distress and other harms.

20. Merrill Lynch management employees were also harmed by these various policy changes after the announcement of the sale in 2012. Harms include, but, are not limited to, being forced to leave the firm to pursue management of international financial advisors at other companies, loss of management bonuses based upon retention and/or recruitment of financial advisors, loss of unvested deferred compensation and emotional distress.

21. The harms due to the announcement of the sale of the international business and subsequent policy changes affected the named Plaintiffs and the proposed Class they seek to represent in that the conduct was widespread and uniform as to the Plaintiffs and Class members.

### **CLASS ACTION ALLEGATIONS**

22. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following Class:

Financial advisors and management personnel employed by Merrill Lynch in the United States who: (a) serviced NRC/international customers or managed financial advisors who serviced NRC/international customers; and (b)(i) voluntarily terminated from employment with Merrill Lynch on or after April 17, 2012, (ii) retired and/or agreed to CTP<sup>1</sup> on or after April 17, 2012, or (iii) are currently employed with Merrill Lynch.

23. Plaintiffs are members of the Class they seek to represent.

24. The proposed Class is so numerous that joinder of all members is impracticable.

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<sup>1</sup> Defined as the Client Transition Program ("CTP") covering retiring financial advisors and those inheriting the business.

25. There are questions of law and fact common to the Class, and those questions predominate over individual questions.

26. The claims alleged by Plaintiffs are typical of the claims of the Class.

27. Plaintiffs will fairly and adequately represent and protect the interests of the Class.

28. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

29. Defendants have acted and refused to act on grounds generally applicable to the Class as a whole, making injunctive and declaratory relief appropriate.

### **CAUSES OF ACTION**

#### **COUNT I**

#### **WRONGFUL TERMINATION (CONSTRUCTIVE DISCHARGE)**

30. Plaintiffs and Class Members adopt and incorporate paragraphs 1 through 29 in full.

31. Defendants acted intentionally when it made the sale and implemented certain policy changes.

32. The actions by Defendants described in the previous paragraph and above created an intolerable workplace for Plaintiffs and Class Members.

33. Plaintiffs and many other domestic international financial advisors were forced to leave Merrill Lynch in order to service certain international clients and to preserve and grow their international business.

34. Plaintiffs request relief as hereinafter described.

**COUNT II**  
**TITLE VII DISPARATE IMPACT DISCRIMINATION**

35. Plaintiffs and Class Members adopt and incorporate paragraphs 1 through 29 in full.

36. Defendants' actions and business practices described in paragraphs 9 through 21, above, cause a disparate impact on the basis of race and/or national origin.

37. Defendants fail to demonstrate that the actions and business practices described in paragraphs 9 through 21, above, are job related for the employment held at Merrill Lynch by Plaintiffs and Class Members.

38. Plaintiffs and Class Members are damaged by Defendants' actions and business practices described in paragraphs 9 through 21, above.

39. Plaintiffs request relief as hereinafter described.

**COUNT III**  
**BREACH OF CONTRACT**

40. Plaintiffs and Class Members adopt and incorporate paragraphs 1 through 29 in full.

41. Plaintiffs and Class Members participated in the FACAAP<sup>2</sup>, Growth Award, Wealthbuilder, LTICP<sup>3</sup>, KASP<sup>4</sup>, Wealthchoice ("Plans") and/or ATP<sup>5</sup> plans, which are valid and binding contracts between Plaintiffs and Class Members on the one hand, and Defendants on the other hand.

42. Plaintiffs and Class Members have adequately performed based upon the Plans and ATP.

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<sup>2</sup> Defined as the Financial Advisor Capital Accumulation Plan or "FACAAP".

<sup>3</sup> Defined as the Long Term Incentive Compensation Plan or "LTICP".

<sup>4</sup> Defined as the Key Associate Stock Plan or "KASP".

<sup>5</sup> Defined as the Advisor Transition Program or "ATP".

43. Defendants have breached the terms of the Plans and ATP by failing or refusing to distribute amounts due and owing to Plaintiffs and Class Members pursuant to the Plans and ATP.

44. Plaintiffs and Class Members have been damaged due to Defendants' breach.

45. In addition, Defendants' conduct in their breach of the various contracts is morally culpable and may entitle Plaintiffs and Class Members to punitive damages.

46. Plaintiffs request relief as hereinafter described.

#### **COUNT IV** **CONVERSION**

47. Plaintiffs and Class Members adopt and incorporate paragraphs 1 through 29 in full.

48. Defendants have converted the Plaintiffs and Class Members' Plans balances and ATP Bonus Payments, and Defendants are liable to Plaintiffs and Class Members in the amount of the value of the Plans balances and remaining ATP Bonus Payments at the time of Defendants' conversions.

49. Defendants acted without following the procedures of the Plans and ATP and did so with the intent to convert.

50. Defendants remain in wrongful possession of Plaintiffs' and Class Members' Plans Account Balances and ATP Bonus Payment funds despite their demands for same.

51. Plaintiffs and Class Members' Plans Account Balances and ATP Bonus Payment funds are specific and identifiable monetary amounts.

52. Plaintiffs and Class Members have been damaged due to Defendants' conversion of the Plans Account Balances and ATP Bonus Payments.

53. Plaintiffs request relief as hereinafter described.



**COUNT V**  
**UNPAID WAGES**

54. Plaintiffs and Class Members adopt and incorporate paragraphs 1 through 29 in full.

55. The Plans and ATP at issue are all construed in accordance with and governed by the laws of the State of New York as to all matters.

56. At all relevant times, Merrill Lynch was an “employer” as defined in applicable labor laws, and Plaintiffs and Class Members were “employees” within the meaning of such labor laws.

57. Defendants promised to pay Plaintiffs and Class Members for their services pursuant to the Plans and ATP as part of their earned wages during their tenure.

58. The Plans balances and ATP Bonus Payments in the instant matter are properly “wages” as defined under the applicable labor laws.

59. Plaintiffs and Class Members performed and met all requirements under the Plans and ATP in order to receive payouts following their terminations.

60. Pursuant to the applicable labor laws, Plaintiffs and Class Members were entitled to be paid for those wages.

61. Defendants have failed, neglected, or refused to pay Plaintiffs and Class Members for all of their wages earned pursuant to applicable labor laws, proximately causing Plaintiffs and Class Members damage.

62. Plaintiffs request relief as hereinafter described.

**COUNT VI**  
**UNJUST ENRICHMENT**

63. Plaintiffs and Class Members adopt and incorporate paragraphs 1 through 29 in full.

64. Throughout their tenure at Merrill Lynch, Plaintiffs and Class Members performed their services in good faith. Defendants accepted Plaintiffs' and Class Members' services and derived great benefit from same. Plaintiffs and Class Members were granted compensation under the Plans and ATP for these services and reasonably expected that they would receive payments due and owing to them under the Plans and ATP if their employment ended following a Change in Control.

65. By engaging in the conduct described in this Complaint, Defendants were unjustly enriched by the services performed by Plaintiffs and Class Members and by retaining for itself monies under the Plans and ATP which are due and owing to Plaintiffs and Class Members.

66. Defendants were further unjustly enriched by requiring payment of outstanding promissory notes when financial advisors were forced to leave the firm prior to the expiration of the corresponding bonus period.

67. Under the circumstances described in this Complaint, it would be inequitable and unjust for Defendants to retain Plaintiffs' and Class Members' funds under the Plans and ATP.

68. Defendants' retention of Plaintiffs' and Class Members' Plans Account Balances and ATP Bonus Payments funds has damaged Plaintiffs and Class Members.

69. Plaintiffs request relief as hereinafter described.

**COUNT VII**  
**GOOD FAITH AND FAIR DEALING**

70. Plaintiffs and Class Members adopt and incorporate paragraphs 1 through 29 in full.

71. Under North Carolina law, a covenant of good faith and fair dealing is implied in every contract.

72. The covenant of good faith and fair dealing requires all parties to a contract act using principles of good faith and fair dealing to accomplish the purposes of the contract.

73. Plaintiffs and Class Members adhered to the presuppositions of their employment agreements, the Plans and ATP, but Defendants did not.

74. Based upon Defendants' actions described herein, Defendants breached the covenant of good faith and fair dealing it owed to Plaintiffs and Class Members.

75. Plaintiffs and Class Members have been damaged by Defendants' breach of the covenant of good faith and fair dealing.

76. Plaintiffs request relief as hereinafter described.

**COUNT VIII**  
**INJUNCTIVE RELIEF**

77. Plaintiffs and Class Members adopt and incorporate paragraphs 1 through 29 in full.

78. Plaintiffs and Class Members are likely to prevail on the merits of their claims in this case.

79. Plaintiffs and Class Members have suffered irreparable harm as a result of Defendants' actions with regard to its international financial advisory business and its failure to properly follow the Plans and ATP.

80. The balance of equities in this matter is decidedly in favor of the granting of injunctive relief.

81. The public interest will not be disserved by the issuance of an injunction, as Defendants would be required to properly conduct its international financial advisory business and to follow written contracts that Defendants drafted.

82. Plaintiffs and Class Members request the Court determine and declare that Plaintiffs and all similarly situated Class Members are entitled to injunctive relief. Plaintiffs and Class Members further request such other equitable, declaratory, and injunctive relief be granted as may be necessary to compel such a distribution, including the establishment of a constructive trust, if necessary and appropriate, and/or prohibiting Defendants from continuing their improper actions in the future.

83. Additionally, Plaintiffs and Class Members request injunctive relief requiring Defendants to remove any CTP payback amount, time period and Protocol for Broker Recruiting restrictions of the receiving financial advisor with regard to any Class Member who has agreed to CTP, any Class Members who are currently being offered CTP or are offered CTP in the future.

84. With regard to Class Members who are currently employed by Merrill Lynch, Plaintiffs request injunctive relief.

**COUNT IX**  
**FRAUDULENT MISREPRESENTATION/CONCEALMENT/OMISSION**

85. Plaintiffs and Class Members adopt and incorporate paragraphs 1 through 29 in full.

86. Defendants represented to Plaintiffs and Class Members that they would receive proper resources to service their international business as well as would receive payments under the Plans and ATP if their employment was terminated following a Change in Control.

87. Defendants intended to misrepresent or omit the fact that Plaintiffs and Class Members would receive proper resources to service their international business and certain payments under the Plans and ATP.

88. Plaintiffs and Class Members reasonably relied on such representations and promises.

89. Plaintiffs and Class Members relied to their detriment on these fraudulent misrepresentations and omissions, and have been damaged as a result thereof.

90. Plaintiffs request relief as hereinafter described.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court find in their favor and the Class of similarly situated individuals and against Defendants as follows:

- a. Certify this case as a class action;
- b. Designate Plaintiffs as Class Representatives;
- c. Designate Plaintiffs' counsel of record as Class Counsel;
- d. Order appropriate equitable and injunctive relief to remedy the unlawful conduct;
- e. Award Plaintiffs and all others similarly situated the full value of all compensation and benefits lost;
- f. Award Plaintiffs and all others similarly situated the full value of all compensation and benefits they may lose in the future as a result of Defendants' conduct;

g. Award Plaintiffs and all others similarly situated all damages, interest and attorneys' fees recoverable under applicable laws;

h. Award Plaintiffs and all others similarly situated punitive damages, compensatory and other damages;

i. Award Plaintiffs and all others similarly situated prejudgment interest and attorneys' fees, costs and disbursements, and liquidated damages, as provided by law;

j. Award Plaintiffs and all others similarly situated such other make whole equitable, injunctive and legal relief as this Court deems just and proper to end the unlawful conduct and fairly compensate Plaintiffs;

k. Order disgorgement of any and all profits of Defendants earned or associated with the contractual breaches referenced herein;

l. Award Plaintiffs and all others similarly situated any and all other relief as this Court deems just and proper; and

m. That this matter be tried by a jury.

This the 1<sup>st</sup> day of April, 2016.

/s/Michael S. Taaffe

Michael S. Taaffe (*pending Motion Pro Hac Vice*)

FL State Bar No. 490318

Michael D. Bressan (*pending Motion Pro Hac Vice*)

FL State Bar No. 0011092

Jarrod J. Malone (*pending Motion Pro Hac Vice*)

FL State Bar No. 0010595

David L. Wyant, Jr. (*pending Motion Pro Hac Vice*)

FL State Bar No. 0085600

Shumaker Loop & Kendrick, LLP

240 South Pineapple Ave., 10<sup>th</sup> Floor

Sarasota, Florida 34236

Telephone: (941) 366-6660

Facsimile: (941) 366-3999

/s/Steven A. Meckler

Steven A. Meckler

NC State Bar No. 26544

Shumaker Loop & Kendrick, LLP

128 South Tryon Street, Suite 1800

Charlotte, North Carolina 28202

Telephone: (704) 375-0057

Facsimile: (704) 332-1197

E-Mail: [smeckler@slk-law.com](mailto:smeckler@slk-law.com)

*Attorneys for Plaintiffs (Local Counsel)*

E-Mail: [mtaaffe@slk-law.com](mailto:mtaaffe@slk-law.com)  
E-Mail: [mbressan@slk-law.com](mailto:mbressan@slk-law.com)  
E-Mail: [jmalone@slk-law.com](mailto:jmalone@slk-law.com)  
E-Mail: [dwyant@slk-law.com](mailto:dwyant@slk-law.com)  
*Attorneys for Plaintiffs*