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Superior Court of California
County of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk of Court
By: Tanya Herrera, Deputy

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ROBERT RODRIGUEZ, as an individual
and on behalf of all others similarly situated,

Plaintiffs,

vs.

CITY NATIONAL BANK, business entity
form unknown; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 20STCV29761

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

**(1) VIOLATION OF LABOR CODE § 2698,
*ET SEQ.***

DEMAND OVER \$25,000.00

1 Plaintiff Robert Rodriguez (“Plaintiff”), hereby submits this First Amended
2 Representative Action Complaint against Defendant City National Bank (“Defendant”), and
3 Does 1-50 (hereinafter collectively referred to as “Defendants”), on behalf of himself and other
4 current and former aggrieved employees of Defendant for penalties under the Private Attorneys
5 General Act of 2004 (the “PAGA”), codified at California Labor Code section 2698, *et seq.*, for
6 violations of the California Labor Code, as follows:

7 **INTRODUCTION**

8 1. This representative action is within the Court’s jurisdiction under California
9 Labor Code §§ 201-203, 226(a), 226.7, 246, 510, 512, 558, 1194 and 2698, *et seq.* and the
10 California Industrial Welfare Commission’s (“IWC”) Wage Orders.

11 2. This Complaint challenges systemic illegal employment practices resulting in
12 violations of the California Labor Code against employees of Defendant.

13 3. Plaintiff is informed and believes and based thereon alleges that Defendants
14 jointly and severally have acted intentionally and with deliberate indifference and conscious
15 disregard to the rights of all employees by failing to properly calculate the regular rate of pay for
16 purposes of paying overtime, meal period premiums and sick pay, provide off-duty rest breaks,
17 pay all wages owed upon separation of employment, and provide accurate itemized wage
18 statements to Plaintiff and the Aggrieved Employees.

19 4. Plaintiff is informed and believes and based thereon alleges that Defendants have
20 engaged in, among other things a system of willful violations of the California Labor Code and
21 applicable IWC Wage Orders by creating and maintaining policies, practices and customs that
22 knowingly deny employees the above stated rights and benefits.

23 **JURISDICTION AND VENUE**

24 5. The Court has jurisdiction over the violations of the California Labor Code §§
25 201-203, 226(a), 226.7, 246, 510, 512, 558, 1194 and 2698, *et seq.*

26 6. Venue is proper in Los Angeles County because Defendant maintains operations
27 in Los Angeles County.
28

PARTIES

7. Plaintiff was employed by Defendant as a security guard from about October 2016 until on or about December 2019. Plaintiff worked as an hourly, non-exempt employee.

8. Plaintiff was and is the victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived him of the rights guaranteed by California Labor Code §§ 201-203, 226(a), 226.7, 246, 510, 512, 558, 1194, and 2698, *et seq.*, and the applicable IWC Wage Orders.

9. Plaintiff is informed and believes and based thereon alleges that Defendant City National Bank was and is a business entity form unknown doing business in the State of California as a bank.

10. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned Defendant and Does 1 through 50 are and were business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California.

11. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to California Labor Code §§ 201-203, 226(a), 226.7, 246, 510, 512, 558, 1194 and 2698, *et seq.* and the IWC Wage Orders.

12. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the Defendants sued herein as Does 1 through 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious Defendants were responsible in some way for the matters alleged herein and proximately caused Plaintiff and Aggrieved Employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

13. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

14. Plaintiff is informed and believes and based thereon alleges that at all times material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer of, or working in concert with each of the other co-defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

15. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

16. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2698, *ET SEQ.*

**(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,
AGAINST ALL DEFENDANTS)**

17. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

18. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees from April 6, 2019, through the present, for Defendant's violations of Labor Code §§ 201-203, 226(a), 226.7, 246, 510, 512, 558, and 1194, arising from Defendant's policy and practice of: (a) failing to pay employees overtime wages at the correct regular rate of pay that included all non-discretionary

remuneration, in violation of Labor Code §§ 201-203, 226, 510, 558, and 1194; (b) failing to pay employees meal period premiums at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203, 226.7, and 512; (c) failing to pay employees sick pay at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203 and 246; (d) failing to provide off-duty 10-minute rest breaks to employees who worked 3.5 hours or longer in one shift, in violation of Labor Code § 226.7; and (e) failing to provide accurate, itemized wage statements, in violation of Labor Code § 226(a).

19. Plaintiff and Aggrieved Employees earned non-discretionary remuneration, including but not limited to shift differentials. However, the non-discretionary wages were not calculated into the regular rate of pay for the purposes of paying overtime, meal period premiums, and sick pay. Rather, such wages were paid at the employee's base rate of pay, instead of the correct, higher regular rate of pay.

20. In addition, Plaintiff and Aggrieved Employees regularly worked shifts of 3.5 hours or more without being provided off-duty rest breaks. Defendant required that employees carry a two-way radio and respond to calls whenever they came in. As a result, employees remained subject to Defendant's control, received interrupted and shortened rest breaks, and were subject to an immediate return to work. Thus, Plaintiff and Aggrieved Employees were regularly denied a duty-free rest break of 10 minutes.

21. To date, Plaintiff and Aggrieved Employees have yet to receive the underpaid overtime, meal period premium, sick pay, and rest period premium wages owed to them.

22. Furthermore, as a result of the aforementioned overtime rate miscalculation, meal period premium miscalculation and rest period violations, the wage statements issued to Plaintiff and other Aggrieved Employees identified incorrect wage rates and net and gross wages earned, in violation of Labor Code section 226(a). In addition, whenever shift differential wages were paid, the wage statements issued to Plaintiff and Aggrieved Employees did not identify the applicable rate of pay and number of hours worked used to calculate such wages.

23. On or about June 17, 2020, Plaintiff sent written notice to the California Labor &

1 Workforce Development Agency (“LWDA”) of Defendant’s violations of Labor Code §§ 201-
2 203, 226(a), 226.7, 246, 510, 512, 558, and 1194, pursuant to Labor Code § 2698, *et seq.*, the
3 Private Attorneys General Act (“PAGA”). To date, the LWDA has not responded to Plaintiff’s
4 written notice.

5 24. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
6 and all applicable civil penalties for Defendant’s violation of Labor Code §§ 201-203, 226(a),
7 226.7, 246, 510, 512, 558, and 1194, for the time period described above, on behalf of himself
8 and other Aggrieved Employees.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for judgment as an individual and on behalf of all others
11 that this suit is brought against Defendants, jointly and severally, as follows:

12 1. Upon the First Cause of Action, for civil penalties according to proof pursuant to
13 Labor Code §§ 226.3 and 2698, *et seq.*;

14 2. For attorneys’ fees and costs as provided by California Labor Code § 2699, and
15 Code of Civil Procedure § 1021.5; and

16 3. For such other and further relief as the Court may deem just and proper.
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18 DATED: November 16, 2020

DIVERSITY LAW GROUP, P.C.

19
20 By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

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22 Attorneys for Plaintiff and the Aggrieved
23 Employees
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PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On November 16, 2020, I served the following document(s) described as: **FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action as follows:

William J. Dritsas wdritsas@seyfarth.com Seyfarth Shaw LLP 560 Mission Street, 31st Floor San Francisco, California 94105-2930 <i>Attorneys for Defendant City National Bank</i>	Michael W. Kopp mkopp@seyfarth.com Seyfarth Shaw LLP 400 Capitol Mall, Suite 2350 Sacramento, California 95814-4428 <i>Attorneys for Defendant City National Bank</i>
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 X BY ELECTRONIC SERVICE VIA CASE ANYWHERE: Based on a court order I caused the above-entitled document(s) to be served through Case Anywhere at the website www.caseanywhere.com, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the Case Anywhere Filing Receipt/Confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 16, 2020, at Los Angeles, California.



Erika Mejia