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Assigned for All Purposes
Judge Randall J. Sherman
Dept. CX105

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF ORANGE**

MARINA CAYON and KRISTINE REESOR, as individuals and on behalf of all other aggrieved employees,

Plaintiffs,

vs.

ZIONS BANCORPORATION, NATIONAL ASSOCIATION, a Utah corporation; and DOES 1 through 100,

Defendants.

Case No. 30-2024-01396627-CU-OE-CXC

**REPRESENTATIVE ACTION COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 *et seq.)***

**UNLIMITED CIVIL CASE**

Plaintiffs Marina Cayon and Kristine Reesor ("Plaintiffs"), on behalf of themselves and all other aggrieved employees, hereby bring this Representative Action Complaint against Zions Bancorporation, National Association, a Utah corporation, and DOES 1 to 100, inclusive (collectively "Defendants"), and on information and belief allege as follows:

## JURISDICTION

1. Plaintiffs, on behalf of themselves and all other aggrieved employees, hereby bring this representative action for recovery of civil penalties under California Labor Code §§ 2698 *et seq.*

2. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the California market so as to render the exercise of jurisdiction over them by the California courts consistent with the traditional notions of fair play and substantial justice.

## VENUE

3. Venue as to each Defendant is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the County of Orange. Further, at all times relevant herein Plaintiffs were employed by Defendants within the County of Orange.

## PARTIES

4. Plaintiffs are individuals over the age of eighteen (18). At all relevant times herein, Plaintiffs were, and currently are, California residents, residing in the County of Orange. During the one year immediately preceding Plaintiffs' giving of the required notice under the PAGA, and within the statute of limitations periods applicable to the cause of action pled herein, Plaintiffs were employed by Defendants as hourly non-exempt employees.

5. Plaintiffs are informed and believe, and based thereon allege, that during the one year preceding Plaintiffs' giving of the required notice under the PAGA and continuing to the present, Defendants did (and do) business by providing financial services to commercial and private customers, including mortgage lending, and employed Plaintiffs and other similarly-

situated hourly non-exempt employees within the County of Orange and, therefore, were (and are) doing business in the County of Orange and the State of California.

6. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned herein, Defendants were licensed to do business in California and the County of Orange, and were the employers of Plaintiffs and the Aggrieved Employees (as defined in Paragraph 23).

7. Plaintiffs do not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to amend this Representative Action Complaint when such true names and capacities are discovered. Plaintiffs are informed, and believe, and thereon allege, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiffs and the Aggrieved Employees (as defined in Paragraph 23) to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

8. Plaintiffs are informed, and believe, and thereon allege, that at all times mentioned herein, Defendants were and are the employers of Plaintiffs and the Aggrieved Employees (as defined in Paragraph 23).

9. 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 Defendant; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one 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. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

10. At all times mentioned herein, 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. Further, Plaintiffs allege that all Defendants were joint employers for all purposes of Plaintiffs and the

Aggrieved Employees (as defined in Paragraph 23).

**REPRESENTATIVE ACTION ALLEGATIONS**

11. Defendants are in the business of providing financial services to both commercial and private clients, including mortgage lending. Plaintiffs Marina Cayon and Kristine Reeser have been employed in the non-exempt position of "Mortgage Lender" (or similarly titled position).

12. Throughout Plaintiffs' employment with Defendants, Plaintiffs and other aggrieved employees have regularly worked over 8 hours per workday, 40 hours per workweek, and/or 12 hours per workday, but have only rarely received overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours, and/or double their regular rate of pay for working over 12 hours in a workday, due to Defendants' policies/practices, which have precluded them from recording the overwhelming majority of their overtime hours worked.

13. Prior to approximately July 2023, Plaintiffs and other aggrieved employees were told by their managers not to record their overtime hours worked. When filling out their timesheets, Plaintiffs and other aggrieved employees were told to simply indicate that they had worked for a set schedule of eight hours in the day, regardless of the number of hours they had actually worked.

14. In the period lasting from approximately 2020 to 2022, Plaintiffs and other aggrieved employees were required to manage anywhere from 30 to 60 loans at a time of high demand in the mortgage lending industry. Strict compliance deadlines required Plaintiffs and other aggrieved employees to work long hours in order to timely process loan estimates to potential borrowers, in addition to sending out all loan disclosures, locking in rates, manually uploading financials, as well as pre-underwriting files.

15. As a result of Defendants' unlawful policies/practices, Defendants have failed to compensate Plaintiffs and other aggrieved employees for all overtime wages owed. Plaintiffs and other aggrieved employees have not received any hourly compensation at all for hundreds of hours of overtime work that they performed during the relevant time period.

16. Specifically, Plaintiffs and other aggrieved employees receive non-discretionary incentive pay, including commissions, "Residential Mortgage Commission Plan", and/or other forms of pay that are not excludable from an employee's "regular rate" of pay (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). On the extremely rare occasions when Plaintiffs and other aggrieved employees were paid any overtime, Defendants failed to properly calculate Plaintiffs' and other aggrieved employees' "regular rate" of pay, thereby causing Plaintiffs and other aggrieved employees to be underpaid for their overtime wages.

17. Prior to approximately July 2020, Plaintiffs and other aggrieved employees used written timesheets to record their hours worked, but starting in approximately July 2020, Defendants adopted a computerized timekeeping system for recording employees' hours worked. Even after the transition to computerized timekeeping, Plaintiffs and other aggrieved employees continued to manually prepare written electronic timesheets that only showed the authorized hours worked, usually eight per day, regardless of the number of hours they had actually worked.

18. In approximately July 2023, Plaintiffs became aware that other employees working for Defendants in the same or similar positions were being regularly paid for some or all of their overtime hours. After communicating with management about the disparity of Defendants' policy/procedure regarding the payment of overtime wages to Plaintiffs as opposed to the payment of overtimes wages to other employees, Plaintiffs began recording their overtime hours using Defendant's computerized time-punch system.

19. Defendants have also failed to provide Plaintiffs and other aggrieved employees with all legally compliant meal periods because they have failed to provide Plaintiffs and other aggrieved employees with a timely full 30-minute meal period commencing before the end of the fifth hour of work, and/or a second 30-minute meal period for shifts of over 10.0 hours. Due to the nature of their work, Plaintiffs and other aggrieved employees are often required to work through their meal periods or to begin their meal periods after the fifth hour of work because they have to assist clients at those times. Defendants have failed to compensate Plaintiffs and other aggrieved employees with the required meal period premium for each workday in which they

experience a meal period violation as mandated by Labor Code § 226.7.

20. Defendants have also failed to authorize and permit Plaintiffs and other aggrieved employees to take all legally compliant rest periods. Upon information and belief, Defendants often require Plaintiffs to work through their rest periods due to the demands of their work, and as a result, Defendants often fail to authorize and permit Plaintiffs to take any duty-free rest periods at all. Further, even though Plaintiffs often work over shifts of over 10.0 hours, Defendants have failed to authorize and permit a third rest period for shifts of over 10.0 hours. On those occasions when Plaintiffs were not authorized and permitted to take all legally compliant rest periods to which they were entitled, Defendants failed to compensate Plaintiffs with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7.

21. Furthermore, Defendants have required Plaintiffs and other aggrieved employees to work multiple times during their paid vacations. When Plaintiffs and other aggrieved employees have worked during their paid vacations, they did not record their hours worked at all.

22. As a result of Defendants' failure to pay all overtime wages and meal and rest period premium wages earned, Defendants have maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiffs and other aggrieved employees.

23. Based on the foregoing, Plaintiffs seek to represent themselves and other aggrieved employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code violations discussed herein.

## <u>**FIRST CAUSE OF ACTION**</u>

## **PRIVATE ATTORNEYS GENERAL ACT**

## **(AGAINST ALL DEFENDANTS)**

24. Plaintiffs re-allege and incorporate by reference all prior paragraphs as though fully set forth herein.

25. Defendants have committed several Labor Code violations against Plaintiffs and other aggrieved employees. Plaintiffs, "aggrieved employees" within the meaning of Labor Code § 2698 *et seq*., acting on behalf of themselves and other aggrieved employees, bring this

representative action against Defendants to recover the civil penalties due to Plaintiffs, other aggrieved employees, and the State of California according to proof, including, but not limited to: (1) $100.00 for each initial violation for each failure to pay each employee and $200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) $50.00 for each initial violation and $100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) $250.00 for each initial violation; and $1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (4) $100.00 for each initial violation and $200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

a. Failing to pay Plaintiffs and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;

b. Failing to provide all legally required meal periods, or to pay premium pay in lieu thereof, to Plaintiffs and other aggrieved employees at the regular rate of pay in violation of Labor Code §§ 226.7, 512, 558, and 1198;

c. Failing to authorize and permit all legally required rest periods, or to pay premium pay in lieu thereof, to Plaintiffs and other aggrieved employees at the regular rate of pay in violation of Labor Code §§ 226.7, 516, 558, and 1198;

d. Failing to furnish Plaintiffs and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;

e. Failing to timely pay all final wages due to Plaintiffs and other aggrieved employees in violation of Labor Code §§ 201, 202, and 203;

f. Failing to pay Plaintiffs and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and

g. Failing to maintain accurate records on behalf of Plaintiffs and other aggrieved employees in violation of Labor Code §§ 1174 and 1198.

26. On or about February 22, 2024, Plaintiffs notified Defendant Zions

Bancorporation, National Association via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiffs' intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 25 (a)-(g). Now that sixty-five days have passed from Plaintiffs notifying Defendants of these violations, Plaintiffs have exhausted their administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

27. Plaintiffs were compelled to retain the services of counsel to file this court action to protect their interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs, which they are entitled to receive under California Labor Code § 2699.

## **PRAYER**

WHEREFORE, Plaintiffs pray for judgment for themselves and for all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action, for civil penalties due to Plaintiffs, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) $100.00 for each initial violation for each failure to pay each employee and $200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) $50.00 for each initial violation and $100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) $250.00 for each initial violation and $1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (4) $100.00 for each initial violation and $200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations identified in Paragraph 25 (a)-(g);

2. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 2699(g) and Code of Civil Procedure § 1021.5; and

3. For such other and further relief the Court may deem just and proper.

Dated: April 29, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

By: ______________________________

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Attorneys for Plaintiff