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Attorneys for Plaintiff

SAN LUIS OBISPO SUPERIOR COURT
BY Carol L. McGuirk
Carol L. McGuirk, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

ARACELI FLORES, as an individual and on
behalf of all other aggrieved employees,

Plaintiff,

vs.

BANK OF AMERICA, NATIONAL
ASSOCIATION, a United States corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. 24CV-0460

**REPRESENTATIVE ACTION
COMPLAINT:**

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

UNLIMITED CIVIL CASE

1 Plaintiff Araceli Flores (“Plaintiff”), on behalf of herself and all other aggrieved
2 employees, hereby brings this Representative Action Complaint against Defendants Bank of
3 America, National Association, a United States corporation; and DOES 1 to 100, inclusive
4 (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all other aggrieved employees, hereby brings
7 this representative action for recovery of civil penalties under California Labor Code §§ 2698 *et*
8 *seq.*

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

14 **VENUE**

15 3. Venue as to each Defendant is proper in this judicial district pursuant to California
16 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
17 complained of herein occurred in the County of San Luis Obispo. Further, at all times relevant
18 herein Plaintiff was employed by Defendants within the County of San Luis Obispo.

19 **PARTIES**

20 4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was, and currently is, a California resident, residing in the County of San Luis Obispo.
22 During the one year immediately preceding Plaintiff’s giving of the required notice under the
23 PAGA, and within the statute of limitations periods applicable to the cause of action pled herein,
24 Plaintiff was employed by Defendants as an employee classified as exempt under Industrial
25 Welfare Commission Wage Order No. 4.

26 5. Plaintiff is informed and believes, and based thereon alleges, that during the one
27 year preceding Plaintiff’s giving of the required notice under the PAGA and continuing to the
28 present, Defendants did (and do) business by providing financial services throughout California

1 and the United States and employed Plaintiff and other similarly situated exempt employees
2 within the County of San Luis Obispo and, therefore, were (and are) doing business in the County
3 of San Luis Obispo and the State of California.

4 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
5 herein, Defendants were licensed to do business in California and the County of San Luis Obispo,
6 and were the employers of Plaintiff and the Aggrieved Employees (as defined in Paragraph 15).

7 7. Plaintiff does not know the true names or capacities, whether individual, partner,
8 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
9 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
10 amend this Representative Action Complaint when such true names and capacities are
11 discovered. Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious
12 defendants, whether individual, partners, or corporate, were responsible in some manner for the
13 acts and omissions alleged herein, and proximately caused Plaintiff and the Aggrieved
14 Employees (as defined in Paragraph 15) to be subject to the unlawful employment practices,
15 wrongs, injuries, and damages complained of herein.

16 8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
17 herein, Defendants were and are the employers of Plaintiff and the Aggrieved Employees (as
18 defined in Paragraph 15).

19 9. At all times herein mentioned, each of said Defendants participated in the doing
20 of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
21 Defendants, and each of them, were the agents, servants, and employees of each and every one
22 of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
23 were acting within the course and scope of said agency and employment. Defendants, and each
24 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
25 omissions complained of herein.

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

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
2 Aggrieved Employees (as defined in Paragraph 15).

3 **REPRESENTATIVE ACTION ALLEGATIONS**

4 11. Plaintiff was employed by Defendants as a Financial Center Manager in Arroyo
5 Grande, California, from approximately May 2020 to approximately October 2023 and was
6 classified as an exempt employee during this time. Plaintiff brings this action on behalf of herself
7 and all other employees of Defendants who were classified as exempt employees during the
8 relevant time period (collectively “aggrieved employees”)

9 12. During her employment with Defendants, Plaintiff and other aggrieved
10 employees were not provided all required meal periods, which include duty-free 30-minute meal
11 periods commencing prior to the beginning of the fifth hour of work, due to Defendants’
12 classification of Plaintiff and other aggrieved employees as exempt employees. When Plaintiff
13 and other aggrieved employees worked shifts in excess of 10.0 hours, Defendants did not provide
14 a second duty-free 30-minute meal period. Moreover, Defendants did not require Plaintiff or any
15 other aggrieved employees to clock out for their meal periods, nor did it track the time that meal
16 periods were being provided.

17 13. Labor Code Section 512(a) states that: “An employer shall not employ an
18 employee for a work period of more than five hours per day without providing the employee
19 with a meal period of not less than 30 minutes, except that if the total work period per day of the
20 employee is no more than six hours, the meal period may be waived by mutual consent of both
21 the employer and employee. An employer shall not employ an employee for a work period of
22 more than 10 hours per day without providing the employee with a second meal period of not
23 less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second
24 meal period may be waived by mutual consent of the employer and the employee only if the first
25 meal period was not waived.”

26 14. Notably, Labor Code Section 512(a) makes no distinction between exempt and
27 non-exempt employees, although Section 512(c) and (e) exclude other classes of workers, and
28 other Sections of the Labor Code (e.g., Sections 204.3, 2810.3, and 2810.5, do expressly exclude

exempt workers from coverage). Similarly, the DLSE Manual at Section 45.2.2 confirms that Section 512(a) does not exclude any class of employee. *Id.* (“Note: Labor Code § 512, requiring an employer to provide a meal period, does not exclude any class of employee. Consequently, it would appear that exempt employees are also entitled to meal periods in accordance with that section.”).

15. Based on the foregoing, Plaintiff seeks to represent herself and other aggrieved employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code violations discussed herein.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

16. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully set forth herein.

17. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, 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 provide all legally required meal periods to Plaintiff and other

aggrieved employees in violation of Labor Code § 512; and

- b. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees of their hours worked, including the times that they began and ended the workday and the beginning and end of their meal periods, in violation of Labor Code § 1174.

18. On or about May 9, 2024, Plaintiff notified Defendant Bank of America, 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 Plaintiff’s 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 17 (a)-(b). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

19. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which she is entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself 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 Plaintiff, 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

1 pay period; and/or (4) \$100.00 for each initial violation and \$200 for each subsequent violation
2 per employee per pay period for those violations of the Labor Code for which no civil penalty is
3 specifically provided, based on the Labor Code violations identified in Paragraph 17 (a)-(b);

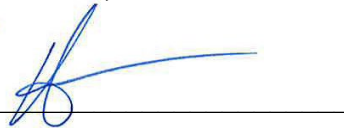
4 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
5 2699(g) and Code of Civil Procedure § 1021.5; and

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

7
8 Dated: July 16, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

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10 By:

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Sean M. Blakely
Attorneys for Plaintiff