

BOYAMIAN LAW, INC.

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Attorneys for Plaintiff HOANG PHAN, an Individual,
On Behalf of Himself, Other Aggrieved Employees,
and the General Public

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

HOANG PHAN, an individual, on behalf
of himself, all other aggrieved
employees, and the general public,

Plaintiff,

v.

BANK OF AMERICA, N.A., a United
States Corporation; and DOES 1 through
50, inclusive,

Defendants.

CASE NO. **24CV098610**

COMPLAINT FOR:

- 1. CIVIL PENALTIES UNDER LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT OF
2004, LABOR CODE 2698, ET. SEQ**

Plaintiff HOANG PHAN, an individual, hereby files this Complaint ("Complaint") against Defendant BANK OF AMERICA, N.A., a United States Corporation; and DOES 1 through 50, inclusive, (hereinafter "BANK" or "Defendant"). Plaintiff, in his representative capacity, is informed and believes and on the basis of that information and belief alleges as follows:

INTRODUCTION

1. This lawsuit challenges Defendants' employment practices with respect to their employees in the State of California, who are paid on a salary basis plus commission (hereinafter "Aggrieved Employees" from August 15, 2023, to the present ("Relevant Time Period"). These Aggrieved Employees are employed by the Bank as Credit Solution Advisors but may hold other similar or related titles. During the Relevant Time Period, Defendants' policy and practices (official

1 and unofficial) led to the systematic underpayment of all wages. Throughout the Relevant Time
2 Period, Defendants failed to pay wages every pay period and provided inaccurate wage statements.

3 2. At all times relevant hereto, and as a matter of policy and/or practice, Defendants
4 knowingly and intentionally provided Plaintiff with wage statements that, among others, do not
5 show all wages earned, all hours worked, or all applicable rates.

6 3. At all times relevant hereto, and as a matter of policy and/or practice, Defendants
7 failed to pay Plaintiff all commission wages due in a timely manner.

8 4. In this case, Plaintiff seeks civil penalties established by Labor Code section 2699,
9 the Private Attorneys General Act ("PAGA"), against Defendants for their unlawful employment
10 practices.

11 **PARTIES**

12 ***Plaintiff Hoang Phan***

13 5. Plaintiff HOANG PHAN is an individual over the age of eighteen (18) and is now
14 and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of the State
15 of California. Plaintiff commenced his employment with Defendants around nine years ago.

16 6. Plaintiff is a current employee of Bank of America, N.A. He has been employed by
17 the Bank for approximately nine years. Earlier this year, in or around May 2024, Plaintiff was
18 introduced into a new role and is presently titled as an Operation Analyst. Immediately prior to that,
19 and for approximately the last three years, Plaintiff's position with the Bank was that of an Assistant
20 Vice President Credit Solution Advisor II. In his role as a CSA, Plaintiff was responsible for the
21 origination of home loans, refinancing of existing home loans, and for facilitating and securing home
22 and commercial equity lines of credit for the Bank's customers. As a CSA, Plaintiff's pay structure
23 consisted of a base salary and the payment of earned commissions through the services he secured
24 for both loan funding and financing.

25 ***Defendant Bank of America, N.A.***

26 7. Plaintiff is informed and believes and based thereon alleges that Defendant Bank of
27 America, N.A., is a United States Corporation.

28 ////

1 ***Does 1 through 50***

2 8. DOES 1 through 50 inclusive are now and/or at all times mentioned in this Complaint
3 were, licensed to do business and/or actually doing business in the State of California. Plaintiff does
4 not know the true names or capacities, whether individual, partner, or corporate, of DOES 1 through
5 50, inclusive and for that reason, DOES 1 through 50 are sued under such fictitious names pursuant
6 to California Code of Civil Procedure, section 474. Plaintiff will seek leave of court to amend this
7 Complaint to allege such names and capacities as soon as they are ascertained. DOES 1 through 50
8 are believed to be business entities who were also co-employers of the Plaintiff and the other
9 aggrieved employees.

10 ***All Defendants***

11 9. Plaintiff is informed and believes and based thereon alleges that at all times herein
12 mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint
13 venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within
14 the course and scope of said employment and/or agency; furthermore, that each and every Defendant
15 herein, while acting as a high corporate officer, director and/or managing agent, principal and/or
16 employer, expressly directed, consented to, approved, affirmed and ratified each and every action
17 taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the
18 matters referred to herein.

19 10. Plaintiff is informed and believes and based thereon alleges that at all times herein
20 mentioned, Defendants, and each of them, proximately caused Plaintiff, all others similarly situated
21 and the general public to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
22 damages alleged in this Complaint.

23 11. Plaintiff is informed and believes and based thereon alleges that Defendants, and each
24 of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in
25 a joint venture, partnership, and common enterprise, and were acting within the course and scope of,
26 and in pursuit of said joint venture, partnership, and common enterprise and, as such were co-
27 employers of the Plaintiff and the other aggrieved employees.

28 ////

12. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, at all times mentioned in this Complaint, concurred with, contributed to, approved of, aided and abetted, condoned and/or otherwise ratified, the various acts and omissions of each and every one of the other Defendants in proximately causing the injuries and/or damages alleged in this Complaint.

JURISDICTION AND VENUE

1. This Court has jurisdiction over all causes of action herein pursuant to the California Constitution, Article VI, § 10, Code of Civil Procedure § 410.10 and Business and Professions Code § 17203. Venue is proper in this Court under Code of Civil Procedure §§ 395 and 395.5 because Defendants operate in this County, does business in the county of Alameda, and because PAGA enforcement actions are not limited to the county in which Aggrieved Employees performed work. *Crestwood Behavioral Health, Inc. v. Superior Court*, 60 Cal. App. 5th 1069, 1075 (2021) (in a PAGA action, a plaintiff is not limited to the county in which he or she performed work).

FACTUAL ALLEGATIONS

2. Plaintiff is a current employee of Bank of America. He has been employed by the Bank for approximately nine years. Earlier this year, in or around May 2024, Plaintiff was introduced into a new role and is presently titled as an Operation Analyst. Immediately prior to that, and for approximately the last three years, Plaintiff's position with the Bank was that of an Assistant Vice President Credit Solution Advisor II. In his role as a CSA, Plaintiff was responsible for the origination of home loans, refinancing of existing home loans, and for facilitating and securing home and commercial equity lines of credit for the Bank's customers. As a CSA, Plaintiff's pay structure consisted of a base salary and the payment of earned commissions through the services he secured for both loan funding and financing. Plaintiff's earned commissions were categorized by the Bank as a "quarterly incentive" and provide in relevant part, that "the payment for all quarterly incentive components will be made approximately 60 days after quarter-end and participants must be active on the last day of the performance period to be eligible." The Bank's documentation on quarterly compensation further adds, or illustrates, that "the payment for the January – March performance will be on May 28 and to be eligible the CSA must be active in the role as of March 31st."

1 3. Plaintiff's payment of commissioned-earned incentives was consistent with the
2 Bank's written policies. For example, for commissions earned in the 2nd Quarter of 2021, the
3 commission was due on August 29, 2021, and was paid on September 3, 2021. Similarly, for
4 commissions earned in 4th Quarter of 2022 (October 1-December 31), the payment was due on
5 March 1, 2023, and in fact was paid on March 3, 2023. More recently, on May 10, 2024, Plaintiff
6 received commissions for work he produced and generated in the first quarter of 2024.

7 ***Defendants' Failure to Pay Wages by the Appropriate Pay Period***

8 4. Under Labor Code section 204, an employer must pay all wages earned by any
9 employee, other than those mentioned in Sections 201, 201.3, 202, 204.1, or 204.2, twice during
10 each calendar month, on days designated in advance by the employer as the regular paydays.

11 5. Section 204 states in pertinent part: "All wages...earned by any person in any
12 employment are due and payable twice during each calendar month, on days designated in advance
13 by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive,
14 of any calendar month shall be paid for between the 16th and the 26th day of the month during
15 which the labor was performed, and labor performed between the 16th and the last day, inclusive, of
16 any calendar month, shall be paid for between the 1st and 10th day of the following month." Cal.
17 Labor Code § 204(a).

18 6. "In other words, all earned wages, including commissions, must be paid no less
19 frequently than semimonthly." *Peabody v. Time Warner Cable, Inc.*, 59 Cal. 4th 662, 668 (Cal.
20 2014) (emphasis in original). "Limited exceptions do exist, demonstrating that the Legislature
21 knows how to establish a different payroll period when it wishes to do so." *Id.* (citations omitted).
22 While "[c]ommission programs which calculate the amount owed once a month (or less often) are
23 common," Section 204 does not "approv[e] of monthly pay periods." *Id.* (citation omitted).

24 7. "A commission is 'earned' when the employee has perfected the right to payment;
25 that is, when all of the legal conditions precedent have been met. Such conditions precedent are a
26 matter of contract between the employer and employee, subject to various limitations imposed by
27 common law or statute." *Koehl v. Verio, Inc.*, 142 Cal. App. 4th 1313, 1335, (1st Dist. 2006)
28 (quoting DLSE Opn. Letter No. 1999.01.09, p.2). While the DLSE and numerous courts interpreting

1 § 204 have concluded that a commission plan that determines how much an employee has earned in
2 commission once per month does not violate § 204, *see Peabody*, 59 Cal. 4th at 668, once the
3 determination that an employee has earned commissions has been made, that employee must be paid
4 during the next pay period. *See Id.*

5 8. In contravention of California law, the Bank waited at least 60 days too long before
6 paying Plaintiff's and other Aggrieved CSAs' their earned commissions.

7 9. Moreover, in violation of California law, the Bank conflates the determination of
8 when a commission is earned with the determination of when an earned commission is required to be
9 paid. Under Section 204, the Bank cannot adopt a quarterly commission pay period that causes
10 earned commissions to be paid after the pay period in which they were earned. *Peabody*, 59 Cal. 4th
11 at 668.

12 ***Defendants' Failure to Provide Accurate, Itemized Wage Statements***

13 10. At all times relevant hereto, Labor Code section 226 and IWC Wage Order, number
14 4, section 7 required employers to maintain adequate employment records and provide employees
15 with accurate itemized wage statements showing gross wages, total hours worked, all applicable
16 hourly rates worked during each pay period, the corresponding number of hours worked at each
17 hourly rate, and rest breaks taken.

18 11. Wage statements provided to Plaintiff and the other Aggrieved Employees by
19 Defendants do not show all wages earned, all hours worked, or all applicable rates, in violation of
20 the Labor Code section 226, and IWC Wage Order number 4, section 7.

21 12. Moreover, Defendants did not maintain adequate records of all wages earned and
22 hours worked by Plaintiff and the other Aggrieved Employees.

23 ***Defendant's Failure to Pay All Wages Due at Termination of Employment***

24 13. At all times relevant hereto, Labor Code § 201 required an employer that discharges
25 an employee to pay compensation due and owing to said employee immediately upon discharge.
26 Labor Code Sections 202 requires an employer to pay an employee who quits any compensation due
27 and owing to said employee within seventy-two (72) hours of an employee's resignation. Labor
28 Code Section 203 provides that if an employer willfully fails to pay compensation promptly upon

1 discharge or resignation, as required under Sections 201 and 202, then the employer is liable for
2 waiting time penalties in the form of continued compensation for up to thirty (30) work days.

3 13. Defendants willfully and knowingly failed to pay Aggrieved Employees, upon
4 termination of employment, all accrued compensation including payment of commissions earned in
5 the course of performing work as a CSA.

6 ***Exhaustion of Administrative Remedies***

7 14. Plaintiff has complied with the procedures for bringing suit specified in California
8 Labor Code Section 2699.3. By letter dated August 15, 2024, Plaintiff, on behalf of himself and the
9 other Aggrieved Employees, gave written notice by electronic mail and certified mail to the Labor
10 and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the
11 California Labor Code alleged to have been violated, including the facts and theories to support the
12 alleged violations. Attached as **Exhibit “1”** is a true and correct copy of the referenced letter.

13 15. More than sixty-five (65) calendar days have passed since Plaintiff provided the
14 LWDA with written notice. To date, Plaintiff has not received any written notice nor been notified
15 from the LWDA that it does intend to investigate the violations of the California Labor Code alleged
16 herein.

17 **FIRST CAUSE OF ACTION**

18 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

19 **(On Behalf of Plaintiff and the Other Aggrieved Employees Against All Defendants)**

20 16. Plaintiff incorporates by reference the allegations set forth above.

21 17. As set forth above, Plaintiff has complied with the procedures for bringing suit
22 specified in California Labor Code Section 2699.3. By letter dated August 15, 2024, Plaintiff, on
23 behalf of himself and the other aggrieved employees, gave written notice by certified mail to the
24 LWDA and to Defendants of the specific provisions of the California Labor Code alleged to have
25 been violated, including the facts and theories to support the alleged violations. A true and correct
26 copy of the written notice letter is attached hereto as **Exhibit “1”**. More than sixty-five (65) calendar
27 days have passed since Plaintiff provided the LWDA with written notice. To date, Plaintiff has not
28 received any written notice nor been notified from the LWDA that it does intend to investigate the

1 violations of the California Labor Code alleged herein.

2 18. This action arises out of the allegedly unlawful labor practices of Defendants in
3 California. Through this private attorneys' general action, Plaintiff represents himself, and other
4 aggrieved employees of Defendants that were in California, against whom Defendants have
5 allegedly committed labor law violations alleged herein. As a result of the allegedly unlawful
6 conduct described herein, Plaintiff now seeks to recover civil penalties, attorneys' fees, and costs,
7 pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code Section 2698, *et seq.*

8 19. Labor Code Section 1198 makes it unlawful for an employer to employ an employee
9 under conditions that violate the applicable Wage Order.

10 20. Plaintiff is informed and believes that throughout the Relevant Time Period,
11 Defendants have applied centrally devised policies and practices to Plaintiff and the other Aggrieved
12 Employees with respect to wages, hours, and working conditions.

13 **Failure to Pay Wages By the Appropriate Pay Period**

14 21. California Labor Code Section 204 establishes the fundamental right of all employees
15 in the state of California to be paid wages in a timely manner for their work.

16 22. During the relevant time period, Labor Code Section 204 applied to Defendants'
17 employment of Plaintiff and the other Aggrieved Employees. At all relevant times,
18 California Labor Code Section 204 provided that all wages earned by any employee, such as
19 Plaintiff, in any employment between the first (1st) and fifteenth (15th) days, inclusive, of
20 any calendar month, other than those wages due upon termination of an employee, are due
21 and payable between the sixteenth (16th) and twenty-sixth (26th) day of the month during
22 which the work was performed. Furthermore, at all relevant times, California Labor Code
23 Section 204 provided that all wages earned by any employee, such as Plaintiff, in any
24 employment between the sixteenth (16th) and the last day, inclusive, of any calendar month,
25 other than those wages due upon termination of an employee, are due and payable between
26 the first (1st) and tenth (10th) day of the following month.

27 23. During the relevant time period, Defendants failed to pay Plaintiff and the other
28 Aggrieved Employees the full amount of wages owed for all hours worked and, therefore, violated

1 California Labor Code Section 204. Accordingly, Plaintiff is entitled to recover all damages,
2 penalties, and other remedies available for violation of California Labor Code Section 204.

3 **Failure to Provide and Maintain Compliant Wage Statements**

4 24. Labor Code Section 1174 requires that every person employing labor in this state
5 shall keep (1) a record showing the names and addresses of all employees employed and the ages of
6 all minors; (2) at a central location in the state or at the plants or establishments at which employees
7 are employed, payroll records showing the hours worked daily by and the wages paid to, and the
8 number of piece-rate units earned by and any applicable piece rate paid to, employees employed at
9 the respective plants or establishments; (3) such records in accordance with rules established for this
10 purpose by the commission, but in any case, on file for not less than three years. This statute also
11 prevents an employer from prohibiting an employee from maintaining a personal record of hours
12 worked, or, if paid on a piece-rate basis, piece-rate units earned. Defendants have willfully failed to
13 keep the records required by Section 1174.

14 25. Pursuant to California Labor Code Section 226(a), Plaintiff and the other Aggrieved
15 Employees were entitled to receive, semimonthly or at the time of each payment of wages, an
16 accurate itemized statement showing: (a) gross wages earned; (b) net wages earned; (c) all applicable
17 hourly rates in effect during the pay period; and (d) the corresponding number of hours worked at
18 each hourly rate by the employee.

19 26. Defendants failed to provide Plaintiff with accurate itemized statements in accordance
20 with California Labor Code Section 226(a) by providing Plaintiff with wage statements with
21 inaccurate entries for hours worked, corresponding rates of pay, and total wages earned as a result of
22 the unlawful labor and payroll practices described herein.

23 27. Plaintiff is informed and believe and thereon allege that, at all relevant times during
24 the applicable limitations period, Defendants maintained a policy or practice of not providing
25 Aggrieved Employees with accurate itemized wage statements by providing them with wage
26 statements with inaccurate entries for hours worked, corresponding rates of pay, total wages and
27 deductions from wages earned as a result of the unlawful labor and payroll practices described
28 herein.

1 28. Plaintiff is informed and believes and thereon alleges that Defendants' failure to
2 provide him and the other Aggrieved Employees with accurate written wage statements is knowing
3 and intentional.

4 29. Plaintiff is informed and believes and thereon alleges that Defendants had the ability
5 to provide him and the other Aggrieved Employees with accurate wage statements, but intentionally
6 provided wage statements that they knew are not accurate.

7 30. As a result of being provided with inaccurate wage statements by Defendants,
8 Plaintiff and the other Aggrieved Employees have suffered an injury. Their legal rights to receive
9 accurate wage statements were violated and they were misled about the amount of wages they had
10 actually earned and were owed. In addition, the absence of accurate information on their wage
11 statements prevented immediate challenges to Defendants' unlawful pay practices, has required
12 discovery and mathematical computations to determine the amounts of wages owed, has caused
13 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the
14 submission of inaccurate information about wages and amounts deducted from wages to state and
15 federal government agencies.

16 31. California Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on
17 behalf of themselves and other current or former employees, to bring a civil action to recover civil
18 penalties pursuant to the procedures specified in California Labor Code Section 2699.3.

19 **Failure to Pay Wages Upon Termination**

20 32. Labor Code Section 201 provides that all earned and unpaid wages of an employee
21 who is discharged are due and payable immediately at the time of discharge.

22 33. Labor Code Section 202 provides that all earned and unpaid wages of an employee
23 who quits after providing at least 72-hours' notice before quitting are due and payable at the time of
24 quitting and that all earned and unpaid wages of an employee who quits without providing at least
25 72-hours' notice before quitting are due and payable within 72 hours.

26 34. Labor Code Section 203 provides that the wages of an employee continue on a daily
27 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
28 unpaid wages to the employee in accordance with Labor Code Section 201 or Section 202.

35. Plaintiff is informed and believes that Defendant's failure to timely pay him and the other Aggrieved Employees all of their earned and unpaid wages, including unpaid commissions, have been willful in that, at all relevant times, Defendant has deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order even though, at all relevant times, they have had the ability to comply with those legal requirements.

Penalties Authorized by PAGA

36. Pursuant to California Labor Code sections 2699(a) and (f), Plaintiff and the other aggrieved employees of Defendants are entitled to, and seek to, recover civil penalties for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 256, and 2698, during the Relevant Time Period in the following amounts:

- a. For violations of California Labor Code sections 200, 201, 202, 203, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code Section 2699(f)(2));
- b. For violations of California Labor Code Section 226, two hundred fifty dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code Section 226.3); and
- c. For violations of California Labor Code Section 204, one hundred dollars (\$100.00) per employee for initial violation and two hundred dollars (\$200.00) per employee for each subsequent violation, plus 25 percent of the amount unlawfully withheld (penalty amounts established by California Labor Code Section 210).

37. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of himself and the other Aggrieved Employees, is entitled to an award of reasonable attorneys' fees and costs.

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1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff on behalf of himself and on behalf of the Aggrieved Employees,
3 prays for judgment against Defendants as follows:

- 4 a. Civil penalties;
5 b. Other penalties and fines permitted by law;
6 c. Costs of suit;
7 d. Reasonable attorneys' fees;
8 e. Pre-judgment and post-judgment interest as provided by law; and
9 f. Such other and further relief as the Court deems just and proper.

10
11 DATED: November 6, 2024

BOYAMIAN LAW, INC.

12
13
14 By: _____



15 Michael H. Boyamian
16 Armand R. Kizirian
17 Attorney for Plaintiff HOANG PHAN,
18 Other Aggrieved Employees, and the
19 General Public
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Exhibit “1”



BOYAMIAN LAW

August 15, 2024

SUBMITTED ELECTRONICALLY VIA ONLINE SUBMISSION

Labor and Workforce Development Agency
Attention: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102

Re: *Phan v. Bank of America, N.A.*
Notice of PAGA Claims Pursuant to Labor Code § 2699.3

To Whom It May Concern:

My office represents Hoang Phan (hereinafter “Claimant”), with respect to claims on behalf of himself and other similarly situated current and former Credit Solution Advisors and other similar commission-earning positions (collectively hereinafter referred to as “Aggrieved Employees” or “CSA”) of Bank of America, National Association (hereinafter “Bank” or “Company”) who worked in California from August 15, 2023 and continuing through the present (“Relevant Time Period”). The purpose of this letter is to satisfy the notice requirements of Labor Code § 2699.3(a). This notice is provided to enable Claimant to proceed in a court of law against the Bank as authorized by California Labor Code section 2695, et seq.

Below we set forth the facts and theories which we believe support our contention that Bank has violated and continues to violate various provisions of the California Labor Code including, but not limited to, failures by the Company to timely pay for all commission-based earnings, and for related derivative claims of inaccurate wage statements and waiting time penalties.

I. FACTS AND THEORIES ABOUT THE CASE

A. Relevant Factual Background

Hoang Phan is a current employee of Bank of America. He has been employed by the Bank for approximately 9 years. Earlier this year, in or around May 2024, Claimant was introduced into a new role and is presently titled as an Operation Analyst. Immediately prior to that, and for approximately the last three years, Claimant’s position with the Bank was that of an Assistant Vice President Credit Solution Advisor II. In his role as a CSA, Claimant was responsible for the origination of home loans, refinancing of existing home loans, and for facilitating and securing home and commercial equity lines of credit for the Bank’s customers. As a CSA, Claimant’s pay structure consisted of a base salary and the payment of earned commissions through the

services he secured for both loan funding and financing. Claimant's earned commissions were categorized by the Bank as a "quarterly incentive" and provides in relevant part, that "the payment for all quarterly incentive components will be made approximately 60 days after quarter-end and participants must be active on the last day of the performance period to be eligible." The Bank's documentation on quarterly compensation further adds, or illustrates, that "the payment for the January – March performance will be on May 28 and to be eligible the CSA must be active in the role as of March 31st."

Indeed, Claimant's payment of commissioned-earned incentives was consistent with the Bank's written policies. For example, for commissions earned in the 2nd Quarter of 2021, the commission was due on August 29, 2021 and was paid on September 3, 2021. Similarly, for commissions earned in 4th Quarter of 2022 (October 1-December 31), the payment was due on March 1, 2023 and in fact was paid on March 3, 2023. More recently, on May 10, 2024, Claimant received commissions for work he produced and generated in the first quarter of 2024.

Accordingly, our investigation has uncovered that the Bank violated California Labor Code §§ 204 and 210 by adopting an unlawful quarterly commission pay period policy and paying earned commissions late.

B. Legal Claims

a. Failure to Pay All Wages Earned at Least Twice During Each Calendar Month in Violation of Labor Code Section 204

Under Labor Code section 204, an employer must pay all wages earned by any employee, other than those mentioned in Sections 201, 201.3, 202, 204.1, or 204.2, twice during each calendar month, on days designated in advance by the employer as the regular paydays. Section 204 states in pertinent part:

All wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

Cal. Labor Code § 204(a). "In other words, all earned wages, including commissions, must be paid no less frequently than semimonthly." *Peabody v. Time Warner Cable, Inc.*, 59 Cal. 4th 662, 668 (Cal. 2014) (emphasis in original). "Limited exceptions do exist, demonstrating that the Legislature knows how to establish a

different payroll period when it wishes to do so.” *Id.* (citations omitted). While “[c]ommission programs which calculate the amount owed once a month (or less often) are common,” Section 204 does not “approv[e] of monthly pay periods.” *Id.* (citation omitted).

“A commission is ‘earned’ when the employee has perfected the right to payment; that is, when all of the legal conditions precedent have been met. Such conditions precedent are a matter of contract between the employer and employee, subject to various limitations imposed by common law or statute.” *Koehl v. Verio, Inc.*, 142 Cal. App. 4th 1313, 1335, (1st Dist. 2006) (quoting DLSE Opn. Letter No. 1999.01.09, p.2). While the DLSE and numerous courts interpreting § 204 have concluded that a commission plan that determines how much an employee has earned in commission once per month does not violate § 204, *see Peabody*, 59 Cal. 4th at 668, once the determination that an employee has earned commissions has been made, that employee must be paid during the next pay period. *See Id.* Here, however, our investigation has revealed that the Bank waited at least 60 days before paying Claimant’s and other Aggrieved CSAs’ earned commissions, a time period that is impermissibly long under Labor Code section 204.

Our research leads us to believe that the Bank conflates the determination of when a commission is earned with the determination of when an earned commission is required to be paid. Under Section 204, the Bank cannot adopt a quarterly commission pay period that causes earned commissions to be paid approximately 60 days after the Bank has determined how much commission the CSA is to be paid for that quarter. *Peabody*, 59 Cal. 4th at 668. Thus, the Bank is liable under Labor Code Sections 204 and 210 for this unlawful commission payment schedule implemented as to Claimant and the other Aggrieved Employees.

b. Other Claims

Because Claimant and other similarly situated CSAs were not compensated for all commissions earned, the Bank also failed to provide accurate wage statements in violation of Labor Code Section 226, and failed to fully compensate former employees in a timely manner when their employment ended in violation of Labor Code Section 201 *et seq.*

II. SCOPE OF ANTICIPATED ACTION

California Labor Code Section 2699.3(a) requires an aggrieved employee to inform the Agency before filing a civil action under the Private Attorneys General Act of 2004 (“PAGA”). Based on the foregoing facts, Claimant is asserting PAGA claims on behalf of himself and on behalf of all other CSAs employed by the Bank from August 15, 2023, to the present. Claimant seeks *civil penalties* under PAGA for the following Labor Code violations:

Due to the above-described violations and similar violations that may be identified after further investigation or during discovery, the Bank is liable as an employer for specific or default civil penalties as provided by Labor Code section 2699 as well as Labor Code sections 201, 202, 203, 204, 210, 223, 226, 226.3, 256, 1174, and 1174.5.

We respectfully request that the Labor Workforce Development Agency notify this office within sixty (60) days if it wishes to investigate this matter further or, in the alternative, notify us that you will not pursue an investigation so that we may pursue these penalties under the Private Attorney General Act of 2004. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned. If the Company wishes to resolve these claims without resorting to protracted litigation, please contact the undersigned forthwith to discuss this matter further.

Thank you for your immediate attention to this matter.

Very truly yours,



Michael H. Boyamian

CC: Bank of America, National Association (*Sent via Certified Mail; Return Receipt Requested*)
Attention: 1505 Corporation / C T Corporation (*Agent of Service of Process*)
Amanda Garcia
330 N. Brand Blvd., Suite 700
Glendale, California 91203