

EDWARD J. WYNNE, SBN 165819
ewynne@wynnelawfirm.com
GEORGE R. NEMIROFF, SBN 262058
gnemiroff@wynnelawfirm.com
WYNNE LAW FIRM
80 E. Sir Francis Drake Blvd., Suite 3G
Larkspur, CA 94939
Telephone: (415) 461-6400
Facsimile: (415) 461-3900

Plaintiff's Counsel

SUPERIOR COURT OF CALIFORNIA

CONTRA COSTA COUNTY

TINA DUNAWAY, individually and on
behalf of those similarly situated,

Plaintiff,
vs.

MECHANICS BANK and DOES 1 through
50, inclusive,

Defendant.

Case No.: C24-01512

SECOND AMENDED COMPLAINT

[CLASS AND PAGA ACTION]

1. Labor Code § 510, 1194 - Overtime
2. B&P § 17200 - Overtime
3. Labor Code § 512, 226.7
4. B&P § 17200 – Meal and Rest Breaks
5. B&P § 17200 – Sick Pay
6. B&P § 17200 – Injunction/Dec. Relief
7. Labor Code § 226, 1174, 1174.5
8. Labor Code § 203 – Waiting Time Penalties
9. Labor Code § 2699 - PAGA

JURY TRIAL REQUESTED

1 **GENERAL ALLEGATIONS**

2 1. Plaintiff Tina Dunaway is a former Banking Services Officer for defendant
3 Mechanics Bank (“Defendant”) in the state of California.

4 2. Defendant is a full-service bank. Defendant owns and operates retail banks in
5 this judicial district and throughout the state of California. Defendant has employees with the
6 title “Branch Manager,” “Financial Services Manager,” and “Banking Services Officer.”

7 3. Venue is proper in Contra Costa County as at least some of the acts complained
8 of herein occurred in Contra Costa County and as Defendant’s principal place of business is in
9 Walnut Creek, Contra Costa County.

10 4. At all times herein mentioned, Plaintiff and the class identified herein worked as
11 employees for Defendant in salaried positions in Defendant’s branch and retail locations. At all
12 times herein mentioned, Plaintiff and the class have been, and continue to be, domiciled in the
13 State of California.

14 5. At all times herein mentioned Defendant and Does 1 through 50 are and were
15 corporations, business entities, individuals and partnerships, licensed to do business and actually
16 doing business in the State of California, Contra Costa County. Defendant owns and operates an
17 industry, business and establishment in a number of separate geographic locations within the
18 State of California, including within Contra Costa County, for the purpose of selling banking
19 services and products. As such, and based upon all the facts and circumstances incident to
20 Defendant’s business in California, Defendant is subject to California Labor Code §§ 203, 226,
21 226.7, 510, 512, 1174, 1174.5, 1194, California Business and Professions Code § 17200 *et seq.*,
22 (Unfair Practices Act) and the applicable Industrial Welfare Commission Wage Orders.

23 6. Plaintiff does not know the true names or capacities, whether individual, partner
24 or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that
25 reason, said Defendants are sued under such fictitious names, and Plaintiff prays leave to amend
26 this complaint when the true names and capacities are known. Each of said fictitious Defendants
27 was responsible in some way for the matters alleged herein and proximately caused Plaintiff and
28 members of the class to be subject to the illegal employment practices, wrongs and injuries

1 complained of herein.

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

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

10 9. At all times herein mentioned, the acts and omissions of various Defendants, and
11 each of them, concurred and contributed to the various acts and omissions of each and all of the
12 other Defendants in proximately causing the injuries and damages as herein alleged.

13 10. At all times herein mentioned, Defendants, and each of them, ratified each and
14 every act or omission complained of herein. At all times herein mentioned, the Defendants, and
15 each of them, aided and abetted the acts and omissions of each and all of the other Defendants
16 in proximately causing the damages as herein alleged. Further, at all times mentioned herein, the
17 wage and hour related compensation policies of Defendant's branch locations in California are
18 and were dictated by, controlled by, and ratified by the Defendants herein and each of them.

19 **FACTUAL ALLEGATIONS**

20 11. Pursuant to California Labor Code §§ 218, 218.6, and 1194, Plaintiff may bring a
21 civil action for overtime wages directly against the employer without first filing a claim with the
22 California Division of Labor Standards Enforcement and may recover such wages, together with
23 interest thereon, penalties, attorney fees and costs.

24 12. Plaintiff and all members of the class identified herein were regularly scheduled
25 as a matter of uniform company policy to work and in fact worked as salaried bank employees
26 in excess of eight hours per workday and/or in excess of forty hours per workweek without
27 receiving straight time or overtime compensation for such overtime hours worked in violation of
28 California Labor Code § 1194 and California Industrial Welfare Commission Wage Order 4-

2001. Plaintiff and all members of the class were primarily engaged in assisting customers and routine inside sales work consistent with Defendant's realistic expectations. Defendant has failed to meet the requirements for establishing any exemption from California's overtime requirements because all class members (a) regularly spent more than 50% of their time performing nonexempt work, (b) did not customarily and regularly exercise discretion and independent judgment on matters of significance, (c) did not have the authority to hire or fire or make meaningful recommendations regarding same, (d) did not customarily and regularly supervise at least two employees or the equivalent, (e) did not perform work directly related to the management policies or the general business operations of Defendant or Defendant's customers, (f) did perform nonexempt production and/or sales work a majority of their time (i.e., in excess of 50%) consistent with Defendant's realistic expectations, (g) did not customarily and regularly spend more than 50% of their time away from the Defendant's places of business selling or obtaining orders or contracts, and (h) did not earn more than 50% of their compensation in a bona fide commission plan. Thus, Plaintiff and the class members were not exempt from the overtime requirements of California law for these reasons.

13. As a result of Defendant's misclassification of Plaintiff and the class members as exempt, it did not provide meal periods and failed to authorize and permit rest periods. Defendant also failed to pay meal and rest period premiums for the missed meal and rest periods.

14. Defendant provided sick pay to Plaintiff and the class. Sick pay must be compensated at the employee's regular rate of pay, for the workweek in which the paid leave was taken, or at the rate determined by averaging over 90-days pursuant to Labor Code § 246(l). Defendant failed to pay Plaintiff and the class members their sick pay at each employee's regular rate.

15. Defendant does not provide Plaintiff and the class members with accurate wage statements as required by California law. Plaintiff and the class members receive wage statements that do not reflect all hours worked, applicable overtime premiums, meal and rest period premiums and the correct regular rate for overtime, meal and rest period premiums and

1 sick pay calculations.

2 16. Defendant did not provide Plaintiff and Class Members with full payment of all
3 wages owed at the end of employment. These workers are owed wages and premium pay for all
4 time worked, as well as sick pay and overtime. These amounts remain unpaid after voluntary
5 and involuntary termination. As a consequence, Defendant is subject to waiting time penalties.

6 17. Plaintiff is informed, believes, and thereon alleges that Defendant's unlawful
7 conduct has been widespread, repeated, and consistent as to Class Members and throughout
8 Defendant's operations in California. Defendant knows or should know that its policies and/or
9 practices have been unlawful and unfair.

10 18. Defendant's conduct was willful, carried out in bad faith, and caused significant
11 damages to Plaintiff and Class Members in an amount to be determined at trial.

12 **CLASS ALLEGATIONS**

13 19. This complaint is brought by Plaintiff pursuant to California Code of Civil
14 Procedure § 382 on behalf of a class. All claims alleged herein arise under California law for
15 which Plaintiff seeks relief authorized under California law. The class is comprised of, and
16 defined as:

17 All current and former California-based employees of Mechanics
18 Bank with the titles "Branch Manager," "Branch Services
19 Manager," "Financial Services Manager," and "Banking Services
20 Officer" or the functional equivalent however titled, who worked
21 at any time from June 10, 2020 up to the time of trial.

22 20. The members of the class are so numerous that joinder of all members is
23 impracticable. The exact number of the members of the class can be determined by reviewing
24 Defendant's records.

25 21. Plaintiff will fairly and adequately protect the interests of the class and has
26 retained counsel that is experienced and competent in class action and employment litigation.
27 Plaintiff has no interests that are contrary to, or in conflict with, members of the class.

28 22. A class action suit, such as the instant one, is superior to other available means
for fair and efficient adjudication of this lawsuit. The damages suffered by individual members
of the class may be relatively small when compared to the expense and burden of litigation,

1 making it virtually impossible for members of the class to individually seek redress for the
2 wrongs done to them.

3 23. A class action is, therefore, superior to other available methods for the fair and
4 efficient adjudication of the controversy. Absent these actions, the members of the class likely
5 will not obtain redress of their injuries and Defendant will retain the proceeds of its violations of
6 California law.

7 24. Even if any member of the class could afford individual litigation against
8 Defendant, it would be unduly burdensome to the judicial system. Concentrating this litigation
9 in one forum will promote judicial economy and parity among the claims of individual members
10 of the class and provide for judicial consistency.

11 25. There is a well-defined community of interest in the questions of law and fact
12 affecting the class as a whole. Questions of law and fact common to each of the class
13 predominate over any questions affecting solely individual members of the action. Among the
14 common questions of law and fact are:

15 a. Whether the class has been properly classified as exempt by Defendant
16 from overtime compensation;

17 b. Whether the class is expected to regularly work hours in excess of forty
18 per week and/or in excess of eight hours per day;

19 c. Whether the class was provided meal periods;

20 d. Whether the class was authorized and permitted rest periods;

21 e. Whether the class was paid meal and rest period premiums at the
22 correct regular rate;

23 f. Whether the class was paid sick pay at the correct regular rate;

24 g. How the class is compensated; and,

25 h. Whether the class has sustained damages and, if so, what the proper
26 measure of damages is.

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1 **FIRST CAUSE OF ACTION**

2 **(Labor Code §§ 510 & 1194)**

3 26. Plaintiff incorporates the allegations contained in the previous paragraphs of this
4 Complaint as if fully set forth herein.

5 27. California Wage Order 4-2001, 8 C.C.R. § 11040, and Labor Code § 510 state
6 that an employee must be paid overtime, equal to 1.5 times the employee's regular rate of pay,
7 for all hours worked in excess of 40 per week and/or 8 per day.

8 28. Class members regularly work more than 40 hours per week and/or 8 hours per
9 day but are not paid overtime compensation.

10 29. Class members do not meet any of the tests for exempt status under the
11 California Wage Orders and/or the California Labor Code.

12 **SECOND CAUSE OF ACTION**

13 **(Bus. & Prof. Code § 17203 – Overtime)**

14 30. Plaintiff incorporates the allegations contained in the previous paragraphs of this
15 Complaint as if fully set forth herein.

16 31. Defendant has committed an act of unfair competition under California Business
17 & Professions Code § 17200 *et seq.* by not paying the required state law overtime pay to the
18 members of the class.

19 32. Pursuant to Bus. & Prof. Code § 17203, Plaintiff requests an order requiring
20 Defendant to make restitution of all overtime wages due to the class.

21 **THIRD CAUSE OF ACTION**

22 **(Labor Code §§ 512 & 226.7 – Meal & Rest Breaks)**

23 33. Plaintiff incorporates the allegations contained in the previous paragraphs of this
24 Complaint as if fully set forth herein.

25 34. In violation of Labor Code § 512 and IWC Wage Order 4-2001, Defendant failed
26 to provide, authorize, permit and document meal and rest period breaks for the class in the
27 number, length and manner as required. At no time has the Plaintiff or the class entered into any
28 written agreement with Defendant expressly or impliedly waiving their right to their meal and

1 rest breaks. Plaintiff and the class have been injured by Defendant's failure to comply with
2 Labor Code § 512 and IWC Wage Order 4-2001 and are thus entitled to the wages set forth in
3 Labor Code § 226.7.

4 **FOURTH CAUSE OF ACTION**

5 **(Bus. & Prof. Code § 17203 – Meal & Rest Breaks)**

6 35. Plaintiff incorporates the allegations contained in the previous paragraphs of this
7 Complaint as if fully set forth herein.

8 36. Defendant has committed an act of unfair competition under California Business
9 & Professions Code § 17200, *et seq.* by failing to provide, authorize, permit and document meal
10 and rest periods breaks to the members of the class. Defendant further violated the Labor Code
11 by failing to pay premium pay for missed meal and rest breaks to the members of the class.

12 37. Pursuant to Bus. & Prof. Code § 17203, Plaintiff requests Defendant make
13 restitution of all wages due to the class under this Fourth Cause of Action.

14 **FIFTH CAUSE OF ACTION**

15 **(Bus. & Prof. Code § 17203 – Failure to Pay Sick Time)**

16 38. Plaintiff incorporates the allegations contained in the previous paragraphs of this
17 Complaint as if fully set forth herein.

18 39. Defendant has committed an act of unfair competition under California Business
19 & Professions Code § 17200 *et seq.* by failing to pay class members sick pay at their regular
20 rate of pay in violation of Labor Code § 246, *et seq.*

21 40. Pursuant to Bus. & Prof. Code § 17203, Plaintiff requests Defendant make
22 restitution of all wages due to the class under this Fifth Cause of Action.

23 **SIXTH CAUSE OF ACTION**

24 **(Bus. & Prof. Code § 17203 – Injunctive & Declaratory Relief)**

25 41. Plaintiff incorporates the allegations contained in the previous paragraphs of this
26 Complaint as if fully set forth herein.

27 42. Plaintiff, and all persons similarly situated, are further entitled to and do seek a
28 both a declaration that the above-described business practices are unfair, unlawful and/or

1 fraudulent and injunctive relief restraining Defendant from engaging in any of such business
2 practices in the future. Such misconduct by Defendant, unless and until enjoined and restrained
3 by order of this Court, will cause great and irreparable injury to all members of the class in that
4 the Defendant will continue to violate California law, represented by labor statutes and IWC
5 Wage Orders, unless specifically ordered to comply with same. This expectation of future
6 violations will require current and future employees to repeatedly and continuously seek legal
7 redress in order to gain compensation to which they are entitled under California law. Plaintiff
8 has no other adequate remedy at law to ensure future compliance with the California labor laws
9 and wage orders alleged to have been violated herein.

10 **SEVENTH CAUSE OF ACTION**

11 **(Labor Code §§ 226, 1174, & 1174.5)**

12 43. Plaintiff incorporates the allegations contained in the previous paragraphs of this
13 Complaint as if fully set forth herein.

14 44. Defendant, as a matter of corporate policy did not maintain or provide accurate
15 itemized statements in violation of Labor Code §§ 226 and 1174.

16 45. For instance, Defendant did not state or did not accurately state, *inter alia*, the
17 total hours worked, hours worked daily, or the actual hourly rate of Plaintiff and other class
18 members in their pay statements. Defendant's failure to maintain accurate itemized statements
19 was willful, knowing, intentional, and the result of Defendant's custom, habit, pattern and
20 practice. Defendant's failure to maintain accurate itemized statements was not the result of
21 isolated, sporadic or unintentional behavior. Due to Defendant's failure to comply with the
22 requirements of Labor Code §§ 226 and 1174, Plaintiff and other class members were injured
23 thereby.

24 46. Such a pattern and practice as alleged herein is unlawful and creates an
25 entitlement to recovery by Plaintiff and the class identified herein for all damages and penalties
26 pursuant to Labor Code §§ 226 and 1174.5, including interest thereon, penalties, attorneys' fees
27 and costs.

1 **EIGHTH CAUSE OF ACTION**

2 **(Labor Code §§ 201-203 - Waiting Time Penalties)**

3 47. Plaintiff incorporates the allegations contained in the previous paragraphs of this
4 Complaint as if fully set forth herein.

5 48. Defendant does not provide Plaintiff and Class Members with their wages when
6 due under California law after their employment with Defendant ends.

7 49. Labor Code § 201 provides: "If an employer discharges an employee, the wages
8 earned and unpaid at the time of discharge are due and payable immediately."

9 50. Labor Code § 202(a) provides:

10 If an employee not having a written contract for a definite period quits his or
11 her employment, his or her wages shall become due and payable not later than
12 72 hours thereafter, unless the employee has given 72 hours previous notice of
13 his or her intention to quit, in which case the employee is entitled to his or her
wages at the time of quitting.

14 51. Labor Code § 203(a) provides:

15 If an employer willfully fails to pay, without abatement or reduction, in
16 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
17 employee who is discharged or who quits, the wages of the employee shall
18 continue as a penalty from the due date thereof at the same rate until paid or
until an action therefor is commenced; but the wages shall not continue for
more than 30 days.

19 52. Some of the Class Members, including Plaintiff, left their employment with
20 Defendant during the statutory period, at which time Defendant owed them unpaid wages.
21 These earned, but unpaid, wages derive from time spent working for the benefit of Defendant
22 which went unrecorded and/or uncompensated.

23 53. Defendant willfully refused and continues to refuse to pay Plaintiff and Class
24 Members all the wages that were due and owed to them upon the end of their employment, in
25 the form of wages owed for uncompensated, overtime compensation, sick pay, meal and rest
26 period premiums, as well as unpaid overtime. As a result of Defendant's actions, Plaintiff and
27 Class Members have suffered and continue to suffer substantial losses, including lost earnings,
28 and interest.

59. On September 16, 2024, Plaintiff Tina Dunaway caused to be served written notice, via certified mail, to the Labor and Workforce Development Agency and to Defendant, Mechanics Bank, of Plaintiff's intent to amend the complaint to add a cause of action pursuant to Labor Code §§ 2699, *et seq.*

60. The Labor and Workforce Development Agency declined to issue notice of its intention to pursue civil penalties in response to either Notice. Labor Code § 2699(a)(2)(C) authorizes Plaintiff to file a claim arising under PAGA after 60 days of the specified time periods. Accordingly, Plaintiff commences this PAGA claim for civil remedies as provided for under Labor Code § 2699.

61. Plaintiff, on behalf of herself and similarly situated salaried managers, request the relief provided for under Labor Code § 2699.

JURY DEMAND

Plaintiff hereby requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on her own behalf and on behalf of the members of the class,
prays for judgment as follows:

1. For an order certifying the proposed class;
2. For damages according to proof;
3. For restitution according to proof;
4. For penalties according to proof;
5. For injunctive and declaratory relief; and,
6. For attorneys' fees and costs;
7. For prejudgment interest; and,
8. For such other relief as the court deems just and proper.

Dated: December 16, 2024

WYNNE LAW FIRM

By:

Edward J. Wynne
Counsel for Plaintiff