County of Orange 06/05/2019 at 03:26:00 PM HAINES LAW GROUP, APC Clerk of the Superior Court 1 Paul K. Haines (SBN 248226) By Georgina Ramirez, Deputy Clerk phaines@haineslawgroup.com 2 Tuvia Korobkin (SBN 268066) tkorobkin@haineslawgroup.com 3 Stacey M. Shim (SBN 305911) sshim@haineslawgroup.com 222 N. Sepulveda Blvd., Suite 1550 4 El Segundo, California 90245 5 Tel: (424) 292-2350 Fax: (424) 292-2355 6 Attorneys for Plaintiff 7 8 9 10 SUPERIOR COURT OF THE STATE OF CALIFORNIA 11 **COUNTY OF ORANGE** 12 13 Case No. 30-2018-01007390-CU-OE-CXC DEHNI WATTS, as an individual and on behalf of all other aggrieved situated, 14 SECOND AMENDED REPRESENTATIVE ACTION Plaintiff, 15 **COMPLAINT:** 16 VS. (1) CIVIL PENALTIES UNDER THE **PRIVATE ATTORNEYS** 17 BANK OF AMERICA, NATIONAL GENERAL ACT (LABOR CODE § ASSOCIATION, a North Carolina Corporation; 2698 et seg.) 18 and DOES 1 through 100, UNLIMITED CIVIL CASE 19 Defendants. 20 CX-101 21 22 23 24 25 26 27 28

Second Amended Representative Action Complaint

Superior Court of California,

Plaintiff Dehni Watts ("Plaintiff") on behalf of herself and aggrieved employees, hereby brings this First Amended Representative Action against Defendants Bank of America, National Association, a North Carolina Corporation; and DOES 1 to 100 (collectively "Defendants"), inclusive, and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of herself and all other aggrieved employees, hereby brings this representative action for recovery of civil penalties under Labor Code § 2698 *et seq*. This Court has jurisdiction over Defendants' violations of the California Labor Code because the amount in controversy exceeds this Court's jurisdictional minimum.

VENUE

2. 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 Plaintiff was employed by Defendants within Orange County.

PARTIES

- 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident, residing in the county of Orange. During statute of limitations period, Plaintiff was employed by Defendants as a non-exempt employee in Orange County.
- 4. Plaintiff is informed and believes, and based thereon alleges, that during the one year preceding the submission of Plaintiff's correspondence referenced in Paragraph 16 below, and continuing to the present, Defendants did (and do) business by operating an international banking and financial services company, and employed Plaintiff and other situated non-exempt employees within Orange County and the State of California and, therefore, were (and are) doing business in Orange County and the State of California
- 5. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants were licensed to do business in California and the County of

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Orange, and were the employers of Plaintiff and the aggrieved employees (as defined in Paragraph 13).

- 6. Plaintiff does not know the true names, capacities, relationships and/or the extent of participation of Defendants DOES 1 through 100, inclusive, in the conduct alleged in this Complaint. For that reason, Defendants DOES 1 through 100, inclusive, are sued under such fictitious names. Plaintiff prays for leave to amend this Representative Action Complaint when the true names and capacities are known. Plaintiff is informed and believes, and based thereon alleges, that each fictitiously named defendant is and was responsible in some way for the alleged wage and hour violations and other wrongful conduct which subjected Plaintiff and the aggrieved employees, as defined below, to the illegal employment practices, wrongs and injuries complained of herein. All references in this Complaint to "Defendants" shall be deemed to include all DOE Defendants.
- 7. 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 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.
- 8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and the aggrieved employees.
- 9. 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, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the aggrieved employees (as defined in Paragraph 13).

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REPRESENTATIVE ACTION ALLEGATIONS

- 10. Plaintiff worked for Defendants at their facility in Brea, California until approximately October 18, 2017, as a non-exempt employee, whose primary job duties consisted of working in a call center. The "aggrieved employees" whom Plaintiff seeks to represent are the other non-exempt employees who have received a meal period premium payment (e.g., appearing as "Missed Meal Period" on their wage statement), and who have also received other forms of pay that must be included in the regular rate of pay, such as, but not limited to: "Shift Differentials" and "Language Differentials" (hereinafter referred to as "Incentive Pay").
- 11. Plaintiff and other aggrieved employees earned Incentive Pay that caused their regular rate of pay to be greater than their base rate of pay. By way of example, Plaintiff earned Shift Differentials that were equal to 10% of her gross regular earnings. Plaintiff also earned Language Differentials that were equal to 10% of her gross regular earnings. Due to the receipt of these forms of Incentive Pay, Plaintiff's and aggrieved employees' regular rate of pay was higher than their base rate of pay. Notwithstanding, when Defendants failed to provide Plaintiff and aggrieved employees with a legally compliant meal period, and paid them a meal period premium payment as a result, Defendants only paid this meal period premium payment at the base rate of pay as opposed to the regular rate of pay, in violation of Labor Code section 226.7.
- 12. As a result of Defendants' failure to pay all required meal period premium payments, Plaintiff and aggrieved employees were not paid all wages owing to them, nor were they paid all wages owing to them at their termination of employment. Additionally, the wage statements received by Plaintiff and other aggrieved employees were deficient in that they failed to list the correct rate of pay at which the meal period premium payments must be paid, and instead, incorrectly listed the base rate of pay.
- 13. Based on the foregoing, Plaintiff seeks to represent herself and all aggrieved employees, as defined by Labor Code § 2699(c).

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

- 14. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully set forth herein.
- 15. Defendants have committed several Labor Code violations against Plaintiff and aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 et seq., acting on behalf of herself and 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 pursuant to Labor Code § 2699 (a) and (f) including, but not limited to \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for the following Labor Code violations:
 - a. Failing to pay all required meal period premium payments to Plaintiff and aggrieved employees in violation of Labor Code §§ 226.7, 512, and 558;
 - b. Failing to timely pay all final wages due to Plaintiff and aggrieved employees in violation of Labor Code § 226;
 - c. Failing to furnish Plaintiff and aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- 16. On or around May 14, 2018, 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 15 (a)-(c). 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.
- 17. 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, plus an amount sufficient to recover the unpaid wages owed to each aggrieved employee; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$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 (5) \$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 following Labor Code violations;
- 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.

Respectfully submitted,
Dated: June 5, 2019

Respectfully submitted,
HAINES LAW GROUP, APC

By:

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Paul K. Haines
Attorneys for Plaintiff

1	PROOF OF SERVICE
1	Dehni Watts v. Bank of America, National Association
2	Orange County Superior Court Case No. 30-2018-01007390-CU-OE-CXC
3	STATE OF CALIFORNIA)
4	COUNTY OF LOS ANGELES) ss.
5	I am employed in the County of Los Angeles, State of California. I am over the age of 18
6	and not a party to the within action; my business address is [X] 222 N. Sepulveda Blvd., Suite 1550, El Segundo, California 90245.
7	1330, El Segundo, Camornia 90243.
8	On June 5, 2019, I served the foregoing document(s) described as:
9	SECOND AMENDED REPRESENTATIVE ACTION COMPLAINT
10	on the interested party(ies) in this action as follows:
11	Michael D. Mandel, Esq.
12	McGuireWoods LLP 1800 Century Park East, 8 th Floor Los Angeles, CA 90067-1501
13	
14	Attorneys for Defendant BANK OF AMERICA, NATIONAL ASSOCIATION
15	[X] (BY MAIL) I am "readily familiar" with Haines Law Group, APC's practice of collection and processing correspondence for mailing. I enclosed the document(s) in a sealed envelope or package addressed to the persons at the address(es) listed above. Under the practice the correspondence
16	would be deposited with the U.S. postal service on the same day with postage thereof fully prepaid
17	at El Segundo, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage date is more than one day
18	after date of deposit for mailing in affidavit.
19	[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the
20	above is true and correct.
21	Executed on June 5, 2019, at El Segundo, California.
22	Monandez
23	Alma Hernandez
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PROOF OF SERVICE