

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 KELLY BOLDING, and MICHAEL
10 MANFREDI, individually and on behalf of a class
11 of all others similarly situated,

12 Plaintiffs,

13 v.

14 BANNER BANK, a Washington Corporation,

15 Defendant.

COMPLAINT – COLLECTIVE ACTION
AND CLASS ACTION

JURY TRIAL REQUESTED

Kelly Bolding and Michael Manfredi, individually and on behalf of all others similarly situated (Plaintiffs), by and through their counsel, for their complaint against Defendant Banner Bank, hereby state and allege as follows:

I. INTRODUCTION

1. Defendant Banner Bank is a Washington state chartered commercial bank and a subsidiary of Banner Corporation, a \$9.7 billion bank holding company. According to its website, Defendant Banner Bank operates 190 full-service branches and 12 loan offices in 58 counties in Washington, Oregon, Idaho, California, and Utah.

2. Kelly Bolding and Michael Manfredi bring this action individually and on behalf of a class of all others similarly situated (Plaintiffs), for declaratory judgment, equitable relief, and money damages for Defendant's failure to pay non-exempt Residential Lenders (Loan Officers) overtime wages in accordance with the law, where commissions earned were not included in the calculation of the regular rate of pay for determination of proper overtime wages; and for Defendant's failure to properly record and pay wages to employees for all hours worked, instituted to secure the protection of and to redress the deprivation and interference with rights secured through:

- a. The Fair Labor Standards Act (FLSA), 29 U.S.C. §201, *et seq.*;
- b. Washington wage statutes, including RCW 49.46 *et seq.*, RCW 49.48 *et seq.*, and RCW 49.52 *et seq.*;
- c. California Labor Code § 510 *et seq.*, §204 *et seq.*, §226 *et seq.*, § 1174 *et seq.*, and §1194 *et seq.*, Cal. Code Regs., Title 8 §11040, Cal. Bus. & Prof. Code §17200, and Industrial Welfare Commission (IWC) Wage Order No. 4;
- d. Oregon Revised Statutes §652 *et seq.*, and §653 *et seq.*, and Oregon Administrative Rules, 839-020 *et seq.*;

e. Utah Code Annotated, §34-28 *et seq.*, U.C.A. §34-40 *et seq.*, and Utah Administrative Code, Title R610 *et seq.*; and,

f. Idaho Code §44-1501 *et seq.*, I.C. §45-601 *et seq.*,

3. Plaintiffs are current and former Loan Officers, Residential Lenders, and other mortgage loan officer employees, employed by Defendant in facilities in states across the country that have been subject to the company's unlawful compensation practices. This includes employees of institutions acquired by Defendant Banner Bank within the statutory periods, such as AmericanWest Bank, which was acquired in 2015. This lawsuit is brought as a collective action under the FLSA and as a class action under state law to recover unpaid wages owed to individual Plaintiffs and all other similarly situated employees.

II. JURISDICTION, VENUE, AND PARTIES

4. The FLSA authorizes court actions by private parties to recover damages for violation of the FLSA's wage and hour provisions. Jurisdiction over Plaintiffs' FLSA claims is based upon 29 U.S.C. § 216(b), 28 U.S.C. §§ 1331, and 1337.

5. This Court has supplemental jurisdiction over Plaintiffs' claims for violations of the Washington wage statutes RCW 49.46 *et seq.*, RCW 49.48 *et seq.*, and RCW 49.52 *et seq.*, and the California Labor Code § 510 *et seq.*, §204 *et seq.*, §§226 and 1174, Cal. Code Regs., Title 8 §11040, Cal. Bus. & Prof. Code §17200, and §1194 *et seq.*; Oregon Revised Statutes §652 *et seq.*, and §653 *et seq.*, and Oregon Administrative Rules, 839-020 *et seq.*; Utah Code Annotated, §34-28 *et seq.*, U.C.A. §34-40 *et seq.*, and Utah Administrative Code, Title R610 *et seq.*; and, Idaho Code §44-1501 *et seq.*, I.C. §45-601 *et seq.*, pursuant to 28 U.S.C. §1367, in that the state claims are so related to the FLSA claims that they form part of the same case or controversy.

6. At all relevant times, Defendant was an employer in an industry affecting commerce within the meaning of 29 U.S.C. §201 *et seq.*

7. Venue in this district is proper pursuant to 28 U.S.C. §1391(b) and (c), because Defendant does business in this district and a substantial part of the unlawful conduct giving rise to the claims occurred in this district.

III. THE PARTIES

8. Plaintiff and class representative Kelly Bolding is a resident of Washington. Ms. Bolding worked as a mortgage loan officer with the title of Residential Lender for Defendant, and for Defendant Banner Bank's predecessor in interest AmericanWest Bank.

9. Plaintiff and class representative Michael Manfredi is a resident of California. Mr. Manfredi worked as a mortgage loan officer with the title of Residential Lender for Defendant and Defendant Banner Bank's predecessor in interest AmericanWest Bank.

10. Defendant Banner Bank is a Washington state chartered commercial bank and a subsidiary of Banner Corporation, headquartered in Washington. Banner Bank operates full-service branches and loan offices throughout Washington, Oregon, Idaho, California, and Utah.

11. The putative class includes all current and former Banner Bank loan officers, as well as loan officer employees of other banks merged with or acquired by Banner Bank during the relevant statutory period, such as AmericanWest Bank which was acquired in 2015.

IV. GENERAL COLLECTIVE AND CLASS FACTUAL ALLEGATIONS

12. Plaintiffs are Mortgage Loan Officers, Residential Lenders, and other similarly situated employees who work for Defendant and perform the typical job duties of mortgage loan officers.

13. Plaintiffs receive internal leads and contact potential customers, or receive contacts from customers generated by direct mail or other marketing activities, about loans and mortgages.

14. They collect required financial information from customers they contact or who contact them, including information about income, employment history, judgments, and liens. They also run credit reports.

1 15. Plaintiffs use the collected financial information to identify which loan products
2 may be offered to customers based on the financial information provided. They then assess the
3 loan products identified and discuss with the customers the terms and conditions of particular
4 loans, trying to match the customers' needs with one of Defendant's loan products.

5 16. Plaintiffs also compile customer documents for forwarding to an underwriter or
6 loan processor, and may finalize documents for closings.

7 17. Defendant requires Plaintiffs to work "off-the-clock" for the benefit of
8 Defendant without compensation, and fails to include earned commission wages in Plaintiffs'
9 regular rate of pay for calculation of time-and-a-half overtime compensation.

10 18. Defendant Banner Bank has implemented a policy and practice of requiring
11 employees, including Plaintiffs, to work "off-the-clock."

12 19. Employees are required to answer emails, phone calls, and otherwise
13 communicate or meet with Defendant's customers in the mornings prior to arriving at work, in
14 the evenings after leaving work, and on weekends.

15 20. Employees are also required to conduct meetings with customers or potential
16 customers over lunch, dinner or otherwise out of the office.

17 21. Defendant's actions were willful. Defendant knew the job required more than
18 40 hours per week but then discouraged accurately recording overtime.

19 22. In addition, Defendant failed to properly pay overtime compensation to
20 Plaintiffs.

21 23. Plaintiffs are compensated with a base salary and earn commissions on the loans
22 purchased by customers.

23 24. Plaintiffs regularly work more than 40 hours per week, and when they do,
24 Defendant pays them time-and-a-half compensation for overtime hours.

25 25. However, Defendant calculates time-and-a-half overtime compensation using
26 only Plaintiffs' base salary to determine their regular rate of pay.

1 26. Defendant does not include commission payments in the calculation of
2 Plaintiffs regular rate in violation of 29 C.F.R. §778.117 and 29 C.F.R. §778.118 and state
3 wage statutes, including Washington and California.

4 27. The net effect of this policy and practice is that Defendant intentionally and
5 willfully fails to keep accurate time records, and intentionally and willfully fails to properly
6 calculate and pay overtime compensation.

7 **V. COLLECTIVE AND CLASS ACTION ALLEGATIONS**

8 29. Kelly Bolding and Michael Manfredi bring their FLSA claim as an “opt-in”
9 collective action pursuant to 29 U.S.C. §216(b), on behalf of themselves and as representatives
10 of the following persons:

- 11 a. All current and former Mortgage Loan Officers, Residential Lenders,
12 and all other similarly situated persons performing the typical duties of
13 mortgage loan officers who performed work off-the-clock and were not
14 compensated;
- 15 b. All current and former Mortgage Loan Officers, Residential Lenders,
16 and all other similarly situated persons performing the typical duties of
17 mortgage loan officers who were paid overtime wages where the regular
18 rate of pay used to calculate overtime wages did not include wages
19 earned in the form of commissions.

20 30. Kelly Bolding and Michael Manfredi additionally bring state law wage and hour
21 claims under FRCP 23 as a class action, for alleged violations of:

- 22 a. The Washington State wage statutes, RCW 49.46 *et seq.* (the
23 Washington Minimum Wage Act (MWA)), RCW 49.48 *et seq.*, and
24 RCW 49.52 *et seq.*, on behalf of themselves and as representatives of the
25 following subclasses of persons:
- 26 (1) All current and former Mortgage Loan Officers, Residential
Lenders, and other similarly situated persons performing the
typical duties of mortgage loan officers in Washington State,
from three years from the filing of this lawsuit to the present,
who performed work off-the-clock and were not compensated;

1 (2) All current and former Mortgage Loan Officers, Residential
2 Lenders, and other similarly situated persons performing the
3 typical duties of mortgage loan officers in Washington State,
4 from three years from the filing of this lawsuit to the present,
5 who were paid overtime wages where the regular rate of pay
6 used to calculate overtime wages did not include wages earned in
7 the form of commissions.

8 b. The California Labor Code § 510 *et seq.*, §204 *et seq.*, §§226, 1174, and
9 1194, Cal. Code Regs., Title 8 §11040, Cal. Bus. & Prof. Code §17200,
10 and IWC Wage Order No. 4; on behalf of themselves and as
11 representatives of the following subclasses of persons:

12 (1) All current and former Mortgage Loan Officers, Residential
13 Lenders, and other similarly situated persons performing the
14 typical duties of mortgage loan officers in California, from four
15 years from the filing of this lawsuit to the present, who
16 performed work off-the-clock and were not compensated;

17 (2) All current and former Mortgage Loan Officers, Residential
18 Lenders, and other similarly situated persons performing the
19 typical duties of mortgage loan officers in California, from four
20 years from the filing of this lawsuit to the present, who were paid
21 overtime wages where the regular rate of pay used to calculate
22 overtime wages did not include wages earned in the form of
23 commissions.

24 c. The Oregon Revised Statutes §652 *et seq.*, and §653 *et seq.*, and Oregon
25 Administrative Rules, 839-020 *et seq.*, on behalf of themselves and as
26 representatives of the following subclasses of persons:

(1) All current and former Mortgage Loan Officers, Residential
Lenders, and other similarly situated persons performing the
typical duties of mortgage loan officers in Oregon, from six years
from the filing of this lawsuit to the present, who performed
work off-the-clock and were not compensated.

d. The Utah Code Annotated, §34-28 *et seq.*, U.C.A. §34-40 *et seq.*, and
Utah Administrative Code, Title R610 *et seq.*, on behalf of themselves
and as representatives of the following subclasses of persons:

(1) All current and former Mortgage Loan Officers, Residential Lenders, and other similarly situated persons performing the typical duties of mortgage loan officers in Utah, from two years from the filing of this lawsuit to the present, who performed work off-the-clock and were not compensated.

e. The Idaho Code §44-1501 *et seq.*, I.C. §45-601 *et seq.*, on behalf of themselves and as representatives of the following subclasses of persons:

(1) All current and former Mortgage Loan Officers, Residential Lenders, and other similarly situated persons performing the typical duties of mortgage loan officers in Idaho, from two years from the filing of this lawsuit to the present, who performed work off-the-clock and were not compensated.

31. The FLSA claim may be pursued by those who opt-in to this action pursuant to 29 U.S.C. §216(b). The state law claims, if certified for class-wide treatment, may be pursued by all similarly-situated persons who do not opt-out of the state-specific subclasses.

32. Plaintiffs, individually and on behalf of other similarly situated employees, seek relief on a collective basis challenging, among other FLSA violations, Defendants' practice of failing to accurately record all hours worked and failing to pay employees for all hours worked, including failing to properly calculate and pay overtime compensation. The number and identity of other Plaintiffs yet to opt-in and consent to be party Plaintiffs may be determined from the records of Defendants, and potential class members may easily and quickly be notified of the pendency of this action.

33. Plaintiffs' state law claims satisfy the numerosity, commonality, typicality, adequacy and superiority requirements for class action certification pursuant to FRCP 23.

34. The class satisfies the numerosity standards. The class is believed to number in the hundreds, or possibly over a thousand people. As a result, joinder of all class members in a single action is impracticable.

35. There are questions of law or fact common to the class, which predominate over any questions affecting only individual members. The questions of law or fact common to the class arising from Defendant's actions include without limitation:

- a. Whether Defendant failed to record and compensate employees for all hours worked;
- b. Whether Defendant failed to properly calculate the regular rate of pay for determination of overtime wages;
- c. Whether Defendant violated RCW 49.46 *et seq.*, 49.48 *et seq.*, and 49.52 *et seq.*, as to the Washington subclass;
- d. Whether Defendant violated the California Labor Code § 510 *et seq.*, §204 *et seq.*, §§226, 1174, and 1194, Cal. Code Regs., Title 8 §11040, Cal. Bus. & Prof. Code §17200, and IWC Wage Order No. 4, as to the California subclass;
- e. Whether Defendant violated Oregon Revised Statutes §652 *et seq.*, and §653 *et seq.*, and Oregon Administrative Rules, 839-020 *et seq.*, as to the Oregon subclass;
- f. Whether Defendant violated Utah Code Annotated, §34-28 *et seq.*, U.C.A. §34-40 *et seq.*, and Utah Administrative Code, Title R610 *et seq.*, as to the Utah subclass;
- g. Whether Defendant violated Idaho Code §44-1501 *et seq.*, I.C. §45-601 *et seq.*, as to the Idaho subclass;
- h. Whether Defendant acted willfully to deprive Plaintiffs and Class Members of earned and owed compensation and overtime;
- i. Whether Plaintiffs and Class Members have sustained damages, and the proper measure of those damages.

1 36. The questions set forth above predominate over any questions affecting only
2 individual persons, any differences in damages calculations can easily be managed by the
3 court, and a class action is superior with respect to considerations of consistency, economy,
4 efficiency, fairness and equity, to other available methods for the fair and efficient adjudication
5 of the state law claims.

6 37. Ms. Bolding's and Mr. Manfredi's collective and class claims are typical of the
7 class in that class members have been or are employed in the same or similar positions, and
8 were subject to the same or similar unlawful practices.

9 38. A class action is the appropriate method for the fair and efficient adjudication of
10 this controversy. Defendant acted or refused to act on grounds generally applicable to the class.
11 The presentation of separate actions by individual class members could create a risk of
12 inconsistent and varying adjudications, establish incompatible standards of conduct for
13 Defendant, and/or substantially impair or impede the ability of class members to protect their
14 interests.

15 39. Ms. Bolding and Mr. Manfredi are adequate representatives of the class because
16 they are members of the class and their interests do not conflict with the interests of the
17 members of the class they seek to represent. The interests of the members of the class will be
18 fairly and adequately protected by Plaintiffs Bolding and Manfredi and their undersigned
19 counsel, who have extensive experience prosecuting complex wage and hour, employment and
20 class action litigation.

21 40. Maintenance of this action as a class action is a fair and efficient method for the
22 adjudication of this controversy. It would be impracticable and undesirable for each member of
23 the class who suffered harm to bring a separate action. In addition, the maintenance of separate
24 actions would place a substantial and unnecessary burden on the courts and could result in
25 inconsistent adjudications, while a single class action can determine, with judicial economy,
26 the rights of all class members.

COUNT I – VIOLATION OF THE FAIR LABOR STANDARDS ACT OF 1938

41. At all times material herein, Plaintiffs have been entitled to the rights, protections and benefits provided under the FLSA, 29 U.S.C. §201 *et seq.*

42. The FLSA regulates, among other things, the payment of overtime pay by employers whose employees are engaged in commerce, or engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce. 29 U.S.C. § 207(a)(1).

43. Defendant was, and is, subject to the overtime pay requirements of the FLSA because it is an enterprise engaged in commerce and its employees are engaged in commerce.

44. Defendant violated the FLSA, 29 U.S.C. §201 *et seq.*, by failing to compensate employees for all hours worked in compliance with 29 C.F.R. §785 (Hours Worked).

45. Defendant violated the FLSA, 29 U.S.C. §201 *et seq.*, by failing to properly calculate overtime in compliance with 29 C.F.R. §778 (Overtime Compensation).

46. Defendant also violated the FLSA, 29 U.S.C. §201 *et seq.*, when it willfully failed to keep accurate records of all hours worked by employees in compliance with 29 C.F.R. §516 (Records To Be Kept By Employers).

47. Plaintiffs are non-exempt workers and must be paid overtime in compliance with FLSA regulations, and U.S. Department of Labor, Wage and Hour Division, Administrator's interpretation No. 2010-1 (March 24, 2010).

48. Ms. Bolding, Mr. Manfredi, and all similarly situated current and former employees are subject to a uniform and company-wide compensation policy. This policy, in violation of the FLSA, has been and continues to be applied to all such employees.

49. Plaintiffs and all similarly situated employees are entitled to damages equal to the mandated overtime pay within the three years preceding the filing of this Complaint, plus periods of equitable tolling, because Defendant acted willfully and intentionally and knew or showed reckless disregard for the matter of whether their conduct was prohibited by the FLSA.

50. Defendant has not acted in good faith nor with reasonable grounds to believe its actions and omissions were not a violation of the FLSA, and as a result thereof, Plaintiffs and other similarly situated employees are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid wages and overtime pay described above, pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b). Alternatively, Plaintiffs and all similarly situated employees are entitled to an award of prejudgment interest at the applicable legal rate.

51. As a result of the aforesaid willful violations of the FLSA's overtime provisions, overtime compensation has been unlawfully withheld by Defendant from Plaintiffs for which Defendant is liable pursuant to 29 U.S.C. § 216(b), together with an additional equal amount as liquidated damages, pre-judgment and post-judgment interest, reasonable attorneys' fees and costs of this action.

COUNT II – CLASS-WIDE VIOLATION OF WASHINGTON WAGE STATUTES

52. Defendant violated the Washington wage statutes, RCW 49.46 *et seq.*, 49.48 *et seq.*, and 49.52 *et seq.*, in relevant part by failing to pay all wages due to Plaintiffs, including for off-the-clock work and overtime pay properly calculated using commission wages to determine the regular rate of pay.

53. Defendant knowingly and intentionally withheld, and continue to withhold, Plaintiffs' wages in violation of the aforementioned statutes.

54. Plaintiffs were thereby damaged in an amount to be determined at trial.

COUNT III – CLASS-WIDE VIOLATION OF THE CALIFORNIA LABOR CODE AND CALIFORNIA UNFAIR COMPETITION LAW

55. Defendant violated the California Labor Code § 510 *et seq.*, §204 *et seq.*, §§226, 1174, and 1194, Cal. Code Regs., Title 8 §11040, Cal. Bus. & Prof. Code §17200, and IWC Wage Order No. 4, by failing to pay all wages due to Plaintiffs, including for off-the-

1 clock work and overtime pay properly calculated using commission wages to determine the
2 regular rate of pay.

3 56. As alleged above, throughout the Class Period, Plaintiffs and Class Members
4 were required to work more than eight hours per day. Plaintiffs and Class Members regularly
5 worked more than 40 hours per week, including time worked off the clock, and often worked
6 as much as 50 or more hours a week. Defendants, however, regularly did not pay Plaintiffs or
7 Class Members overtime compensation for the hours they worked over eight hours in a day and
8 40 hours a week.

9 57. At all times herein relevant, California Labor Code § 510 and California Code
10 of Regulations Title 8 § 11040 applied to Plaintiffs' work with Defendants and continue to
11 apply to Class Members' employment with Defendants. California Labor Code § 510 and
12 California Code of Regulations Title 8, § 11040 states that "employers must pay one and a half
13 times an employee's 'regular rate' if he or she works more than 40 hours per week or more than
14 eight hours per day." Cal. Labor Code § 510(a).

15 58. California Labor Code § 204 establishes the fundamental right of all employees
16 in the State of California to be paid wages in a timely fashion for their work.

17 59. Pursuant to IWC Wage Order No. 4, Defendant is required to pay Plaintiffs and
18 other members of the class for all hours worked, meaning the time during which an employee
19 is subject to the control of the employer.

20 60. Defendant's uniform policy and procedures requires its employees to work off
21 the clock without compensation for time spent working for Defendant and/or subject to the
22 control of the Defendant. Plaintiffs seek unpaid wages and penalties therefore.

23 61. California Labor Code § 226(a) provides that, at the time of each payment of
24 wages, an employer shall provide each employee with a wage statement itemizing, among
25 other things, the total hours worked by the employee in the pay period and the correct amount
26 to be paid for each hour worked.

1 62. California Labor Code § 226(e) provides that an employee suffering injury as a
2 result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a)
3 is entitled to recover the greater of his or her actual damages or a penalty of \$50 for the initial
4 pay period in which a violation occurs and \$100 per employee for each violation in a
5 subsequent pay period (up to a maximum of \$4,000), in addition to attorneys' fees and costs.

6 63. Defendants knowingly and intentionally failed to provide timely, accurate,
7 itemized wage statements to Plaintiffs and Class Members in accordance with Labor Code
8 §226. The statements provided to Plaintiffs and Class Members have not accurately reflected
9 actual gross wages earned, and the total hours worked by employees. Plaintiffs and the Class
10 are therefore entitled to the damages and penalties provided for under Labor Code § 226(e).

11 64. Plaintiffs further bring this cause of action on behalf of the proposed Class,
12 seeking statutory relief to stop the misconduct of Defendants, as complained herein, and to
13 compel restitution and disgorgement of all profits obtained by Defendants through the unfair
14 and unlawful business practices described herein.

15 65. The conduct of Defendants, as alleged herein, constitutes unlawful practices as
16 set forth in California Business & Professions Code §§ 17200, *et seq.* Specifically, Defendants
17 conduct business activities while failing to comply with California wage and hour laws and the
18 California common and statutory law as described herein—including the failure to pay
19 overtime, and pay for all hours worked.

20 66. Section 17200 of the California Business & Professions Code prohibits unfair
21 competition by prohibiting unlawful, unfair, or fraudulent business practices or acts.

22 67. Defendants' failure to adopt policies in accordance with and/or adhere to these
23 laws, all of which are binding upon and burdensome to Defendants' competitors, engenders an
24 unfair competitive advantage for Defendants, thereby constituting an unfair business practice,
25 as set forth in California Business & Professions Code §§ 17200, *et seq.*
26

68. Defendants' conduct as herein alleged has damaged Plaintiffs and members of the proposed Class by wrongfully denying them earned wages, overtime pay, and meal breaks and therefore was substantially injurious to Plaintiffs and the Class.

69. Under the circumstances alleged, it would be inequitable and result in a miscarriage of justice for Defendants to continue to retain the property of Plaintiffs and the members of the Class, entitling Plaintiffs and the proposed Class to restitution of the unfair benefits obtained and disgorgement of Defendants' ill-gotten gains.

70. As a result of Defendants' unlawful and unfair business practices, Plaintiffs and members of the proposed Class are entitled to and seek restitution and disgorgement, and other appropriate relief available under Cal. Bus. & Prof. Code §§ 17200 *et seq.*

71. While the statute of limitations for Plaintiffs' overtime claims is three years, pursuant to California Business & Professions Code § 17208, the statute of limitations is effectively four years because Plaintiffs have brought claims under the California Unfair Competition Law.

72. Defendant knowingly and intentionally withheld, and continue to withhold, Plaintiff's wages in violation of the aforementioned statutes.

73. Plaintiffs were thereby damages in an amount to be determined at trial.

COUNT IV – CLASS-WIDE VIOLATION OF OREGON WAGE STATUTES

74. Defendant violated the Oregon Revised Statutes §652 *et seq.*, and §653 *et seq.*, and Oregon Administrative Rules, 839-020 *et seq.*, in relevant part by failing to pay all wages due to Plaintiffs, including for off-the-clock.

75. Defendant knowingly and intentionally withheld, and continue to withhold, Plaintiffs' wages in violation of the aforementioned statutes.

76. Plaintiffs were thereby damaged in an amount to be determined at trial.

COUNT V – CLASS-WIDE VIOLATION OF UTAH WAGE STATUTES

1 77. Defendant violated the Utah Code Annotated, §34-28 *et seq.*, U.C.A. §34-40 *et*
2 *seq.*, and Utah Administrative Code, Title R610 *et seq.*, in relevant part by failing to pay all
3 wages due to Plaintiffs, including for off-the-clock.

4 78. Defendant knowingly and intentionally withheld, and continue to withhold,
5 Plaintiffs' wages in violation of the aforementioned statutes.

6 79. Plaintiffs were thereby damaged in an amount to be determined at trial.

7 **COUNT VI – CLASS-WIDE VIOLATION OF IDAHO WAGE STATUTES**

8 80. Defendant violated the Idaho Code §44-1501 *et seq.*, I.C. §45-601 *et seq.*, in
9 relevant part by failing to pay all wages due to Plaintiffs, including for off-the-clock.

10 81. Defendant knowingly and intentionally withheld, and continue to withhold,
11 Plaintiffs' wages in violation of the aforementioned statutes.

12 82. Plaintiffs were thereby damaged in an amount to be determined at trial.

13 **VI. RESERVATION OF RIGHTS**

14 83. Plaintiffs and Class Members reserve the right to amend these claims for relief,
15 including for claims of retaliation for assertion of these rights under applicable state and
16 federal laws.

17 84. Under FRCP 2 and 8, Plaintiffs and the Class Members are not required to plead
18 every legal theory supporting claims for relief, and through the discovery process expect to
19 uncover additional evidence of unlawful employment practices. Thus, this short and plain
20 statement of claims under Rule 8 is not exhaustive of the fact and legal theories that will be
21 presented at trial.

22 **VII. PRAYER FOR RELIEF**

23 Wherefore, Plaintiffs respectfully request that this Court:

24 A. Grant a permanent injunction enjoining Defendant, its officers, successors,
25 agents, assigns, and all persons in active concert or participation with them, from engaging in
26

any other employment practice which deprives employees of their wages or violates the law or public policy;

B. Order Defendant to institute and carry out policies, practices, and programs which eradicate the effects of their past and present unlawful employment practices;

C. Order Defendant to make Plaintiffs and Class Members whole for the wrongful withholding of wages by providing relief, including awarding exemplary, double, or treble damages, under:

- a. The Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*;
- b. RCW 49.46 *et seq.*, 49.48 *et seq.*, and RCW 49.52 *et seq.*;
- c. California Labor Code § 510 *et seq.*, §204 *et seq.*, §§226, 1174, and 1194, Cal. Code Regs., Title 8 §11040, Cal. Bus. & Prof. Code §17200, and IWC Wage Order No. 4;
- d. Oregon Revised Statutes §652 *et seq.*, and §653 *et seq.*, and Oregon Administrative Rules, 839-020 *et seq.*,
- e. Utah Code Annotated, §34-28 *et seq.*, U.C.A. §34-40 *et seq.*, and Utah Administrative Code, Title R610 *et seq.*;
- f. Idaho Code §44-1501 *et seq.*, I.C. §45-601 *et seq.*; or,
- g. Any other applicable statute.

D. Order Defendant to make Plaintiffs and Class Members whole by taking all other affirmative relief necessary to eradicate the effects of their unlawful employment practices;

E. Order Defendant to pay punitive, double, exemplary, and/or liquidated damages to the fullest extent allowed by law;

F. Award Plaintiffs and Class Members the costs of this action, including attorneys' fees, expert fees, and all other costs to the fullest extent allowed by law;

1 G. Order Defendant to pay for any and all tax ramifications arising from Plaintiffs'
2 and Class Members' recovery of damages and/or attorney's fees;

3 H. Award pre-judgment interest and post-judgment interest; and

4 I. Grant any additional or further relief as provided by law, which this Court finds
5 appropriate, equitable, or just.

6 **VIII. DEMAND FOR JURY TRIAL**

7 All Plaintiffs hereby request trial by jury of all issues triable by jury.

8
9
10 DATED this 17th day of April, 2017.

11 THE BLANKENSHIP LAW FIRM, P.S.

12 By: s/ Scott C. G. Blankenship

13 By: s/ Robin J. Shishido

14 By: s/ Jordan A. Taren

15 Scott C. G. Blankenship, WSBA No. 21431

16 Robin J. Shishido, WSBA No. 45926

17 Jordan A. Taren, WSBA No. 50066

18 The Blankenship Law Firm, P.S.

19 1000 Second Avenue, Suite 3250

20 Seattle, WA 98104

21 Telephone: (206) 343-2700

22 Facsimile: (206) 343-2704

23 Email: sblankenship@blankenshiplawfirm.com

24 rshishido@blankenshiplawfirm.com

25 jtaren@blankenshiplawfirm.com

26 *Attorneys for Plaintiff*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KELLY BOLDING, and MICHAEL MANFREDI, individually and on behalf of all other similarly situated,

(b) County of Residence of First Listed Plaintiff Spokane
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
The Blankenship Law Firm, P.S.
1000 Second Ave., Suite 3250
Seattle, WA 98104

DEFENDANTS

BANNER BANK, a Washington Corporation

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act
	PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. § 201 et seq. (FLSA)

Brief description of cause:

Failure to pay non-exempt Residential Lenders overtime wages and failure to pay and record all hours worked.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/14/2017

SIGNATURE OF ATTORNEY OF RECORD

s/ Scott C. G. Blankenship

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Print

Save As...

Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Western District of Washington

KELLY BOLDING, and MICHAEL MANFREDI,
individually and on behalf of a class of all others
similarly situated,

Plaintiff(s)

V.

BANNER BANK, a Washington Corporation

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

BANNER BANK
c/o Kendra Keller, Branch Manager
1222 E. Madison St., Ste. A
Seattle, WA 98122

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Scott C. G. Blankenship, WSBA No. 21431
Jordan A. Taren, WSBA No. 50066
The Blankenship Law Firm, P.S.
1000 Second Ave., Suite 3250
Seattle, WA 98104

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Loan Officers Claim Banner Bank Miscalculates Overtime Wages](#)
