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BANK OF AMERICA, N.A.

7
8 **UNITED STATES DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA**

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11
12 LAURA LOPEZ, individually and on behalf of
all others similarly situated,

13 Plaintiff,

14
15 vs.

16 BANK OF AMERICA, NATIONAL
ASSOCIATION and DOES 1 through 10,
17 inclusive,

18 Defendants.
19
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CASE NO.

[Alameda County Superior Court Case No.
RG17853209]

**DEFENDANT BANK OF AMERICA,
N.A.'S NOTICE OF REMOVAL OF CIVIL
ACTION FROM STATE COURT**

Original Complaint Filed: 3/14/2017

1st Amended Complaint Filed: 10/16/2017

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN**
2 **DISTRICT OF CALIFORNIA:**

3 PLEASE TAKE NOTICE that Defendant BANK OF AMERICA, N.A. (“Bank of
4 America” or “Defendant”), by and through its undersigned counsel, hereby removes the above-
5 entitled action currently pending in the Superior Court of the State of California in and for the
6 County of Alameda (the “State Court”) to the United States District Court for the Northern District
7 of California on the grounds that this Court has original jurisdiction over this civil action pursuant
8 to 28 U.S.C. §§ 1331, 1332(d), 1441 and 1446, the Class Action Fairness Act of 2005 (“CAFA”),
9 and all other applicable bases for removal. In support of its Notice of Removal, Defendant avers
10 as follows:

11 **I. STATEMENT OF JURISDICTION: CLASS ACTION FAIRNESS ACT**

12 1. Pursuant to 28 U.S.C. §§ 1332 and 1441, removal to this Court is proper under
13 CAFA. Under CAFA, this Court has jurisdiction over class actions where any member of the
14 class is a citizen of a State different from any defendant, and where the aggregate amount in
15 controversy exceeds the sum of \$5,000,000, exclusive of interest and costs, and the number of
16 members of all proposed plaintiff classes in the aggregate is at least 100 class members. 28 U.S.C.
17 § 1332(d)(2)-(6). CAFA authorizes removal of such actions under 28 U.S.C. § 1446.

18 2. As required by 28 U.S.C. § 1441, Defendant seeks to remove this case to the
19 United States District Court for the Northern District of California which is the District Court
20 embracing the place where the State Court Action has been filed.

21 3. In accordance with 28 U.S.C. § 1446(d), Defendant will provide contemporaneous
22 written notice of this Notice of Removal to all adverse parties and to the Clerk of the State Court.

23 4. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §
24 1332(d)(2), and is one which may be removed to this Court by Defendant, because (1) the number
25 of members of all proposed plaintiff classes in the aggregate is at least 100 class members; (2)
26 there is diversity of citizenship between Plaintiff and Defendant; and (3) the amount-in-
27 controversy exceeds \$5,000,000, exclusive of interest and costs.

1 5. Plaintiff Laura Lopez (“Plaintiff”) alleges that Defendant misclassified her and
2 other salaried putative class members (“PCMs”) as “exempt” from overtime, and thereby failed to
3 pay for straight time or overtime compensation for overtime hours, failed to provide meal periods,
4 failed to authorize and permit rest periods, and failed to reimburse for ordinary business expenses.
5 *See* First Amended Complaint (“FAC”) [Exh. E], ¶¶ 10-19.

6 6. Plaintiff purports to bring this action pursuant to California Code of Civil
7 Procedure § 382 as a class action, and seeks certification on behalf of the following PCMs:

8 All persons who are or have been employed, at any time from March 14, 2013
9 through the date of the Court’s granting of class certification in this matter, by
10 Bank of America, National Association in California under the job title Small
Business Banker or the functional equivalent however titled.

11 *See* FAC [Exh. E], ¶ 20.

12 7. Defendant is informed and believes that there has been no service of process upon
13 any “Does,” which are fictitious defendants and therefore disregarded for the purpose of this
14 removal. 28 U.S.C. § 1441(a).

15 8. Defendant is the only defendant in the State Court Action. As such, there are no
16 unserved defendants, and Defendant is the only defendant needed to consent to removal.

17 9. 28 U.S.C. § 1446(b) (“Section 1446(b)”) provides, in pertinent part: “if the case
18 stated by the initial pleading is not removable, a notice of removal may be filed within thirty days
19 after receipt by defendant, through service or otherwise, of a copy of an amended pleading, motion
20 or other paper from which it may be first ascertained that the case is one which is or has become
21 removable.”

22 10. Section 1446(b) and applicable case law allow for successive petitions for removal,
23 so long as the party files its Notice of Removal within 30 days of discovery of the basis upon
24 which the case is or has become removable. *See Mattel v. Bryant*, 441 F.Supp.2d 1081, 1089
25 (C.D. Cal. 2005) (citing cases); *S.W.S. Erectors v. Infax, Inc.*, 72 F.3d 489, 492-93 (5th Cir. 1996);
26 *Brierly v. Allusuisse*
27 *Flexible Packaging, Inc.*, 184 F.3d 52 (6th Cir. 1999).

1 11. As set forth further herein, Defendant first became aware of Plaintiff's claimed
2 overtime hours through her response to Defendant's Special Interrogatory, dated March 19, 2018.
3 As a result, Defendant removes this case within 30 days of the discovery of this information that
4 demonstrates that this case is removable under CAFA.

5 **II. RELEVANT PROCEDURAL HISTORY: PREVIOUS REMOVAL AND REMAND**

6 12. Defendant previously removed this action to federal court. On March 14, 2017,
7 Plaintiff filed a Complaint against Defendant (the "Complaint") in the State Court, styled as *Laura*
8 *Lopez, individually and on behalf of all others similarly situated, v. Bank of America, National*
9 *Association and DOES 1 through 10, inclusive*, Case No. RG17853209 (the "State Court Action"),
10 asserting seven causes of action and seeking damages for, *inter alia*, failure to pay overtime,
11 failure to provide and document meal and rest breaks, failure to pay work related expenditures,
12 failure to provide accurate wage statements penalties, and attorneys' fees and costs.

13 13. On April 26, 2017, Defendant removed the State Court Action to this Court,
14 assigned Case No. 17-cv-02383-VC (the "First Removal"). *See* Case No. 17-cv-02383-VC, Dkt.
15 #1.

16 14. In its First Removal, Defendant asserted that the total amount in controversy for
17 Plaintiff's claims asserted in this action, were well over the \$5,000,000.00 jurisdictional minimum.

18 15. Among the elements of the amount in controversy calculated in Defendant's First
19 Removal was **\$6,411,524.39** in amount in controversy on Plaintiff's overtime claim. Defendant
20 calculated this figure based on the following data and assumptions:

- 21 a. \$53.17 average regular rate for the PCMs
- 22 b. 2.5 hours of estimated overtime per week
- 23 c. 35,729 total workweeks for the PCMs
- 24 d. 0.9 of total workweeks with overtime hours worked.

25 $\$53.17 \times 2.5 \times 1.5 \times 35,727(0.9) = \mathbf{\$6,411,524.39}$. *See id.*, pp. 8-9.

26 16. On May 4, 2017, Plaintiff filed a motion to remand, arguing that Defendant could
27 not show that the amount in controversy exceeded the sum of \$5,000,000, as required under
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1 CAFA, and that Defendant's calculations of the amount in controversy were not supported by any
2 evidence. *See id.*, Dkt. #9. Defendant opposed the motion to remand. *See id.*, Dkt #12.

3 17. In Plaintiff's Reply in support of her motion to remand, Plaintiff asserted her own
4 estimates and assumption that she conceded were reasonable in calculating the amount in
5 controversy for her overtime compensation claims. Specifically, Plaintiff calculated an alternative
6 overtime amount in controversy using the following assumptions she asserted were reasonable:

7 a. \$28.84 regular rate for Plaintiff, which Plaintiff extrapolates to the PCMs.
8 *See id.*, Dkt #13 [Reply], p. 5, n. 3.

9 b. 2.0 hours of estimated overtime. *See id.*, pp. 5-6, n. 4.

10 c. 26,374 total active workweeks with overtime worked (0.75 of total
11 workweeks). *See id.*, p. 5.

12 18. On July 25, 2017, the Court in the First Removal entered an order remanding this
13 action to the State Court, finding that Defendant had failed to meet its burden to establish the
14 amount in controversy for CAFA jurisdiction. *See id.*, Dkt. #23.

15 19. The Court granted Plaintiff's motion, finding that the limited evidence provided by
16 the parties made Defendant's assumptions about the Plaintiff's overtime claims unreasonable.
17 Namely, the Court found that Defendant provided no information to support its assumptions about
18 the alleged number of overtime hours worked by Plaintiff or members of the class she purported to
19 represent. Furthermore, the Court ruled the allegations in Plaintiff's Complaint did not support
20 Defendant's assumptions regarding the number of overtime hours worked. The Court also found a
21 similar lack of evidence supporting Defendant's assumption about the other claims asserted in the
22 Complaint. *See* Dkt. #23, pp. 2-3. The Court noted that there was no dispute that the number of
23 PCMs and minimal diversity requirements for CAFA jurisdiction were satisfied. *See id.*, p. 1, n. 1.

24 20. On October 16, 2017, after remand to the State Court, Plaintiff filed a FAC in the
25 State Court Action, in which she asserts claims for failure to pay overtime, failure to provide meal
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1 and rest breaks,¹ and failure to reimburse for business-related expenses, all under the California
2 Unfair Competition Law, Business & Professions Code § 17200, *et seq.* (the “UCL”). *See* FAC
3 [Exh. E], ¶¶ 22-38. She also amended the definition of the putative class from “Business Bankers”
4 to “Small Business Bankers.” *See id.*, ¶ 20.

5 21. In State Court, Defendant served written interrogatories to Plaintiff. Plaintiff
6 provided the first evidence of the amount of hours of overtime she claimed she worked during the
7 time period relevant to this action on March 19, 2018, in her responses to Defendant’s Special
8 Interrogatory No. 7. Specifically, Plaintiff stated that “[e]xcepting the time Plaintiff may have
9 been absent due to sickness, vacation or holiday, Plaintiff customarily and regularly worked 55
10 hours per week on average” Exh. H, p. 3.

11 22. The information from Plaintiff’s March 19, 2018 discovery response permits
12 Defendant to reasonably calculate the weekly hours that Plaintiff claims, and by extension, the
13 hours of the PCMs who Plaintiff claims to be similarly situated to her. The new information
14 regarding Plaintiff’s asserted overtime hours, combined with the estimates and data that Plaintiff
15 has previously conceded to be reasonable as to the numbers of PCMs, workweeks, and pay rates,
16 allows Defendant to reasonably calculate the amount in controversy and establish that the
17 threshold under CAFA is satisfied.

18 **III. STATUS OF PLEADINGS**

19 23. True and correct copies of every process, pleading, and order served on Defendant
20 in the State Action are attached hereto as the exhibits identified below:

21 24. On the same date, Defendant was served with the following documents from the
22 State Court Action, true and correct copies of which are attached hereto as follows:

- 23 • Exhibit A: Summons;

24 _____
25 ¹ While the FAC asserts claims for meal and rest break violations through the UCL, the
26 State Court held that Plaintiff cannot recover meal and rest period premium pay through her UCL
27 claim. Thus, Defendant does not include these claims in its calculations of the amount in
28 controversy. To the extent Plaintiff asserts that she still can recover meal and rest period premium
pay through her UCL claim, the amount in controversy obviously increases.

- 1 • Exhibit B: Complaint;
- 2 • Exhibit C: Civil Case Cover Sheet
- 3 • Exhibit D: Notice of Hearing regarding Complex Case Determination
- 4 • Exhibit E: First Amended Complaint

5 25. Defendant also attaches as Exhibits F and G, respectively, a true and correct copy
6 of the Order Setting a Hearing regarding Complex Case Determination, dated May 9, 2017, and
7 the Order Affirming Tentative Ruling regarding Complex Case Determination, dated September
8 19, 2017, which were served on Defendant in the State Court Action.

9 26. Defendant is informed and believes that the aforementioned documents and
10 exhibits constitute all of the process, pleadings, and orders that have been served on Defendant in
11 the State Court Action.

12 27. In addition, Defendant attaches as Exhibit H, a true and correct copy of Plaintiff's
13 Responses to Defendant Bank of America, N.A.'s Special Interrogatories, Set One, dated March
14 19, 2018.

15 **IV. CAFA JURISDICTION IS SATISFIED**

16 **Citizenship of Parties**

17 28. **Plaintiff's Citizenship.** Defendant is informed and believes and thereupon alleges
18 that, at the time that the State Court Action was filed and at the time that this Notice of Removal is
19 filed, Plaintiff is a resident and citizen of the State of California and has the intent to remain in
20 California. *See* FAC [Exh. E], ¶ 5. Furthermore, throughout her employment with BANA,
21 Plaintiff's addresses of record were in Los Angeles and Orange counties in the State of California.
22 Throughout the potential relevant time period for Plaintiff's Complaint, Plaintiff worked and
23 resided in Orange County, California. Consequently, Defendant is informed and believes and
24 therefore alleges that Plaintiff has the intent to remain in California. *See, e.g., Mondragon v.*
25 *Capital One Auto Finance*, 776 F.3d 880 (9th Cir. 2013) (holding that, in connection with removal
26 to federal court, a person's continuing domicile in a state establishes citizenship "unless rebutted
27 with sufficient evidence of change"); *Lew v. Moss*, 797 F.2d 747, 751-52 (9th Cir. 1986) (holding
28 that California was the state of domicile for a party with a California residential address).

1 29. **Bank of America, N.A.’s Citizenship.** Pursuant to 28 U.S.C. § 1332(c)(1), Bank
2 of America is a citizen of the State of North Carolina (the location of its main office). Bank of
3 America, N.A. is a national banking association chartered under the laws of the United States, and
4 28 U.S.C. § 1348 (“Section 1348”) governs the citizenship of national banking associations for
5 diversity purposes. Section 1348 provides, in relevant part, that “[a]ll national banking
6 associations shall, for the purposes of all other actions by or against them, be deemed citizens of
7 the States in which they are respectively located.” 28 U.S.C. § 1348. For the purpose of diversity
8 jurisdiction, a national banking association is “located” only in the state designated in its articles
9 of association as its main office, even though it has branch offices in other states. *See Wachovia*
10 *Bank, N.A. v. Schmidt*, 546 U.S. 303, 317-18 (2006); *U.S. Nat’l Bank v. Hill*, 434 F.2d 1019 (9th
11 Cir. 1970); *American Surety Co. v. Bank of Cal.*, 133 F.2d 160 (9th Cir. 1943). Bank of America
12 is headquartered in, has its principal place of business in, and is therefore “located” in North
13 Carolina. Its articles of association designate Charlotte, North Carolina, as the location of its main
14 office. Its principal executive offices, including the office of its President, are located in
15 Charlotte, North Carolina. Furthermore, Bank of America’s certificate from the Office of the
16 Comptroller of the Currency (“OCC”) states that it is located in Charlotte, North Carolina, and the
17 OCC has issued an Interpretive Letter regarding Bank of America’s North Carolina citizenship for
18 purposes of diversity jurisdiction. In short, under the standard set forth in *Wachovia* and *American*
19 *Surety*, Bank of America’s principal place of business is the state of North Carolina. Further,
20 given that Bank of America’s headquarters is in Charlotte, North Carolina, that its officers direct,
21 control and coordinate its activities from there, and that the majority of its executive and
22 administrative functions are performed there, its state of citizenship is North Carolina, and not
23 California, even under the standard set forth in *Hertz Corp. v. Friend*, 559 U.S. 77, 80-81 (2010).

24 30. **Doe Defendants.** The Amended Complaint also names “DOES 1 through 10” as
25 defendants. For purposes of removal, “the citizenship of defendants sued under fictitious names
26 shall be disregarded.” 28 U.S.C. § 1441(a). Therefore, for purposes of removal with jurisdiction
27 based on 28 U.S.C. § 1332, the citizenship of all of the “Doe” defendants is to be disregarded.

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1 31. Therefore, the diversity of citizenship between Plaintiff (California) and Bank of
2 America (North Carolina) establishes sufficient basis for removal of this action under 28 U.S.C. §
3 1332.

4 Aggregate Membership

5 32. According to Plaintiff, the members of the putative class that she purports to
6 represent “are numerous and therefore joinder of all the members of the Class is impracticable.”
7 See FAC [Exh. E], ¶ 21(a). Plaintiff also alleges that her claims are typical of the claims of
8 putative class members that she seeks to represent. See *id.*, ¶ 21(c). Bank of America employed
9 approximately 379 individuals in California between March 14, 2013 (the beginning of the
10 putative class period alleged by Plaintiff) and December 12, 2016² in the position that Plaintiff
11 held as a Small Business Banker. Thus, the aggregate membership of the proposed class is at least
12 100 as required under CAFA.

13 Amount in Controversy

14 33. The claims of the individual members in a class action are aggregated to determine
15 if the amount in controversy exceeds the sum or value of \$5 million. See 28 U.S.C. § 1332(d)(6).
16 In addition, Congress intended for federal jurisdiction to be appropriate under CAFA “if the value
17 of the matter in litigation exceeds \$5,000,000 either from the viewpoint of the plaintiff or the
18 viewpoint of the defendant, and regardless of the type of relief sought (*e.g.*, damages, injunctive
19 relief, or declaratory relief).” Senate Judiciary Committee Report, S. Rep. 109-14, at 42.
20 Moreover, the Senate Judiciary Committee’s Report on the final version of CAFA makes clear
21 that any doubts regarding the maintenance of class actions in state or federal court should be
22 resolved in favor of federal jurisdiction. S. Rep. 109-14, at 42-43 (“[I]f a federal court is uncertain
23 about whether ‘all matters in controversy’ in a purported class action ‘do not in the aggregate
24 exceed the sum or value of \$5,000,000, the court should err in favor of exercising jurisdiction over
25 the case . . . Overall, new section 1332(d) is intended to expand substantially federal court

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27 ² For purposes of this removal, Defendant uses the same payroll and personnel data used in
28 the First Removal, which was current through December 12, 2016. As such, the amount-in-
controversy estimates in this removal are significantly *understated*.

1 jurisdiction over class actions. Its provisions should be read broadly, with a strong preference that
2 interstate class actions should be heard in a federal court if properly removed by any defendant.”).

3 34. Here, Plaintiff does not allege a specific amount in controversy in the FAC. Thus,
4 the Court must first consider as evidence of the amount in controversy that which is “facially
5 apparent” on the Complaint. *See, e.g., Rippee v. Boston Market Corp.*, 408 F.Supp.2d 982, 984
6 (S.D. Cal. 2005). If it is not, “the court may consider facts in the removal petition as well as
7 evidence submitted by the parties, including summary-judgment-type evidence relevant to the
8 amount in controversy at the time of removal.” *Id.* (internal quotations omitted). A notice of
9 removal may satisfy this burden through plausible allegations, consistent with Fed. R. Civ. P. 8(a).
10 *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S.Ct. 547, 550, 554 (2014).
11 Evidentiary submissions are not required unless and until the defendant’s allegations are contested
12 by the plaintiff or questioned by the court. *Id.* at 554. This standard is appropriate even when the
13 complaint fails to allege or seek a specific amount of damages. *See Ibarra v. Manheim*
14 *Investments, Inc.*, 775 F.3d 1193, 1197-97 (9th Cir. 2015).

15 35. Plaintiff asserts three causes of action against Defendant, each asserted under the
16 UCL, based on her allegations that Defendant had uniform unlawful policies and procedures,
17 including:

- 18 a. *Unpaid overtime*: that Defendant “has violated California labor law” and “has
19 committed an act of unfair competition” by not paying the required overtime pay to the
20 Plaintiff and the members of the Class Exh. E (Amended Complaint) ¶¶ 26-27;
- 21 b. *Meal and rest period violations*: that Defendant “failed to provide and document meal
22 and rest period breaks for the class in number, length and manner as required,” *Id.* at ¶
23 30, and “has committed an act of unfair competition by not providing meal and rest
24 breaks in the number, length, and manner as required by law.” *Id.* at ¶ 31; and
- 25 c. *Unreimbursed business expenses*: that Defendant “failed to indemnify or in any manner
26 reimburse Plaintiff and the class for [alleged work-related expenses]. *Id.* at ¶ 36.

27 36. Thus, Plaintiff seeks damages, *inter alia*, for failure to pay overtime, failure to
28 provide and document meal and rest breaks, failure to pay work related expenditures, and
attorneys’ fees and costs. *See generally* FAC [Exh. E].

1 37. While Defendant denies any liability as to Plaintiff's claims, based on the
2 allegations, claims, and prayer for relief set forth in the Complaint and Plaintiff's own admissions,
3 the amount in controversy in this action, exclusive of interest and costs, exceeds the sum of
4 \$5,000,000. Defendant's establishment of the amount-in-controversy, as set forth below, is based
5 on assumptions for purposes of removal only as to the amounts that Plaintiff could recover if she
6 prevailed on her overtime claim. Defendant's calculations include no amounts for Plaintiff's meal
7 and rest period claim because the State Court ruled that Plaintiff could not recover meal and rest
8 period payments as restitution under the UCL. Defendant's calculations include no amount for
9 unreimbursed business expenses because Plaintiff has, to date, provided no information on which
10 Defendant could reasonably estimate the amount sought through this claim.

11 38. For purposes of this Notice of Removal, Bank of America avers as follows:

- 12 a. From March 14, 2013 through December 12, 2016, there were 379 individuals who
13 worked as exempt Small Business Bankers for Defendant in California and they
14 worked 35,166 workweeks.
- 15 b. Between March 14, 2013 through December 12, 2016, the average hourly rate of
16 pay for these 379 employees was \$30.82.
- 17 c. Between March 14, 2013 through December 12, 2016, the average rate of pay
18 including non-discretionary bonuses for these 379 employees was \$53.17.

19 39. Although this data is reasonable, for purposes of this Notice of Removal,
20 Defendant uses the lower figures for regular hourly rates and workweeks that Plaintiff previously
21 provided and conceded were reasonable, as follows:

- 22 a. Plaintiff and the PCMs earned a regular hourly rate of \$28.84; and
23 b. Plaintiff and the PCMs actively worked 75% of his or her workweeks, for a
24 total of 26,374 active workweeks.
- 25 c. Plaintiff worked an average of 15 hours of overtime during each active
26 workweek.

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1 40. **Overtime Compensation Claim.** Plaintiff's First Cause of Action alleges that the
2 Bank violated California law by not paying required overtime pay to Plaintiff and the PCMs. *See*
3 FAC [Exh. E.], ¶¶ 22-28.

4 41. Accepting for purposes of this Notice of Removal only that each PCM earned an
5 average regular rate of \$28.84 (the regular rate of pay that Plaintiff asserts was her regular rate and
6 more appropriate for extrapolation purposes), that there were 26,374 active workweeks with
7 overtime (75% of total workweeks for the PCMs), and worked an average of 5 hours of overtime
8 during each active workweek, (which is *10 hours fewer* than the number of overtime hours
9 Plaintiff asserts that she customarily and regularly worked herself), the total in controversy for
10 Plaintiff's First Cause of Action for alleged unpaid overtime is reasonably estimated to be
11 **\$5,704,696**, calculated as follows:

12 ➤ \$28.84 regular rate x 1.5 overtime premium rate x 5 hours of overtime per week x
13 26,374 active workweeks = **\$5,704,696**.

14 42. **Attorneys' Fees.** Plaintiff's Complaint also seeks an award of statutory attorneys'
15 fees. It is settled in the Ninth Circuit that where attorneys' fees are authorized by statute, they are
16 appropriately part of the calculation of the "amount in controversy" for purposes of removal. *See*
17 *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005); *Johnson v. America Online, Inc.*,
18 280 F.Supp.2d 1018 (N.D. Cal. 2003); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th
19 Cir. 1998) ("where an underlying statute authorizes an award of attorneys' fees, either with
20 mandatory or discretionary language, such fees may be included in the amount in controversy.").
21 The Ninth Circuit has used a benchmark rate of 25% of the potential damage award as an estimate
22 for attorneys' fees. Applying this benchmark to the potential amounts in controversy on
23 Plaintiff's, the potential amount in controversy related to Plaintiff's demand for attorneys' fees is
24 calculated as:

Cause of Action	Amount in Controversy	9 th Circuit Benchmark	Attorneys' Fees
Overtime Compensation Claim	\$5,704,696	x 25%	\$1,426,174

1 43. Accordingly, even using an overtime estimate for PCMs that is only 1/3 of the
 2 overtime claimed by Plaintiff herself, the total amount in controversy for Plaintiff's claims
 3 asserted in this action, conservatively estimated, is well over the \$5,000,000.00 jurisdictional
 4 minimum.

Remedies Sought	Amount in Controversy
Overtime Compensation Claim	\$5,704,696
Statutory Attorneys' Fees	\$1,426,174
TOTAL AMOUNT IN CONTROVERSY	\$7,130,870

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 11 44. In sum, because there exists diversity of citizenship between Plaintiff and
 12 Defendant, and because the amount in controversy exceeds CAFA's \$5,000,000.00 jurisdictional
 13 threshold, Defendant may remove this action pursuant to 28 U.S.C. §§ 1332(d) and 1441(b).

14 **V. VENUE**

15 45. Venue lies in this Court because Plaintiff's action is pending in this district and
 16 division. *See* 28 U.S.C. § 1441(a).

17 46. Nothing in this Notice of Removal is intended nor should be construed as any type
 18 of express or implied admission by Defendant of any fact, of the validity or merits of any of
 19 Plaintiff's claims, causes of action, and allegations, or of any liability for the same, all of which
 20 are hereby expressly denied, or as any type of express or implied waiver or limitation of any of
 21 Defendant's rights, claims, remedies, and defenses in connection with this action, all of which are
 22 hereby fully and expressly reserved. Further, Defendant expressly reserves its right to amend or
 23 supplement this Notice of Removal and the evidence in support thereof to the fullest extent
 24 permitted by applicable law.

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WHEREFORE, Defendant requests that the above-captioned action now pending in the State Court be removed to the United States District Court for the Northern District of California.

Date: April 18, 2018

McGUIREWOODS LLP

By: /s/ Michael D. Mandel
Michael D. Mandel
John A. Van Hook

Attorneys for Defendant
BANK OF AMERICA, N.A.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1800 Century Park East, 8th Floor, Los Angeles, CA 90067.

On April 18, 2018, I served the following document described as **DEFENDANT BANK OF AMERICA, N.A.'s NOTICE OF REMOVAL OF CIVIL ACTION FROM STATE COURT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Edward J. Wynne, Esq.
WYNNE LAW FIRM
80 E. Sir Francis Drake Blvd., Suite 3G
Larkspur, CA 94939
Telephone: 415-461-6400; Facsimile: 415-461-3900
Email: ewynne@wynnelawfirm.com

Attorneys for Plaintiff

- BY MAIL:** I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Los Angeles, CA, on that same day following ordinary business practices. (C.C.P. § 1013 (a) and 1013a(3))
- BY OVERNIGHT DELIVERY:** I deposited such document(s) in a box or other facility regularly maintained by the overnight service carrier, or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier with delivery fees paid or provided for, addressed to the person(s) served hereunder. (C.C.P. § 1013(d)(e))
- BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered the addressee(s). (C.C.P. § 1011)

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on April 18, 2018, at Los Angeles, CA.

Vaneta D. Birtha

Vaneta D. Birtha



SUM-100

Exhibit A

SUMMONS (CITACION JUDICIAL)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

BANK OF AMERICA, NATIONAL ASSOCIATION, and DOES 1 through 10, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

LAURA LOPEZ, individually and on behalf of all others similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**FILED
ALAMEDA COUNTY**

MAR 14 2017

CLERK OF THE SUPERIOR COURT
By *S. Williams* Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la Información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Alameda County Superior Court

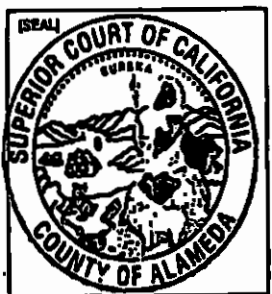
1225 Fallon Street
Oakland, CA 94612

CASE NUMBER **RG17853209**
(Número del Caso)

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Edward J. Wynne, WYNNE LAW FIRM, 80 E. Sir Francis Drake Blvd., Ste. 3G, Larkspur, CA 94939

DATE: **MAR 14 2017** Clerk, by *S. Williams* Deputy
(Fecha) **Chad Finke** (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): Bank Of America, National Association
 under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

Exhibit A



ORIGINAL

Exhibit B

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EDWARD J. WYNNE, SBN 165819
WYNNE LAW FIRM
Wood Island
80 E. Sir Francis Drake Blvd., Ste. 3G
Larkspur, CA 94939
Telephone: (415) 461-6400
Facsimile: (415) 461-3900
ewynne@wynnelawfirm.com

Attorneys for Plaintiff and the putative class

FILED
ALAMEDA COUNTY

MAR 14 2017

CLERK OF THE SUPERIOR COURT

By *[Signature]*

IN THE SUPERIOR COURT OF CALIFORNIA

ALAMEDA COUNTY

LAURA LOPEZ, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, NATIONAL
ASSOCIATION and DOES 1 through 10,
inclusive,

Defendants.

Case No. **RG 17 853209**

COMPLAINT FOR:

- (1) Overtime Compensation (Labor Code §§ 510, 1194)
- (2) Overtime Compensation (Bus. & Prof. Code § 17200);
- (3) Meal and Rest Period Violations (Labor Code §§ 226.7, 512)
- (4) Meal and Rest Period Violations (Bus. & Prof. Code § 17200)
- (5) Unreimbursed Business Expenses (Labor Code § 2802)
- (6) Unlawful Wage Statements (Labor Code §§ 226, 1174)
- (7) Waiting Time Penalties (Labor Code § 203)

[CLASS ACTION]

Exhibit B

1 Plaintiff Laura Lopez, on behalf of herself and all others similarly situated, complains and
2 alleges as follows:

3 **A. INTRODUCTION**

4 1. This is a class action, under California Code of Civil Procedure § 382, seeking
5 damages, restitution, declaratory relief, equitable relief, penalties, and reasonable attorneys' fees and
6 costs, on behalf of Plaintiff and all other individuals who are or have been employed as Business
7 Bankers by Defendant Bank of America, National Association (hereafter "Bank of America" or
8 "Defendant"), in California during the four years prior to the filing of this action. Laura Lopez brings
9 this complaint on behalf of similarly situated Business Bankers who were (a) not paid overtime
10 compensation; (b) not provided meal and rest breaks; (c) not reimbursed for ordinary business
11 expenses; (d) not provided lawful wage statements, and (d) not timely and properly paid all their
12 wages at time of separation.

13 2. The "Class Period" is designated as the period from four years prior to the filing of this
14 Complaint through the time the Court certifies this case as a class action. The violations of
15 California's wage and hour laws, as described more fully below, have been ongoing for at least four
16 years prior to the filing of this action, are continuing at present, and will continue unless and until
17 enjoined by the Court.

18 **B. JURISDICTION AND VENUE**

19 3. This Court has jurisdiction over the claims brought under the California Labor Code
20 and California's Unfair Competition Law, Business & Professions Code § 17200 *et seq.*

21 4. Venue as to Defendant is proper in Alameda County, pursuant to Code of Civil
22 Procedure §§ 395, 395.5. Bank of America is a foreign corporation that has not designated a principal
23 business office in California according to its latest Statement of Information (Foreign Corporation) on
24 file with the California Secretary of State. Defendant maintains branches, facilities and offices from
25 which Defendant transacts business in a variety of locations in Alameda County, and Defendant is
26 otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged
27 herein have a direct effect on Plaintiff and those similarly situated within the State of California and
28 within Alameda County. Defendant has employed Class Members in Alameda County, who have also

Exhibit B

1 incurred unreimbursed business expenses while conducting Defendant's business in Alameda County
2 in the State of California during the Class Period.

3 C. PARTIES

4 5. Plaintiff Laura Lopez resides in Orange County, California. Plaintiff was employed by
5 Defendant during the statutory period covered by this action. During the Class Period, she worked as
6 a Business Banker for Defendant in Orange County. During this time, Plaintiff was subject to
7 Defendant's unlawful policies and/or practices set forth herein.

8 6. Defendant Bank of America, National Association is a Delaware Corporation with its
9 principal place of business in Charlotte, North Carolina.

10 7. The true names and capacities of persons or entities, whether individual, corporate,
11 associate, or otherwise, sued herein as DOES 1 through 10, inclusive, are currently unknown to
12 Plaintiff, who therefore sue Defendant by such fictitious names under Code of Civil Procedure § 474.
13 Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated
14 herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein.
15 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
16 the Defendants designated hereinafter as DOES when such identities become known.

17 8. All of Plaintiff's claims stated herein are asserted against Defendant and any of its
18 owners, predecessors, successors, subsidiaries, and/or assigns.

19 D. FACTUAL BACKGROUND

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

24 10. Plaintiff and all members of the class identified herein were regularly scheduled as a
25 matter of uniform company policy and practice to work and in fact worked as salaried bank
26 employees 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 §§ 510, 1194 and California Industrial Welfare Commission Wage Order 4-

Exhibit B

Exhibit B

1 2001. Defendant has failed to meet the requirements for establishing an exemption from these
2 requirements because all class members (a) regularly spent more than 50% of their time performing
3 nonexempt work, (b) did not customarily and regularly exercise discretion and independent judgment
4 on matters of significance, (c) did not have the authority to hire or fire or make meaningful
5 recommendations regarding same, (d) did not customarily and regularly supervise at least two
6 employees or the equivalent, (e) did not perform work directly related to the management policies or
7 the general business operations of Defendant or Defendant's customers, (f) did perform nonexempt
8 production and/or sales work a majority of their time (i.e., in excess of 50%) consistent with
9 Defendant's realistic expectations, (g) did not customarily and regularly spend more than 50% of their
10 time away from the Defendant's places of business selling or obtaining orders or contracts, and (h) did
11 not earn more than 50% of their compensation in a bona fide commission plan. Thus, Plaintiff and the
12 class members were not exempt from the overtime requirements of California law for these reasons.

13 11. Defendant failed to provide and document uninterrupted off-duty meal breaks of at
14 least 30 minutes for the class in the number, length and manner as required. Defendant has failed to
15 authorize and permit rest breaks for the class in the number, length and manner as required. At no
16 time has the Plaintiff or the class entered into any written agreement with Defendant expressly or
17 impliedly waiving their right to their meal or rest breaks. Plaintiff and the class were injured by
18 Defendant's failure to provide meal and rest breaks.

19 12. Defendant willfully, intentionally and knowingly did not provide Plaintiff and all
20 members of the class with accurate itemized statements showing all of the information required
21 pursuant to Labor Code §§ 226 and 1174 and Plaintiff and other members of the class were injured
22 thereby.

23 13. Defendant has maintained company-wide policies and/or practices that require class
24 members to pay the ordinary business expenses of Defendant without reimbursement. For example,
25 Business Bankers are forced to bear the costs of travel, parking, mileage, and tolls without
26 reimbursement by Defendant. Moreover, Defendant's policy and practice of having class members
27 pay for Defendant's ordinary business expenses also causes class members to forfeit their wages to
28 Defendant.

Exhibit B

1 14. Plaintiff and other formerly employed class members were not timely and properly
2 paid all of their wages at time of termination. Plaintiff and other class members did not absent or
3 secret themselves from timely and properly receiving their final wages at time of termination.

4 **E. CLASS ACTION ALLEGATIONS**

5 15. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a
6 class action pursuant to Code of Civil Procedure § 382. The class, and subclasses, that Plaintiff seeks
7 to represent is composed of and defined as follows:

8 All persons who are or have been employed, at any time from four years prior to
9 the filing of this Complaint through the date of the Court's granting of class
10 certification in this matter, by Bank of America, National Association in
11 California under the job title Business Banker or the functional equivalent
12 however titled.

13 16. This action has been brought and may properly be maintained as a class action under
14 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation,
15 the proposed class is easily ascertainable, and Plaintiff is a proper representative of the class and
16 subclasses:

17 a. Numerosity: The potential members of the class as defined are numerous and
18 therefore joinder of all the members of the Class is impracticable.

19 b. Commonality: There are questions of law and fact common to Plaintiff and the
20 class that predominate over any questions affecting only individual members of the class.

21 These common questions of law and fact include, but are not limited to, the following:

22 (i) Whether Defendant's policy of classifying all Business Bankers as
23 exempt is legal under California law;

24 (ii) Whether Defendant's policy of not providing meal periods is legal
25 under California law;

26 (iii) Whether Defendant's policy of not making rest periods available is
27 legal under California law;

28 (v) Whether Defendant's policy of not paying for ordinary business

Exhibit B

1 expenses is legal under California law; and,

2 (vi) Whether Defendant's wage statements violate California law.

3 c. Typicality: Plaintiff's claims are typical of the claims of the class. Plaintiff and
4 other Business Bankers sustained injuries and damages, and were deprived of property rightly
5 belonging to them, arising out of and caused by Defendant's common course of conduct in
6 violation of law as alleged herein, in similar ways and for the same types of expenses.

7 d. Adequacy of Representation: Plaintiff is a member of the class and will fairly
8 and adequately represent and protect the interests of the class. Plaintiff's interests do not
9 conflict with those of other class members. Counsel who represent Plaintiff are competent and
10 experienced in litigating large wage and hour class actions and will devote sufficient time and
11 resources to the case and otherwise adequately represent the class.

12 e. Superiority of Class Action: A class action is superior to other available means
13 for the fair and efficient adjudication of this controversy. Individual joinder of all Business
14 Bankers is not practicable, and questions of law and fact common to the class predominate
15 over any questions affecting only individual members of the class. Each class member has
16 been damaged or may be damaged in the future by reason of Defendant's unlawful policies
17 and/or practices as alleged herein. Certification of this case as a class action will allow those
18 similarly situated persons to litigate their claims in the manner that is most efficient and
19 economical for the parties and the judicial system. Certifying this case as a class action is
20 superior because Plaintiff seeks relief that will affect all Business Bankers in a common way,
21 and will also allow for efficient and full disgorgement of the ill-gotten gains Defendant has
22 enjoyed by maintaining its unlawful business policies and practices, and will thereby
23 effectuate California's strong public policy of protecting employees from deprivation or
24 offsetting of compensation earned in their employment. If this action is not certified as a Class
25 Action, it will be impossible as a practical matter for many or most Business Bankers to bring
26 individual actions to recover monies unlawfully withheld from their lawful compensation due
27 from Defendant due to the relatively small amounts of such individual recoveries relative to
28 the costs, burdens, and risks of litigation.

Exhibit B

Exhibit B

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME COMPENSATION

(Labor Code §§ 510, 1194)

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

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

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

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

21. Defendant has violated California labor law by not paying the required overtime pay to Plaintiff and the members of the Class.

22. Pursuant to Labor Code § 218.6, Plaintiff requests prejudgment interest on all wages from the date the wages were due and payable.

23. Pursuant to California Labor Code §§ 218.5 and 1194, Plaintiff requests an order requiring Defendant to pay damages of all overtime wages due to them and the members of the class in an amount to be proved at hearing as well as attorneys' fees and costs.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME COMPENSATION

(Bus. & Prof. Code § 17203)

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

25. California Labor Code § 510 and Wage Order 4-2001, 8 C.C.R. § 11040, state that an employee must be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per day. Plaintiff and the class are not "exempt" because, *inter alia*, they did not and do not perform work directly related to the management or general business

Exhibit B

Exhibit B

1 operations of either Defendant or Defendant's customers, they are/were primarily engaged in inside
 2 sales and sales related activities, and they did not and do not spend a majority of their time on exempt
 3 tasks.

4 26. Defendant has committed an act of unfair competition by not paying the required
 5 overtime pay to Plaintiff and the class.

6 27. Pursuant to California Business & Professions Code § 17203, Plaintiff requests an
 7 order requiring Defendant to make restitution of all overtime wages due to them and the members of
 8 the class in an amount to be proved at hearing, an injunction and declaratory relief to enjoin
 9 Defendant from such contact in the future, and reasonable attorneys' fees and costs per CCP § 1021.5.

10 **THIRD CAUSE OF ACTION**

11 **MEAL AND REST BREAK VIOLATIONS**

12 **(Labor Code § 512 and IWC Order 4-2001)**

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

15 29. In violation of Labor Code § 512 and IWC Wage Order 4-2001, Defendant failed to
 16 provide and document meal and rest period breaks for the class in the number, length and manner as
 17 required. At no time has the Plaintiff or the class entered into any written agreement with Defendant
 18 expressly or impliedly waiving their right to their meal and rest breaks. Plaintiff and the class have
 19 been injured by Defendant's failure to comply with Labor Code § 512 and IWC Wage Order 4-2001
 20 and are thus entitled to the wages set forth in Labor Code § 226.7.

21 **FOURTH CAUSE OF ACTION**

22 **MEAL AND REST BREAK VIOLATIONS**

23 **(Bus. & Prof. Code § 17203)**

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

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

Exhibit B

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

4 32. Defendant has committed an act of unfair competition by not providing meal and rest
5 breaks in the number, length and manner as required by law.

6 33. Pursuant to California Business & Professions Code § 17203, Plaintiff requests an
7 order requiring Defendant to make restitution of all wages due to them and the members of the class
8 in an amount to be proved at hearing, an injunction and declaratory relief to enjoin Defendant from
9 such contact in the future, and reasonable attorneys' fees and costs per CCP § 1021.5.

10 **FIFTH CAUSE OF ACTION**

11 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

12 **(Labor Code § 2802)**

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

15 35. Labor Code § 2802 provides that "[a]n employer shall indemnify his or her employee
16 for all necessary expenditures or losses incurred by the employee in direct consequence of the
17 discharge of his or her duties."

18 36. While discharging their duties for Defendant, Plaintiff and the class have incurred
19 work-related expenses. Such expenses include but are not limited to travel, parking, mileage, and
20 tolls charges.

21 37. Defendant has failed to indemnify or in any manner reimburse Plaintiff and the class
22 for these expenditures and losses. By requiring those employees to pay expenses and cover losses that
23 they incurred in direct consequence of the discharge of their duties for Defendant and/or in obedience
24 of Defendant's direction or expectations, Defendant has violated and continues to violate Labor Code
25 § 2802.

26 38. By unlawfully failing to indemnify Plaintiff and the class, Defendant is liable for
27 reasonable attorneys' fees and costs under Labor Code § 2802(c).

28 39. As a direct and proximate result of Defendant's conduct, Plaintiff and the class have

Exhibit B

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1 suffered substantial losses according to proof, as well as pre-judgment interest, costs, and attorneys'
2 fees for the prosecution of this action.

3 **SIXTH CAUSE OF ACTION**

4 **UNLAWFUL WAGE STATEMENTS**

5 (Labor Code §§ 226, 1174, and 1174.5)

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

8 41. Defendant, as a matter of corporate policy did not maintain or provide accurate
9 itemized wage statements in violation of Labor Code §§ 226 and 1174.

10 42. Defendant did not state or did not accurately state, *inter alia*, the wages earned in the
11 pay period or the actual hourly rate of Plaintiff and other Business Bankers. Defendant's failure to
12 maintain accurate itemized wage statements was willful, knowing, intentional, and the result of
13 Defendant's custom, habit, pattern and practice. Defendant's failure to maintain accurate itemized
14 wage statements was not the result of isolated, sporadic or unintentional behavior. Due to Defendant's
15 failure to comply with the requirements of Labor Code §§ 226 and 1174, Plaintiff and other Business
16 Bankers were injured thereby.

17 43. Such a pattern and practice as alleged herein is unlawful and creates an entitlement to
18 recovery by Plaintiff and Business Bankers identified herein for all damages and penalties pursuant to
19 Labor Code §§ 226 and 1174.5, including interest thereon, penalties, attorneys' fees and costs.

20 **SEVENTH CAUSE OF ACTION**

21 **FAILURE TO PAY WAGES AT TERMINATION**

22 (Labor Code §§ 201-203)

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

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

27 46. Labor Code § 202 provides: "If an employee not having a written contract for a
28 definite period quits his or her employment, his or her wages shall become due and payable not later

Exhibit B

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1 than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her
2 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

3 47. Labor Code §.203 provides: “If an employer willfully fails to pay, without abatement
4 or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an
5 employee who is discharged or who quits, the wages of the employee shall continue as a penalty from
6 the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages
7 shall not continue for more than 30 days.”

8 48. Plaintiff and other formerly employed Business Bankers in the Waiting Time Penalties
9 subclass were discharged by Defendant or voluntarily quit. Defendant, in violation of California
10 Labor Code §§ 201 and 202, has a consistent and uniform policy, practice and procedure of willfully
11 failing to timely pay the wages to its former employees. Plaintiff and other formerly employed
12 Business Bankers did not secret or absent themselves from Defendant nor refuse to accept the earned
13 and unpaid wages from Defendant.

14 49. As a result of Defendant’s violations of Labor Code §§ 201-202, Defendant is liable
15 for waiting-time penalties to Plaintiff and the members of the Waiting Time Penalties subclass.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE, Plaintiff requests the following relief:**

- 18 1. For an Order certifying the proposed class and designating this action as a class
19 action pursuant to CCP § 382;
- 20 2. For a declaratory and injunctive relief;
- 21 3. For an Order appointing Plaintiff and his counsel to represent the proposed
22 class as defined in this Complaint;
- 23 4. For compensatory damages according to proof;
- 24 5. For an order requiring Defendant to provide an accounting of all wages and all
25 sums unlawfully charged back and withheld from compensation due to Plaintiff
26 and the other members of the proposed class;
- 27 6. For interest according to proof;
- 28 7. For penalties alleged herein;

Exhibit B

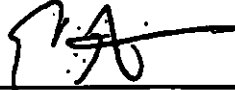
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- 8. For reasonable attorneys' fees and costs; and
- 9. For such other relief the Court deems just and proper.

DATED: March 10, 2017

WYNNE LAW FIRM



By: Edward J. Wynne
Attorneys for Plaintiff Laura Lopez, individually
and on behalf of all others similar situated

Exhibit B

ORIGINAL



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, title, bar number, and address): Edward J. Wynne (165819) WYNNE LAW FIRM 80 E. Sir Francis Drake Blvd., Ste. 3G Larkspur, CA 94939 TELEPHONE NO.: (415) 461-6400 FAX NO. (415) 461-3900 ATTORNEY FOR (Name): Plaintiff, Laura Lopez	FOR COURT USE ONLY FILED ALAMEDA COUNTY MAR 14 2017 CLERK OF THE SUPERIOR COURT By <i>[Signature]</i> Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon MAILING ADDRESS: CITY AND ZIP CODE: Oakland 94612 BRANCH NAME: Rene C. Davidson Courthouse	CASE NAME: Laura Lopez v. Bank of America, N.A.
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: RG17853209 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) Non-PIP/DWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/DWD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (08) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input checked="" type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): Seven: LC-§510, 1194, 226.7, 512, 2802, 226, 1174, 203, B&P §17200

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **March 10, 2017**
Edward J. Wynne *[Signature]*
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Wynne Law Firm Attn: Wynne Esq, Edward J. 80 E. Sir Francis Drake Blvd Suite 3G Larkspur, CA 94939	Bank of America, National Association
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**Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse**

Lopez <div style="text-align: right; margin-right: 20px;">Plaintiff/Petitioner(s)</div> <p style="text-align: center;">VS.</p> Bank of America, National Association <div style="text-align: right; margin-right: 20px;">Defendant/Respondent(s) (Abbreviated Title)</div>	No. <u>RG17853209</u> NOTICE OF HEARING
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To each party or to the attorney(s) of record for each party herein:
 Notice is hereby given that the above-entitled action has been set for:
 Complex Determination Hearing
 Case Management Conference

You are hereby notified to appear at the following Court location on the date and time noted below:

Complex Determination Hearing:
 DATE: 05/09/2017 TIME: 03:00 PM DEPARTMENT: 30
 LOCATION: U.S. Post Office Building, Second Floor
 201 13th Street, Oakland

Case Management Conference:
 DATE: 06/16/2017 TIME: 09:16 AM DEPARTMENT: 30
 LOCATION: U.S. Post Office Building, Second Floor
 201 13th Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 3.250 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 30 issues tentative rulings on DomainWeb (www.alameda.courts.ca.gov/domainweb). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 268-5104. Please consult Rule 3.30(c) of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 30.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions. Case Management Statements may be filed by E-Delivery, by submitting directly to the E-Delivery Fax Number (510) 267-5732. No fee is charged for this service. For further information, go to Direct Calendar Departments at

<http://apps.alameda.courts.ca.gov/domainweb>.


All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 30.

If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 30 by e-mail at Dept.30@alameda.courts.ca.gov or by phone at (510) 268-5104.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 03/22/2017


Chad Finke Executive Officer / Clerk of the Superior Court

By  Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 03/23/2017.

By  Deputy Clerk

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EDWARD J. WYNNE, SBN 165819
WYNNE LAW FIRM
Wood Island
80 E. Sir Francis Drake Blvd., Ste. 3G
Larkspur, CA 94939
Telephone: (415) 461-6400
Facsimile: (415) 461-3900
ewynne@wynnelawfirm.com

Attorneys for Plaintiff and the putative class

ENDORSED
FILED
ALAMEDA COUNTY

OCT 16 2017

CLERK OF THE SUPERIOR COURT
By: D. OLIVER, Deputy

IN THE SUPERIOR COURT OF CALIFORNIA
ALAMEDA COUNTY

LAURA LOPEZ, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, NATIONAL
ASSOCIATION and DOES 1 through 10,
inclusive,

Defendants.

Case No. RG 17853209

FIRST AMENDED COMPLAINT FOR:
(1) Overtime Compensation (Bus. & Prof.
Code § 17200);

(2) Meal and Rest Period Violations (Bus. &
Prof. Code § 17200)

(3) Unreimbursed Business Expenses (Bus. &
Prof. Code § 17200)

[CLASS ACTION]

Complaint filed March 14, 2017

Assigned for all purposes to
Hon. Brad Seligman

FIRST AMENDED COMPLAINT
RG 17853209

BY FAX

1 Plaintiff Laura Lopez, on behalf of herself and all others similarly situated, complains and
2 alleges as follows:

3 A. INTRODUCTION

4 1. This is a class action, under California Code of Civil Procedure § 382, seeking
5 restitution, declaratory relief, equitable relief, and reasonable attorneys' fees and costs, on behalf of
6 Plaintiff and all other individuals who are or have been employed as Small Business Bankers by
7 Defendant Bank of America, National Association (hereafter "Bank of America," "Bank," or
8 "Defendant"), in California from March 14, 2013 to the time this case is certified as a class action.
9 Laura Lopez brings this complaint on behalf of similarly situated Small Business Bankers who were
10 (a) not paid overtime compensation; (b) not provided meal and rest breaks; and (c) not reimbursed for
11 ordinary business expenses.

12 2. The "Class Period" is designated as the period from March 14, 2013 through the time
13 the Court certifies this case as a class action. The violations of California's wage and hour laws, as
14 described more fully below, have been ongoing for at least four years prior to the filing of this action,
15 are continuing at present, and will continue unless and until enjoined by the Court.

16 B. JURISDICTION AND VENUE

17 3. This Court has jurisdiction over the claims brought under the California Labor Code
18 and California's Unfair Competition Law, Business & Professions Code § 17200 *et seq.*

19 4. Venue as to Defendant is proper in Alameda County, pursuant to Code of Civil
20 Procedure §§ 395, 395.5. Bank of America is a foreign corporation that has not designated a principal
21 business office in California according to its latest Statement of Information (Foreign Corporation) on
22 file with the California Secretary of State. Defendant maintains branches, facilities and offices from
23 which Defendant transacts business in a variety of locations in Alameda County, and Defendant is
24 otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged
25 herein have a direct effect on Plaintiff and those similarly situated within the State of California and
26 within Alameda County. Defendant has employed Class Members in Alameda County, who have also
27 incurred unreimbursed business expenses while conducting Defendant's business in Alameda County
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1 in the State of California during the Class Period.

2 **C. PARTIES**

3 5. Plaintiff Laura Lopez resides in Orange County, California. Plaintiff was employed by
4 Defendant during the statutory period covered by this action. During the Class Period, she worked as
5 a Small Business Banker for Defendant in Orange County. During this time, Plaintiff was subject to
6 Defendant's unlawful policies and/or practices set forth herein.

7 6. Defendant Bank of America, National Association is a Delaware Corporation with its
8 principal place of business in Charlotte, North Carolina.

9 7. The true names and capacities of persons or entities, whether individual, corporate,
10 associate, or otherwise, sued herein as DOES 1 through 10, inclusive, are currently unknown to
11 Plaintiff, who therefore sue Defendant by such fictitious names under Code of Civil Procedure § 474.
12 Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated
13 herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein.
14 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
15 the Defendants designated hereinafter as DOES when such identities become known.

16 8. All of Plaintiff's claims stated herein are asserted against Defendant and any of its
17 owners, predecessors, successors, subsidiaries, and/or assigns.

18 **D. FACTUAL BACKGROUND**

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

23 10. Plaintiff and all members of the class identified herein were regularly scheduled as a
24 matter of uniform company policy and practice to work and in fact worked as salaried bank
25 employees in excess of eight hours per workday and/or in excess of forty hours per workweek without
26 receiving straight time or overtime compensation for such overtime hours worked in violation of
27 California Labor Code §§ 510, 1194 and California Industrial Welfare Commission Wage Order 4-
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1 2001.

2 11. Plaintiff and all members of the class were expected to be and were primarily engaged
3 in sales and sales-related activities such as prospecting for new business and closing sales. Plaintiff
4 and the class prospected for new business by cold calling from lead lists, sending out flyers, emails
5 and other correspondence to potential customers. Plaintiff and the class sought referrals from other
6 Bank employees and referral sources from outside of the Bank. Plaintiff and the class solicited
7 business from existing Bank customers in an attempt to up-sell and cross-sell bank customers with
8 additional banking products and services. Plaintiff and the class had customer meetings for the
9 purposes of soliciting new business and concluding existing deals. Plaintiff and the class were
10 instructed and trained on various sales techniques. Plaintiff and the class were ranked, rewarded and
11 disciplined based on the sales production. The sales efforts of Plaintiff and the class were tracked and
12 monitored by their supervisors.

13 12. Plaintiff and the class spent most of their time physically inside Bank branches and
14 offices consistent with the Bank's realistic expectations. Plaintiff and other class members were
15 domiciled in a specific branch and expected to cover other banking centers in order to engage in sales
16 efforts at the other branches. Plaintiff and the class were expected to attend daily huddles with Bank
17 staff. Plaintiff and the class responded to emails, telephone messages and correspondence from the
18 branch. Plaintiff and the class were expected to meet with their Sales Manager at the Sales Manager's
19 office and participate in other company meetings at Bank locations. Plaintiff and the class attended
20 training sessions at Bank locations. Plaintiff and the class met with customers at the Bank. Plaintiff
21 and the class used their computers, telephones, branch copiers and other business machines at the
22 branch. Plaintiff and the class received correspondence and documents from customers and packaged
23 loans at the branch. Plaintiff and the class reviewed customer files at the branch. Plaintiff and the class
24 communicated with underwriting and other Bank personnel at the branch. Plaintiff and the class filled
25 out paperwork and tracked their sales activities at the branch.

26 13. Plaintiff and the class did not supervise anyone and no one reported to them. They did
27 not have any hiring or firing responsibilities or formally review any employee's performance.

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1 14. Plaintiff and the class did not advise the management of Bank or the customers of the
2 Bank on how they should run their businesses, plan their objectives, negotiate the salary or benefits of
3 other employees, or represent the Bank or its customers in purchasing anything.

4 15. Plaintiff and the class did not serve as financial advisors for the Bank. They were not
5 required to hold any security licenses in order to perform the job of a Small Business Banker. They
6 were not authorized to sell customers products without their express knowledge and consent. They did
7 not sell any type of securities like stocks, bonds, or mutual funds or provide any advice on such
8 products. They did not sell or provide any tax or estate planning advice or services. Plaintiff and the
9 class did not underwrite or approve loans.

10 16. Plaintiff and the class did not earn more in incentive pay than in salary. The incentive
11 pay they earned was not based on the amount or value of the products and services sold. Plaintiff and
12 the class did not always or almost always make more in incentive pay than in base salary.

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

25 18. Defendant failed to provide and document uninterrupted off-duty meal breaks of at
26 least 30 minutes for the class in the number, length and manner as required. Defendant has failed to
27 authorize and permit rest breaks for the class in the number, length and manner as required. Defendant
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1 required Plaintiff and the class to be available for work at all times and Plaintiff and the class were
2 expected to answer telephone calls at all times. Defendant customarily and regularly scheduled
3 mandatory meetings during lunchtime. At no time has the Plaintiff or the class entered into any
4 written agreement with Defendant expressly or impliedly waiving their right to their meal or rest
5 breaks. Plaintiff and the class were injured by Defendant's failure to provide meal and rest breaks.

6 19. Defendant has maintained company-wide policies and/or practices that require class
7 members to pay the ordinary business expenses of Defendant without reimbursement. Small Business
8 Bankers were instructed to and expected to use their personal vehicles for work-related travel. As
9 such, Plaintiff and the class incurred the costs of mileage, parking, and tolls. However, Defendant had
10 a policy of refusing to reimburse Plaintiff and the class for their reasonable and necessary business
11 expenses and/or failed to take all reasonable steps to ensure that Plaintiff and the class were
12 reimbursed for their business-related expenses. Defendant's policy and practice of having class
13 members pay for Defendant's ordinary business expenses caused class members to forfeit their wages
14 to Defendant.

15 E. CLASS ACTION ALLEGATIONS

16 20. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a
17 class action pursuant to Code of Civil Procedure § 382. The class, and subclasses, that Plaintiff seeks
18 to represent is composed of and defined as follows:

19 All persons who are or have been employed, at any time from March 14, 2013
20 through the date of the Court's granting of class certification in this matter, by
21 Bank of America, National Association in California under the job title Small
22 Business Banker or the functional equivalent however titled.

23 21. This action has been brought and may properly be maintained as a class action under
24 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation,
25 the proposed class is easily ascertainable, and Plaintiff is a proper representative of the class and
26 subclasses:

27 a. Numerosity: Plaintiff is informed and believes and based thereon alleges that
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1 there are approximately 400 individuals potentially covered by this action. The potential
2 members of the class as defined are numerous and therefore joinder of all the members of the
3 Class is impracticable.

4 b. Commonality: There are questions of law and fact common to Plaintiff and the
5 class that predominate over any questions affecting only individual members of the class.
6 These predominant common questions of law and fact include, but are not limited to, the
7 following:

8 (i) Whether Defendant's policy of classifying all Small Business Bankers
9 as exempt is legal under California law;

10 (ii) Whether Defendant's expectation that Small Business Bankers would
11 be primarily engaged in exempt work was realistic;

12 (iii) Whether Defendant's policy of not providing meal and rest periods is
13 legal under California law; and,

14 (iv) Whether Defendant took all reasonable steps to reimburse Small
15 Business Bankers for business-related expenses or, alternatively, whether Defendant
16 had a *de facto* policy or practice of not reimbursing for such expenses.

17 c. Typicality: Plaintiff's claims are typical of the claims of the class. Plaintiff and
18 other Small Business Bankers sustained injuries and damages, and were deprived of property
19 rightly belonging to them, arising out of and caused by Defendant's common course of
20 conduct in violation of law as alleged herein, in similar ways and for the same types of
21 expenses.

22 d. Adequacy of Representation: Plaintiff is a member of the class and will fairly
23 and adequately represent and protect the interests of the class. Plaintiff's interests do not
24 conflict with those of other class members. Counsel who represent Plaintiff are competent and
25 experienced in litigating large wage and hour class actions and will devote sufficient time and
26 resources to the case and otherwise adequately represent the class.

27 e. Superiority of Class Action: A class action is superior to other available means
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1 for the fair and efficient adjudication of this controversy. Individual joinder of all Small
2 Business Bankers is not practicable, and questions of law and fact common to the class
3 predominate over any questions affecting only individual members of the class. Each class
4 member has been damaged or may be damaged in the future by reason of Defendant's
5 unlawful policies and/or practices as alleged herein. Certification of this case as a class action
6 will allow those similarly situated persons to litigate their claims in the manner that is most
7 efficient and economical for the parties and the judicial system. Certifying this case as a class
8 action is superior because Plaintiff seeks relief that will affect all Small Business Bankers in a
9 common way, and will also allow for efficient and full disgorgement of the ill-gotten gains
10 Defendant has enjoyed by maintaining its unlawful business policies and practices, and will
11 thereby effectuate California's strong public policy of protecting employees from deprivation
12 or offsetting of compensation earned in their employment. If this action is not certified as a
13 class action, it will be impossible as a practical matter for many or most Small Business
14 Bankers to bring individual actions to recover monies unlawfully withheld from their lawful
15 compensation due from Defendant due to the relatively small amounts of such individual
16 recoveries relative to the costs, burdens, and risks of litigation.

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PAY OVERTIME COMPENSATION**

19 **(Bus. & Prof. Code § 17203)**

20 22. Plaintiff incorporates the allegations contained in the previous paragraphs of this
21 complaint as if fully set forth herein.

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

25 24. Class members regularly work more than 40 hours per week and/or 8 hours per day but
26 are not paid overtime.

27 25. Class members do not meet any of the tests for exempt status under the California
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1 Wage Orders and/or the California Labor Code. Plaintiff and the class did not and do not perform
2 work directly related to the management or general business operations of either Defendant or
3 Defendant's customers, they are/were primarily engaged in inside sales and sales related activities,
4 and they did not and do not spend a majority of their time on exempt tasks.

5 26. Defendant has violated California labor law by not paying the required overtime pay to
6 Plaintiff and the members of the Class.

7 27. Defendant has committed an act of unfair competition by not paying the required
8 overtime pay to Plaintiff and the class.

9 28. Pursuant to California Business & Professions Code § 17203, Plaintiff requests an
10 order requiring Defendant to make restitution of all overtime wages due to them and the members of
11 the class in an amount to be proved at hearing, an injunction and declaratory relief to enjoin
12 Defendant from such conduct in the future, and reasonable attorneys' fees and costs per CCP §
13 1021.5.

14 **SECOND CAUSE OF ACTION**

15 **MEAL AND REST BREAK VIOLATIONS**

16 **(Bus. & Prof. Code § 17203)**

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

19 30. In violation of Labor Code § 512 and IWC Wage Order 4-2001, Defendant failed to
20 provide and document meal and rest period breaks for the class in the number, length and manner as
21 required. At no time has the Plaintiff or the class entered into any written agreement with Defendant
22 expressly or impliedly waiving their right to their meal and rest breaks. Plaintiff and the class have
23 been injured by Defendant's failure to comply with Labor Code § 512 and IWC Wage Order 4-2001.

24 31. Defendant has committed an act of unfair competition by not providing meal and rest
25 breaks in the number, length and manner as required by law.

26 32. Pursuant to California Business & Professions Code § 17203, Plaintiff requests an
27 order requiring Defendant to make restitution of all wages due to them and the members of the class
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1 in an amount to be proved at hearing, an injunction and declaratory relief to enjoin Defendant from
2 such conduct in the future, and reasonable attorneys' fees and costs per CCP § 1021.5.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

5 **(Bus. & Prof. Code § 17203)**

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

8 34. Labor Code § 2802 provides that "[a]n employer shall indemnify his or her employee
9 for all necessary expenditures or losses incurred by the employee in direct consequence of the
10 discharge of his or her duties."

11 35. While discharging their duties for Defendant, Plaintiff and the class have incurred
12 work-related expenses. Such expenses include but are not limited to travel, parking, mileage, and tolls
13 charges. Defendant knew or should have known that Plaintiff and the class incurred work-related
14 expenses yet did not take reasonable steps to ensure that Plaintiff and the class were reimbursed.

15 36. Defendant has failed to indemnify or in any manner reimburse Plaintiff and the class
16 for these expenditures and losses. By requiring those employees to pay expenses and cover losses that
17 they incurred in direct consequence of the discharge of their duties for Defendant and/or in obedience
18 of Defendant's direction or expectations, Defendant has violated and continues to violate Labor Code
19 § 2802.

20 37. Defendant has committed an act of unfair competition by not reimbursing Plaintiff and
21 the class for all reasonable and necessary business expenses Plaintiff and the class incurred for the
22 benefit of Defendant.

23 38. Pursuant to California Business & Professions Code § 17203, Plaintiff requests an
24 order requiring Defendant to make restitution of all work-related expenses due to her and the
25 members of the class in an amount to be proved at hearing, an injunction and declaratory relief to
26 enjoin Defendant from such conduct in the future, and reasonable attorneys' fees and costs per CCP §
27 1021.5.

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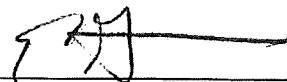
PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

1. For an Order certifying the proposed class and designating this action as a class action pursuant to CCP § 382;
2. For a declaratory and injunctive relief;
3. For an Order appointing Plaintiff and his counsel to represent the proposed class as defined in this Complaint;
4. For restitution according to proof;
5. For an order requiring Defendant to provide an accounting of all wages and all sums unlawfully charged back and withheld from compensation due to Plaintiff and the other members of the proposed class;
6. For interest according to proof;
7. For reasonable attorneys' fees and costs; and
8. For such other relief the Court deems just and proper.

DATED: October 13, 2017

WYNNE LAW FIRM



 By: Edward J. Wynne
 Attorneys for Plaintiff Laura Lopez, individually
 and on behalf of all others similar situated

Wynne Law Firm
 Attn: Wynne Esq, Edward J.
 80 E. Sir Francis Drake Blvd
 Suite 3G
 Larkspur, CA 94939

Bank of America, National Association

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

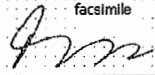
Lopez <p style="text-align: right;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> Bank of America, National Association <p style="text-align: right;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG17853209</u> Order Complaint - Other Employment
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The Complex Determination Hearing was set for hearing on 05/09/2017 at 03:00 PM in Department 30 before the Honorable Brad Seligman. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The motion is dropped by the Court. This action has been removed to federal court.

Dated: 05/09/2017

facsimile


Judge Brad Seligman

Order

Wynne Law Firm
 Attn: Wynne Esq, Edward J.
 80 E. Sir Francis Drake Blvd
 Suite 3G
 Larkspur, CA 94939

Bank of America, National Association

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Lopez <p style="text-align: right; margin-right: 100px;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> Bank of America, National Association <p style="text-align: right; margin-right: 100px;">Defendant/Respondent(s)</p> <p style="text-align: center;">(Abbreviated Title)</p>	No. <u>RG17853209</u> <p style="text-align: center;">Order</p> Complaint - Other Employment
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The Complex Determination Hearing was set for hearing on 09/19/2017 at 03:00 PM in Department 23 before the Honorable Brad Seligman. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: **COMPLEX DETERMINATION**

The Court designates this case as complex pursuant to Rule 3.400 et seq. of the California Rules of Court. Counsel are advised to be familiar with the Alameda County Local Rules concerning complex litigation, including Rule 3.250 et seq. An order assigning the case to one of the three complex judges and an initial case management order will be issued.

COMPLEX CASE FEES

Pursuant to Government Code section 70616, any non-exempt party who has appeared in the action but has not paid the complex case fee is required to pay the fee within ten days of the filing of this order. The complex case fee is \$1,000 for each plaintiff or group of plaintiffs appearing together and \$1,000 PER PARTY for each defendant, intervenor, respondent or other adverse party, whether filing separately or jointly, up to a maximum of \$18,000 for all adverse parties. All payments must identify on whose behalf the fee is submitted. Please submit payment to the attention of the Complex Litigation Clerk located in the Civil Division at the Rene C. Davidson Courthouse, 1225 Fallon Street, Oakland, CA 94612. Please make check(s) payable to the Clerk of the Superior Court. Documents may continue to be filed as allowed under Local Rule 1.9. Note that for those admitted pro hac vice, there is also an annual fee. (Gov't Code section 70617.)

PROCEDURES

Calendar information, filings, and tentative rulings are available to the public at <http://www.alameda.courts.ca.gov/domainweb/>. All counsel are expected to be familiar and to comply with pertinent provisions of the Code of Civil Procedure, the California Rules of Court, the Alameda County Superior Court Local Rules.

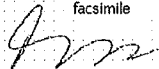
SERVICE OF THIS ORDER

Counsel for plaintiff(s) shall have a continuing obligation to serve a copy of this order on newly joined

Order

parties defendant not listed on the proof of service of this order and file proof of service. Each party defendant joining any third party cross-defendant shall have a continuing duty to serve a copy of this order on newly joined cross-defendants and to file proof of service.

Dated: 09/19/2017

facsimile


Judge Brad Seligman

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

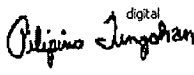
Case Number: RG17853209
Order After Hearing Re: of 09/19/2017

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 09/21/2017.

Chad Finke Executive Officer / Clerk of the Superior Court

By  ^{digital}

Deputy Clerk

1 EDWARD J. WYNNE, SBN 165819
 WYNNE LAW FIRM
 2 Wood Island
 80 E. Sir Francis Drake Blvd., Ste. 3G
 3 Larkspur, CA 94939
 Telephone: (415) 461-6400
 4 Facsimile: (415) 461-3900
 ewynne@wynnelawfirm.com

5 *Attorneys for Plaintiff and the putative class*

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9 **IN THE SUPERIOR COURT OF CALIFORNIA**

10 **ALAMEDA COUNTY**

11 LAURA LOPEZ, individually and on behalf of
all others similarly situated,

12 Plaintiff,

13 v.

14 BANK OF AMERICA, NATIONAL
15 ASSOCIATION and DOES 1 through 10,
inclusive,

16 Defendants.

Case No. RG 17853209

**PLAINTIFF'S RESPONSES TO
DEFENDANT BANK OF AMERICA,
N.A.'S SPECIAL INTERROGATORIES,
SET ONE**

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19 PROPOUNDING PARTY: BANK OF AMERICA, N.A.

20 RESPONDING PARTY: PLAINTIFF LAURA LOPEZ

21 SET NO.: ONE

1 **INTERROGATORY NO. 1:**

2 State all facts that support YOUR contention that “Plaintiff and the class members were not
3 exempt from the overtime requirements of California law” as alleged in paragraph 17 of the FAC.

4 **RESPONSE TO INTERROGATORY NO. 1:**

5 Objection. This interrogatory calls for a legal opinion or conclusion. This interrogatory is
6 premature as discovery has just commenced. Plaintiff reserves her right to amend this response.
7 Without waiving and subject to said objections, Plaintiff responds as follows:

8 The facts in support of Plaintiff’s contention that class member were not exempt from
9 California’s overtime requirements are that class members (a) regularly spent more than 50% of
10 their time performing nonexempt work, (b) did not customarily and regularly exercise discretion
11 and independent judgment on matters of significance, (c) did not have the authority to hire or fire or
12 make meaningful recommendations regarding same, (d) did not customarily and regularly supervise
13 at least two employees or the equivalent, (e) did not perform work directly related to the
14 management policies or the general business operations of Defendant or Defendant’s customers, (f)
15 did perform nonexempt production and/or sales work a majority of their time (i.e., in excess of
16 50%) consistent with Defendant’s realistic expectations, (g) did not customarily and regularly
17 spend more than 50% of their time away from the Defendant’s places of business selling or
18 obtaining orders or contracts, and (h) did not earn more than 50% of their compensation in a bona
19 fide commission plan. Discovery is continuing.

20 **INTERROGATORY NO. 2:**

21 IDENTIFY each and every DOCUMENT that supports YOUR contention that “Plaintiff
22 and the class members were not exempt from the overtime requirements of California law” as
23 alleged in paragraph 17 of the FAC.

24 **RESPONSE TO INTERROGATORY NO. 2:**

25 Objection. This interrogatory is burdensome and harassing in that documents responsive to
26 this request are in the care, custody and control of Defendant. This interrogatory calls for
27 speculation in that Defendant may be in possession of documents responsive to this request that
28 Plaintiff is as yet unaware. This interrogatory calls for a legal opinion or conclusion. Without

1 waiving and subject to said objection, plaintiff responds as follows:

2 Please see Plaintiff's document production.

3 **INTERROGATORY NO. 3:**

4 State all facts that support YOUR contention that "Defendant has maintained company-
5 wide policies and/or practices that require class members to pay ordinary business expenses for
6 DEFENDANT without reimbursement" as alleged in paragraph 19 of the FAC.

7 **RESPONSE TO INTERROGATORY NO. 3:**

8 Objection. This interrogatory calls for a legal opinion or conclusion. This interrogatory is
9 premature as discovery has just commenced. Plaintiff reserves her right to amend this response.
10 Without waiving and subject to said objections, Plaintiff responds as follows:

11 The facts in support of Plaintiff's contention that Defendant maintained company-wide
12 policies and/or practices that require class members to pay ordinary business expenses for
13 Defendant without reimbursement are that Small Business Bankers were instructed to and expected
14 to use their personal vehicles for work-related travel. As such, Plaintiff and the class incurred the
15 costs of mileage, parking, and tolls in carrying out their duties and responsibilities for the benefit of
16 Defendant. In addition, Plaintiff's manager Adele Green instructed Plaintiff not to submit business
17 expenses. Ms. Green stated that this instruction was based on "orders from above" or similar words.
18 Based on Plaintiff's supervisor's comments, Plaintiff believed that Ms. Green was expressing
19 Defendant's policy and practice of not reimbursing Small Business Bankers for all business
20 expenses.

21 **INTERROGATORY NO. 4:**

22 IDENTIFY each and every DOCUMENT that supports YOUR contention that "Defendant
23 has maintained company-wide policies and/or practices that require class members to pay ordinary
24 business expenses for Defendant without reimbursement" as alleged in paragraph 19 of the FAC.

25 **RESPONSE TO INTERROGATORY NO. 4:**

26 Objection. This interrogatory calls for a legal opinion or conclusion. This interrogatory is
27 burdensome and harassing in that documents responsive to this request are in the care, custody and
28 control of Defendant. This interrogatory is premature as discovery has just commenced. Plaintiff

1 reserves her right to amend this response. Without waiving and subject to said objections, Plaintiff
2 responds as follows:

3 Plaintiff is informed and believes that Defendant's expense reimbursement records support
4 Plaintiff's contention.

5 **INTERROGATORY NO. 5:**

6 IDENTIFY every request made by YOU for reimbursement of a business expense that was
7 denied by DEFENDANT.

8 **RESPONSE TO INTERROGATORY NO. 5:**

9 Objection. This request is burdensome and harassing in that documents responsive to this
10 request are in the sole care, custody and control of Defendant.

11 Without waiving and subject to said objection, Plaintiff responds as follows: Plaintiff is not
12 aware of any request for reimbursement that was denied.

13 **INTERROGATORY NO. 6:**

14 IDENTIFY each and every DOCUMENT reflecting any business expense incurred by YOU
15 for which a request for reimbursement was denied by DEFENDANT.

16 **RESPONSE TO INTERROGATORY NO. 6:**

17 Objection. This request is burdensome and harassing in that documents responsive to this
18 request are in the sole care, custody and control of Defendant.

19 Without waiving and subject to said objection, Plaintiff responds as follows: Plaintiff is not
20 aware of any request for reimbursement that was denied.

21 **INTERROGATORY NO. 7:**

22 State the number of hours YOU worked for DEFENDANT each week from March 14, 2013
23 until the end of YOUR employment with DEFENDANT.

24 **RESPONSE TO INTERROGATORY NO. 7:**

25 Excepting the time Plaintiff may have been absent due to sickness, vacation or holiday,
26 Plaintiff customarily and regularly worked 55 hours per week on average.

27 **INTERROGATORY NO. 8:**

28 IDENTIFY each and every DOCUMENT or other record YOU prepared regarding YOUR

1 job duties from March 14, 2013 until the end of YOUR employment with DEFENDANT.

2 **RESPONSE TO INTERROGATORY NO. 8:**

3 Objection. This request is burdensome and harassing in that documents responsive to this
4 request are in the sole care, custody and control of Defendant.

5 Without waiving and subject to said objection, Plaintiff responds as follows: Some of the
6 documents prepared by Plaintiff that may contain her activities include, but are not limited to the
7 following: emails, outlook calendar entries, Salesforce entries, call planning tool, partnership
8 agreement, SBB weekly connect, loan checklist, schedule of business debt, note taking tool, small
9 business profile.

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DATED: March 19, 2018

WYNNE LAW FIRM



By: Edward J. Wynne

Attorneys for Plaintiff LAURA LOPEZ
individually and on behalf of all others similar
situated

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VERIFICATION TO FOLLOW

PROOF OF SERVICE

I, the undersigned, declare that I am employed in Marin County, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 80 E. Sir Francis Drake Blvd., Ste. 3G, Larkspur, CA 94939.

On March 19, 2018, I served on the interested parties in this action the within document(s) entitled:

**PLAINTIFF'S RESPONSES TO DEFENDANT BANK OF AMERICA, N.A.'S
SPECIAL INTERROGATORIES, SET ONE**

- BY MAIL:** I placed, on the date shown below, at my place of business, a true copy thereof, enclosed in a sealed envelope, with postage fully pre-paid, for collection and mailing with the United States Postal Service where it would be deposited with the United States Postal Service that same day in the ordinary course of business, addressed to those listed below.
- BY ELECTRONIC SERVICE:** the parties listed below were served electronically with the document(s) listed above by e-mailed PDF files on March 19, 2018. The transmission was reported as complete and without error. My e-mail address is hhall@wynnelawfirm.com.

Michael D. Mandel
John A. Van Hook
MCGUIRE WOODS, LLP
1800 Century Park East, 8th Floor
Los Angeles, CA 90067-1501
jvanhook@mcguirewoods.com

- STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Executed on March 19, 2018 at Larkspur, California.



Heidi Hall

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

LAURA LOPEZ

DEFENDANTS

BANK OF AMERICA, N.A.

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

County of Residence of First Listed Defendant Mecklenburg County, North Carolina (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) Edward J. Wynne, Wynne Law Firm (415) 461-6400 80 E. Sir Francis Drake Blvd., Ste. 3G Larkspur, CA 94939

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known) Michael D. Mandel, McGuireWoods LLP (310) 315-8200 1800 Century Park East, 8th Floor Los Angeles, CA 90067-1501

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

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship options: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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): Class Action Fairness Act, 28 U.S.C. § 1332(d)(2)
Brief description of cause: Plaintiff alleges unpaid wages, meal and rest period violations, and failure to reimburse business expenses.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE: 04/18/2018

SIGNATURE OF ATTORNEY OF RECORD: /s/ Michael D. Mandel

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate 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 Federal Rule of Civil Procedure 8(a), 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.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 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.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 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-CAND 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 six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no 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 Federal Rule of Civil Procedure 23. 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-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1800 Century Park East, 8th Floor, Los Angeles, CA 90067.

On April 18, 2018, I served the following document described as **CIVIL CASE COVER SHEET** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Edward J. Wynne, Esq.
WYNNE LAW FIRM
80 E. Sir Francis Drake Blvd., Suite 3G
Larkspur, CA 94939
Telephone: 415-461-6400; Facsimile: 415-461-3900
Email: ewynne@wynnelawfirm.com

Attorneys for Plaintiff

- BY MAIL:** I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Los Angeles, CA, on that same day following ordinary business practices. (C.C.P. § 1013 (a) and 1013a(3))
- BY OVERNIGHT DELIVERY:** I deposited such document(s) in a box or other facility regularly maintained by the overnight service carrier, or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier with delivery fees paid or provided for, addressed to the person(s) served hereunder. (C.C.P. § 1013(d)(e))
- BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered the addressee(s). (C.C.P. § 1011)

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on April 18, 2018, at Los Angeles, CA.

Vaneta D. BIRTHA'

Vaneta D. BIRTHA

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Bank of America Employees Misclassified as Exempt from Overtime Pay, Class Action Says](#)
