

McGUIREWOODS LLP

Matthew C. Kane (SBN 171829)

Email: mkane@mcguirewoods.com

Ashley R. Li (SBN 317305)

Email: ali@mcguirewoods.com

1800 Century Park East, 8th Floor

Los Angeles, CA 90067-1501

Telephone: 310.315.8200

Facsimile: 310.315.8210

Sylvia J. Kim (SBN 258363)

Email: skim@mcguirewoods.com

Two Embarcadero Center, Suite 1300

San Francisco, CA 94111

Telephone: 415.844.9944

Facsimile: 415.844.9922

Attorneys for Defendant

BANK OF AMERICA CORPORATION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MIGUEL MENDOZA, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

BANK OF AMERICA CORPORATION, and
DOES 1-100, inclusive,

Defendants.

CASE NO. 3:19-cv-2491

[Contra Costa Superior Court Case No.
C19-00575]

**DEFENDANT'S NOTICE OF REMOVAL
OF CIVIL ACTION FROM STATE
COURT**

Complaint Filed: 03/25/2019

Complaint Served: 04/08/2019

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

11 **I. PLEADINGS AND PROCEEDINGS**

12 1. Plaintiff Miguel Mendoza (“Plaintiff”) filed a Complaint against Defendant (the
 13 “Complaint”) in the State Court on March 25, 2019 styled as *Miguel Mendoza, individually, and*
 14 *on behalf of all others similarly situated, v. Bank of America Corporation, and DOES 1-100,*
 15 *inclusive*, Case No. C19-00575 (the “State Court Action”).

16 2. On April 8, 2019, Defendant was served with the following documents from the
 17 State Court Action, true and correct copies of which are attached hereto as follows:

18 Exhibit A: Summons

19 Exhibit B: Complaint

20 Exhibit C: Civil Case Cover Sheet

21 Exhibit D: Notice of Assignment

22 Exhibit E: Alternative Dispute Resolution Information

23 Exhibit F: Blank Case Management Statement

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

27 4. Defendant is informed and believes that Bank of America is the only defendant that
 28 has been served with process in the State Court Action. Defendants Does 1 through 100 have yet

1 to be identified, and thus are to be disregarded for the purposes of this removal. *See* 28 U.S.C. §
 2 1441(b)(1). As such, Bank of America is the only defendant needed to join and consent to this
 3 removal.

4 **REMOVAL JURISDICTION: CLASS ACTION FAIRNESS ACT (“CAFA”)**

5 5. Pursuant to 28 U.S.C. §§ 1332 and 1441, removal to this Court is proper under
 6 CAFA. Under CAFA, this Court has jurisdiction over class actions where any member of the
 7 class is a citizen of a state different from any defendant, and where the aggregate amount in
 8 controversy exceeds the sum of \$5,000,000, exclusive of interest and costs, and the number of
 9 members of all proposed plaintiff classes in the aggregate is at least 100 class members. 28 U.S.C.
 10 § 1332(d)(2)-(6). CAFA authorizes removal of such actions under 28 U.S.C. § 1446.

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

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

16 8. This Court has original jurisdiction over this action pursuant to 28 U.S.C.
 17 § 1332(d)(2), and is one which may be removed to this Court by Defendant, because (1) the
 18 number of members of all proposed plaintiff classes in the aggregate is at least 100 class members;
 19 (2) there is diversity of citizenship between Plaintiff and Defendant; and (3) the amount-in-
 20 controversy exceeds \$5,000,000, exclusive of interest and costs.

21 9. Plaintiff worked for Bank of America from September 2015 until January 2017.
 22 *See* Exh. B, Complaint, at ¶ 9. Throughout his employment, Plaintiff worked as a Financial
 23 Center Operations Manager (“Operations Manager”), during which time he was classified as a
 24 non-exempt employee for the purposes of federal and state wage and hour laws and was paid on
 25 an hourly basis. *Id.* at ¶¶ 9, 13.

26 10. Plaintiff alleges that Defendant failed to: (1) provide legally compliant meal and
 27 rest breaks to Plaintiff and the putative class members (“PCMs”) he seeks to represent; (2) track
 28 and identify which employee meal periods were late, missed, or short; (3) maintain records of

whether the missed, late, or short meal periods were due to business pressure or were voluntary; (4) pay Plaintiff and the PCMs “on duty” or on-the-premises meal or rest breaks; and (5) pay Plaintiff and the PCMs premium wages when required by law. *Id.* at ¶¶ 14, 15, 23.

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

All of Bank of America’s non-exempt California operations managers who worked a shift over five hours in length beginning four years from the date of the filing of this Complaint to the time judgment is entered hereon, and who were not provided with an off duty, uninterrupted, 30 minute meal break that started before the beginning of their sixth hour of work, or were required to remain on the premises during their meal breaks, or were not provided off duty rest periods of at least 10 minutes for every four hours of work or major fraction thereof.

See Exh. B., Complaint, at ¶ 29.

Citizenship of Parties

12. **Plaintiff’s Citizenship.** Defendant is informed and believes and thereupon alleges that, at the time that the State Court Action was filed and at the time that this Notice of Removal is filed, Plaintiff is a resident and citizen of the State of California and has the intent to remain in California. *See id.* at ¶ 8. Furthermore, throughout his employment with Bank of America, Plaintiff’s addresses of record were in California. Indeed, Plaintiff is alleged to have worked and resided in California since approximately September 2015. *Id.* at ¶¶ 8–9. Consequently, Defendant is informed and believes and therefore alleges that Plaintiff has the intent to remain in California. *See, e.g., Mondragon v. Capital One Auto Finance*, 776 F.3d 880 (9th Cir. 2013) (holding that, in connection with removal to federal court, a person’s continuing domicile in a state establishes citizenship “unless rebutted with sufficient evidence of change”); *Lew v. Moss*, 797 F.2d 747, 751-52 (9th Cir. 1986) (holding that California was the state of domicile for a party with a California residential address).

13. **Bank of America’s Citizenship.** Pursuant to 28 U.S.C. § 1332(c)(1), Bank of America Corporation is a citizen of the State of Delaware (state of incorporation) and North Carolina (the location of its main office). Furthermore, Bank of America, N.A., the entity for which Plaintiff worked, is a national banking association chartered under the laws of the United States, and 28 U.S.C. § 1348 (“Section 1348”) governs the citizenship of national banking

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

22 14. **Doe Defendants.** The Complaint also names “DOES 1-100” as defendants. For
 23 purposes of removal, “the citizenship of defendants sued under fictitious names shall be
 24 disregarded.” 28 U.S.C. § 1441(b)(1). Therefore, for purposes of removal with jurisdiction based
 25 on 28 U.S.C. § 1332, the citizenship of all of the “Doe” defendants is to be disregarded.

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

Aggregate Membership

16. According to Plaintiff, the members of the putative class that he purports to represent “are so numerous that joinder of all the members would be unfeasible and not practical.” See Exh. B, Complaint, at ¶ 31. Indeed, Plaintiff alleges that, at the time of the filing of his Complaint, “it is estimated that the Class number greater than one thousand individuals.” *Id.* Thus, the aggregate membership of the proposed class is at least 100 as required under CAFA.

Amount in Controversy

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

18. Here, Plaintiff does not allege a specific amount in controversy. Thus, the Court must consider as evidence of the amount in controversy that which is “facially apparent” on the Complaint. See, *e.g.*, *Rippee v. Boston Market Corp.*, 408 F. Supp. 2d 982, 984 (S.D. Cal. 2005). A notice of removal may satisfy this burden through plausible allegations that the amount exceeds the threshold, consistent with Fed. R. Civ. P. 8(a). See *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 550, 554 (2014). Evidentiary submissions are not required unless and

1 until the defendant's allegations are contested by the plaintiff or questioned by the court. *Id.* at
 2 554. This standard is appropriate even when the complaint fails to allege or seek a specific
 3 amount of damages. *See Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1197 (9th Cir.
 4 2015).

5 19. Plaintiff asserts seven causes of action against Defendant based on his allegations
 6 that Defendant, as part of alleged uniform policies and practices:

- 7 a. failed to authorize and permit Plaintiff and the PCMs to take legally compliant
 8 meal and rest periods. *See* Exh. B, Complaint, at ¶ 14–18;
- 9 b. “failed to track and identify which employee meal periods were late, missed, or
 10 short.” *Id.* at ¶ 23;
- 11 c. “failed to maintain records of whether the missed, late, or short meal period was
 12 due to the press[ure] of business or voluntary.” *Id.*;
- 13 d. “failed to pay employees ‘on duty,’ or on-the-premises meal or rest breaks.” *Id.*;
 14 and
- 15 e. “failed to pay premium wages when required by law.” *Id.*

16 20. Thus, Plaintiff seeks damages and related penalties for, *inter alia*, failure to provide
 17 compliant meal and rest breaks; failure to pay for non-compliant meal and rest breaks; failure to
 18 provide accurate itemized wage statements and/or maintain accurate payroll records; failure to pay
 19 all wages due upon discharge; failure to reimburse for business expenses, as well as attorneys’ fees
 20 and costs. *See generally* Exh. B, Complaint and Prayer for Relief.

21 21. While Defendant denies any liability as to Plaintiff’s claims, based on the
 22 allegations, claims, and prayer for relief set forth in the Complaint, the amount in controversy in
 23 this action, exclusive of interest and costs, exceeds the sum of \$5,000,000. Defendant’s
 24 establishment of the amount-in-controversy, as set forth below, is based on assumptions for
 25 purposes of removal only as to the amounts that Plaintiff could recover if he prevailed on some of
 26 his claims.

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

- a. During the almost **four-year period** preceding the filing of the Complaint in this action, Bank of America employed at least **1,632 non-exempt operations managers** in California who worked an aggregate of **132,006 workweeks** from March 25, 2015 through September 14, 2018 and were paid an average hourly rate of **\$25.70** during that period.
- b. During the almost **three-year period** preceding the filing of the Complaint in this action, Bank of America employed **315 non-exempt operations managers** in California whose respective employments ended voluntarily or involuntarily between March 25, 2016 through September 14, 2018, and their average hourly rate of pay at the time of their respective separation dates was **\$25.85**.

23. **Meal and Rest Break Violation Claim.** Plaintiff's First and Second Causes of Action allege that Defendant maintained "policies" and "practices" that "require[] its operations managers to remain on duty for meal and rest periods by requiring them to remain on the premises" even though "no on-the-job meal period was agreed to in writing," and of "often" failing to provide Plaintiff and PCMs with "an otherwise off duty, uninterrupted" meal break and rest break. *See* Exh. B, Complaint, at ¶¶ 1, 14–18, 49. As a result, Plaintiff alleges that Plaintiff and the PCMs are entitled to premium pay pursuant to Cal. Labor Code § 226.7. From March 25, 2015 through September 14, 2018, there were approximately 1,632 individuals who worked in non-exempt operations manager positions for Bank of America in California and they worked 132,006 workweeks during that period.¹ Those individuals were earning an average hourly rate of \$25.70. Assuming for purposes of this Notice of Removal only that each PCM experience just

¹ For the purposes of removal, a four-year statute of limitations is presumed as Plaintiff has purported to allege a cause of action for missed meal and rest breaks as an unfair business practice under California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* *See* Exh. B, Complaint at ¶¶ 66–75; *See Beaver v. Tarsadia Hotels*, 816 F.3d 1170, 1177 (9th Cir. 2016) (recognizing that "the UCL statute of limitations will apply to a UCL claim, even when that claim is based on an underlying law with its own separate statute of limitations."); *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal.4th 163, 178-79 (2000).

1 *one* meal break violation and *one* rest break violation per week, the total amount in controversy
 2 for Plaintiff's First and Second Causes of Action for meal and rest break violations is estimated to
 3 be at least **\$6,785,108.40**, calculated as follows:

4 ➤ (\$25.70 average hourly rate) x (1 meal break violation per week) x (132,006
 5 aggregate workweeks) = **\$3,392,554.20**

6 ➤ (\$25.70 average hourly rate) x (1 rest break violation per week) x (132,006
 7 aggregate workweeks) = **\$3,392,554.20**

8 24. **\$3,392,554.20** meal break payments + **\$3,392,554.20** rest break payments =
 9 **\$6,785,108.40**

10 25. **Waiting Time Penalties.** Plaintiff's Fourth Cause of Action seeks waiting time
 11 penalties for alleged failure to pay all wages due upon termination. *See* Exh. A, Complaint, ¶¶ 57-
 12 61. To that end, Plaintiff alleges that Bank of America "willfully and intentionally failed and
 13 refused to pay the earned and unpaid wages to Plaintiff" and that it "similarly treated the other
 14 employees whose employment with [it] has terminated within the three years prior to the filing of"
 15 the Complaint. *Id.* at ¶¶ 59. For example, Plaintiff alleges that "Plaintiff recently separated from
 16 [Bank of America] and was not paid all earned and unpaid wages at the time of his termination
 17 from employment, including unpaid minimum wages, unpaid overtime, unpaid reporting time
 18 wages, and unpaid premiums for missed meal and rest breaks." *Id.* Plaintiff also alleges that his
 19 claims are "typical" of the claims of all PCMs. *Id.* at ¶ 34. Between March 25, 2016 and
 20 September 14, 2018, 315 individuals worked in non-exempt operations manager positions for
 21 Bank of America in California whose employment ended voluntarily or involuntarily. Those
 22 individuals were earning an average hourly rate of \$25.85 at the time of their separation. For
 23 purposes of calculating the amount-in-controversy for removal, based on Plaintiff's allegations,
 24 Bank of America assumes that Plaintiff and the PCMs will seek the maximum penalty allowed
 25 under California Labor Code § 203. *See* Exh. B, Complaint, at ¶ 61. *See Korn v. Polo Ralph*
 26 *Lauren Corp.*, 536 F.Supp.2d 1199, 1205-06 (E.D. Cal. 2008) (recognizing that courts may
 27 consider the maximum statutory penalty available in determining whether the jurisdictional
 28 amount in controversy requirement is met."). Thus, using the average hourly rate in effect for the

PCMs at the time of their respective separations, the total amount in controversy on Plaintiff's Fourth Cause of Action for **waiting time penalties** is estimated to be **\$1,953,504**, calculated as follows:

➤ 315 PCMs x \$25.84 x 8 hours x 30 days = **\$1,953,504**

26. **Attorneys' Fees.** Plaintiff's Complaint also seeks an award of statutory attorneys' fees. In the Ninth Circuit where attorneys' fees are authorized by statute, they are appropriately part of the calculation of the "amount in controversy" for purposes of removal. *See Fritsch v. Swift Transp. Co. of Ariz., LLC*, 899 F.3d 785, 794–95 (9th Cir. 2018); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998) (stating that "where an underlying statute authorizes an award of attorneys' fees, either with mandatory or discretionary language, such fees may be included in the amount in controversy"). While the Ninth Circuit has declined to impose a per se rule that the amount in controversy is 25% of all other alleged recovery, it has used that estimation in common fund cases. *See Fritsch*, 899 F.3d at 796, *citing Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). Applying this benchmark to the potential amounts in controversy on Plaintiff's claims identified above, the potential amount in controversy related to Plaintiff's demand for attorneys' fees is calculated at no less than **\$2,184,653.10**:

Cause of Action	Amount in Controversy	9 th Circuit Benchmark	Attorneys' Fees
Meal and Rest Break Violations	\$6,785,108.40	x 25%	\$1,696,277.10
Waiting Time Penalties	\$1,953,504.00	x 25%	\$488,376.00
TOTAL ESTIMATED ATTORNEYS FEES			\$2,184,653.10

27. Accordingly, the total amount in controversy for Plaintiff's claims asserted in this action, exclusive of Plaintiff's claims for wage statement penalties, failure to reimburse business expenses and civil penalties under PAGA, conservatively estimated, is well over the \$5,000,000 jurisdictional minimum:

Remedies Sought	Amount in Controversy
Meal and Rest Break Premiums	\$6,785,108.40
Waiting Time Penalties	\$1,953,504.00
Statutory Attorneys' Fees	\$2,184,653.10
TOTAL AMOUNT IN CONTROVERSY²	\$10,923,265.50

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

VENUE

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

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

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.

² Plaintiff also asserts claims for failure to provide accurate, itemized wage statements and/or maintain accurate payroll records (Third Cause of Action, Exh. B, Complaint, at ¶¶ 51–56), failure to reimburse for necessary business expenses (Fifth Cause of Action, Exh. B, Complaint, at ¶¶ 62–65), and civil penalties under the Private Attorney General Act of 2004 ("PAGA") (Seventh Cause of Action, Exh. B, Complaint, at ¶¶ 76–81). Defendant has not valued those claims herein, but obviously the Court's consideration of those claims necessarily would increase the total amount in controversy.

1 Date: May 8, 2019

McGUIREWOODS LLP

2
3 By: 

4 Matthew C. Kane
5 Sylvia J. Kim
6 Ashley R. Li

7 Attorneys for Defendant
8 BANK OF AMERICA CORPORATION
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CERTIFICATE 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 May 8, 2019, I served the following document described as **DEFENDANT'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:

Stanley D. Saltzman
Bradley R. Fagnani
MARLIN & SALTZMAN LLP
29800 Agoura Road, Suite 210
Agoura Hills, California 91301
Telephone: (818) 991-8080
Facsimile: (818) 991- 8081

Attorneys for Plaintiff Miguel Mendoza

☒ **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 FACSIMILE:** At approximately _____, I caused said document(s) to be transmitted by facsimile pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was 310.315.8210. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The document was transmitted by facsimile transmission, and the sending facsimile machine properly issued a transmission report confirming that the transmission was complete and without error.

☐ **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 May 8, 2019, at Los Angeles, CA.

Vaneta D. Birtha'

Vaneta D. Birtha

Exhibit A

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: BANK OF AMERICA CORPORATION, and
(AVISO AL DEMANDADO): DOES 1-100, inclusive

YOU ARE BEING SUED BY PLAINTIFF: MIGUEL MENDOZA,
(LO ESTÁ DEMANDANDO EL DEMANDANTE): individually, and
on behalf of all others similarly situated

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 este 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 puede 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.sucone.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede 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.sucone.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 oírlos por imponer un gravamen sobre cualquier recuperación de \$10,000 o 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 desochar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

CONTRA COSTA COUNTY SUPERIOR COURT
1020 Ward Street
1020 Ward Street
Martinez, CA 94553

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):

Stanley D. Saltzman (SBN 90058) (818) 991-8080 (818) 991-8081
Bradley R. Fagnani (SBN 261330)
MARLIN & SALTZMAN, LLP
29800 Agoura Road, Suite 210, Agoura Hills, CA 91301

DATE:

MAR 25 2019

Clerk by

(Secretario)

C. A. JACALA

Deputy

(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)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): **BANK OF AMERICA CORPORATION**

- 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 416.80 (authorized person)
☐ other (specify):

4. ☒ by personal delivery on (date):

4/8/19

Exhibit A

FILED

KATE RIEKER
CLERK OF THE SUPERIOR COURT
COUNTY OF CUMBERLAND, ME.

BY: CHANDRA P. PATEL

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT. 34 FOR ALL
PURPOSES.

Attorneys for Plaintiff and the putative Class

COUNTY OF CONTRA COSTA

CASE NO.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Provide Compliant Meal Periods (Lab. Code §§ 512, 226.7, and Wage Order No. 4);
2. Failure to Provide Compliant Rest Breaks (Lab. Code §§ 512, 226.7, and Wage Order No. 4);
3. Failure to Accurately Itemize and Report Wages, Hours, and Pay Rates (Lab. Code §§ 226, 1174, and Wage Order No. 4);
4. Failure to Pay All Wages Upon Discharge (Lab. Code §§ 200-203);
5. Failure to Reimburse for Necessary Business Expenses (Lab. Code § 2802);
6. Violation of the California Unfair Competition Law (Bus. & Prof. Code § 17200, *et seq.*); and
7. Civil Penalties Under the Private Attorney General Act of 2004 (Lab. Code §§ 2698, *et seq.*)

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

1 Plaintiff Miguel Mendoza ("Plaintiff"), individually and on behalf of all others similarly
2 situated and similarly aggrieved, hereby brings this Class Action Complaint against Defendant
3 Bank of America Corporation ("Bank of America") and DOES 1 through 100 (collectively,
4 "Defendants"), and alleges as follows:

5 INTRODUCTION

6 1. Plaintiff brings this class action on behalf of himself and all others similarly
7 situated and similarly aggrieved employees (collectively, the "Class"), who have sustained
8 injuries arising out of Bank of America's systematic course of uniform payroll policies and
9 practices that violate the California Labor Code, Industrial Welfare Commission ("IWC") Wage
10 Order No. 4, California Code of Regulations, and California Business and Professions Code
11 section 17200. Specifically, Bank of America intentionally and wrongfully requires its operations
12 managers to remain on duty for meal and rest periods by requiring them to remain on the
13 premises, and often fails to provide its operations managers with an otherwise off duty,
14 uninterrupted, 30-minute meal period within the first five hours of their shifts, an uninterrupted
15 10-minute rest period for every four hours (or major fraction thereof) of work, and fails to pay
16 employees the resulting vested meal period and rest period premium wages when due.

17 2. Under California law, unless an employee is relieved of all duty during his or her
18 thirty-minute meal period, the meal period shall be considered an "on duty" meal period and
19 counted as hours worked which must be compensate at the employee's regular rate of pay. (8
20 Cal. Code Regs. § 11040 ["Wage Order"], Part 11(A).) An "on duty" meal period shall be
21 permitted only when the nature of the work prevents an employee from being relieved of all duty
22 *and* when by written agreement between the employer and employee an on-the-job meal period
23 is agreed to. The written agreement must state that the employee may, in writing, revoke the
24 agreement at any time. (*Id.*) Here, Plaintiff and the Class were not relieved of all duty during their
25 meal periods and were, therefore, forced to remain "on duty." Further, no on-the-job meal period
26 was agreed to in writing. Plaintiff and the Class were therefore entitled to be, but were not, paid
27 at their regular rate of pay for all "on duty" meal periods. Thus, Plaintiff and Class are due
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1 premium wages.

2 3. If the employer requires the employee to remain at the work site or facility during
3 the meal period, the meal period must be paid as time worked because it is "on-duty." This is true
4 even where the employee is relieved of all work during the meal period. (*Bono Enterprises, Inc.*
5 *v. Bradshaw* (1995) 32 Cal.App.4th 968.) Here, Plaintiff and the Class were required to remain
6 at the office during their meal (and rest) periods; therefore, the meal periods should have been
7 paid. Meal periods should have been, but were not paid. A compliant, timely meal period was
8 not provided. Premium wages are, therefore, due.

9 4. Under California law, when employees are forced to miss a meal or rest period,
10 take a late meal or rest period, take a shortened meal period lasting less than 30 minutes, take an
11 interrupted meal or rest period, are required to take unpaid "on duty" meal periods, or are required
12 to remain on the premises during meal periods without pay, they are immediately entitled to
13 premium wages. Indeed, the California Supreme Court has held that an employee is entitled to
14 the additional hour of pay *immediately* upon being forced to miss a rest or meal period, even in
15 the absence of any request by employees or payment authorization by their supervisors. (*Murphy*
16 *v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1108.)

17 5. Bank of America's pattern, practice, and uniform administration of enterprise-wide
18 policies and practices regarding illegal and improper compensation, as described herein, creates
19 an entitlement to recovery by the Plaintiff and the putative Class for the unpaid balance of the
20 full amount of unpaid and/or withheld compensation, including interest thereon, applicable
21 penalties and premium pay, reasonable attorneys' fees, and costs of suit according to the
22 mandates of the California Labor Code and California Code of Civil Procedure.

23 JURISDICTION AND VENUE

24 6. This Court has jurisdiction over this action under the California Constitution,
25 Article VI, section 10, which grants the Superior Court, "Original jurisdiction in all causes except
26 those given by statute to other courts." The statutes under which Plaintiff brings this action do
27 not specify any other basis for jurisdiction.

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1 7. Venue is proper in this judicial district under California Code of Civil Procedure
2 sections 395(a) and 395.5 as a portion of the acts and injuries complained of herein occurred in
3 this County and Bank of America employed Plaintiff in this County.

4 **THE PARTIES**

5 8. Plaintiff is an individual and resident of the State of California, and at all relevant
6 times was a non-exempt Bank of America Operations Manager in the State of California. At all
7 times pertinent, Plaintiff's employment duties were discharged within the State of California.

8 9. Plaintiff was employed by Bank of America from September 2015 to January 2017
9 as an Operations Manager.

10 10. Bank of America is a Delaware corporation with hundreds of branch offices in
11 California. On information and belief, Bank of America employs an Operations Manager at each
12 and every branch office in California.

13 11. The true names and capacities whether individual, corporate, associate or otherwise
14 of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff at this time. Plaintiff
15 will amend this Complaint to show their true names and capacities once they are ascertained.
16 Plaintiff is informed and believes, and based thereon alleges, that each of said fictitious
17 defendants are responsible in some manner for the acts and occurrences set forth herein, and that
18 the injuries and damages alleged herein were and are the direct and proximate result of the actions
19 of these defendants. At all times herein mentioned, each Defendant participated in the doing of
20 the acts alleged to have been done by the named Defendant, and furthermore, all Defendants were
21 the agents, servants and employees of each of the other Defendants, and at all times herein
22 mentioned, were acting within the course and scope of said agency and employment. At all
23 relevant times, Defendants were members of, and engaged in, a joint venture, partnership and
24 common enterprise, and acting within the course and scope of, and in pursuance of, said joint
25 venture, partnership and common enterprise.

26 12. The use of the term "Defendant" or "Defendants" in any of the allegations in this
27 Complaint, unless specifically alleged otherwise, is intended to include and charge, both jointly
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1 and severally, not only the Defendants identified in this Complaint, but also all Defendants
2 designated as DOES 1 through 100, inclusive, as though the term "Defendants" was followed in
3 each and every instance throughout this Complaint with the phrase "and each of them jointly and
4 severally," including all named Defendants and Defendants included herein and sued under the
5 fictitious names of DOES 1 through 100, inclusive.

6 FACTUAL ALLEGATIONS

7 13. At all relevant times, Bank of America classified Plaintiff and members of the Class
8 as "non-exempt" under IWC Wage Order No. 4 (the applicable Wage Order here), the California
9 Code of Regulations, and the California Labor Code.

10 14. During their employment, Plaintiff and members of the Class were often not
11 authorized or permitted by their supervisors to take an off duty, uninterrupted, full 30-minute
12 meal break within the first five hours of their shifts that exceeded five hours, as required by Labor
13 Code section 512 and IWC Wage Order No. 4.

14 15. During their employment, Plaintiff and members of the Class were often not
15 authorized or permitted by their supervisors to take an uninterrupted, full 10-minute rest break
16 per four hours worked or fraction thereof, as required by Labor Code section 512 and IWC Wage
17 Order No. 4.

18 16. During their employment, Plaintiff and members of the Class were often not
19 relieved of all duties during meal and rest breaks, as required by IWC Wage Order No. 4.

20 17. During their employment, Plaintiff and members of the class were required to
21 remain on the premises for meal breaks without a written agreement for on-the-job paid meal
22 periods.

23 18. Plaintiff's and members of the Class's missed, late, shortened, "on duty," and on-
24 the-premises meal and rest breaks were caused by pressure from supervisors and Bank of
25 America's required business practices, and were not voluntary.

26 19. Whenever Plaintiff's and members of the Class's meal or rest breaks are late,
27 missed, or shortened because of business concerns and thus not voluntary on the part of the
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1 employee. Bank of America is required by statute and Wage Order No. 4 to pay the affected
2 employee a premium wage of one hour of additional pay at his or her hourly rate.

3 20. Whenever Plaintiff's and members of the Class's meal or rest breaks are "on duty"
4 or required to be on-the-premises, their breaks are on-the-clock and must be paid the time spent
5 by the Class Members during these non-complaint breaks, in addition to paying the affected
6 employee a premium wage of one hour of additional pay at his or her hourly rate, as required by
7 the Wage Order and the Labor Code.

8 21. Plaintiff's and members of the Class's right to meal and rest period premium wages
9 vested immediately upon the late, missed, or short meal or rest breaks.

10 22. Plaintiff's and members of the Class's right to meal and rest period premium wages
11 vested immediately upon the nonpayment for time worked for "on duty" or on-the-premises meal
12 or rest breaks.

13 23. During the class period, Bank of America: (1) failed to track and identify which
14 employee meal periods were late, missed, or short; (2) failed to maintain records of whether the
15 missed, late, or short meal period was due to the press of business or voluntary; (3) failed to pay
16 employees' "on duty" or on-the-premises meal or rest breaks; and (4) failed to pay premium
17 wages when required by law.

18 24. As a result, Plaintiff and members of the Class were not paid meal and rest period
19 premium wages for late, missed, short, "on duty," or on-the-premises meal or rest breaks, in
20 violation of California law.

21 25. Bank of America's wholesale failure to comply—or even have a system for
22 complying—with California's meal and rest break laws provided it with a competitive advantage
23 over companies that complied with California law.

24 26. Additionally, Bank of America could have easily implemented a system for
25 automatically paying meal and rest period premiums but chose not to do so. For example, Bank
26 of America could have simply paid operations managers premium wages for their meal breaks as
27 all were "on duty" or on-premises, and simply paid the meal breaks as time worked. Further,
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1 Bank of America could instruct operations managers to notify their supervisors when they
2 received interrupted, short, or late meal or rest breaks. Moreover, on information and belief,
3 software exists where Bank of America can track when breaks are improper, record the reasons
4 therefor, and pay additional premium pay to affected employees. These systems also record those
5 premiums on wage statements.

6 27. Because Bank of America failed to implement a system for tracking meal and rest
7 break violations and recording whether they were voluntary, a presumption arises that the break
8 violations were involuntary and Bank of America owes the premium pay therefor. (*Safeway, Inc.*
9 *v. Superior Court of Los Angeles County* (2015) 238 Cal.App.4th 1138, 1159-1160.)

10 28. Bank of America's policies, practices, and other conduct described herein violated
11 the Labor Code, Wage Order No. 4 (9 Cal. Code Regs., § 11040), and Business & Professions
12 Code sections 17200, et seq.

13 CLASS ALLEGATIONS

14 29. Plaintiff brings this class action under the provisions of California Code of Civil
15 Procedure section 382 on behalf of herself and the proposed Class defined as follows:

16 All of Bank of America's non-exempt California operations managers who worked a
17 shift over five hours in length beginning four years from the date of the filing of this
18 Complaint to the time judgment is entered hereon, and who were not provided with an
19 off duty, uninterrupted, 30 minute meal break that started before the beginning of their
20 sixth hour of work, or were required to remain on the premises during their meal breaks,
21 or were not provided off duty rest periods of at least 10 minutes for every four hours of
22 work or major fraction thereof.

23 30. This case is appropriate for class treatment because Plaintiff can prove the elements
24 of his claims on a class-wide basis using the same evidence as would be used to prove those
25 elements in individual actions alleging the same claims.

26 31. **Numerosity and Ascertainability:** The members of the Class are so numerous that
27 joinder of all members would be unfeasible and not practicable. The membership of the Class is
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1 unknown to Plaintiff at this time; however, it is estimated that the Class number greater than one
2 thousand individuals. The identity of such membership is readily ascertainable via inspection of
3 Defendants' books and records or other approved methods. Similarly, Class members may be
4 notified of the pendency of this action by mail, email, internet postings, and/or publication.

5 **32. Common Questions of Law or Fact:** There are common questions of law and fact
6 as to Plaintiff and all other similarly situated persons, which predominate over questions affecting
7 only individual Class members, including, without limitation:

- 8 a) Whether Bank of America required Plaintiff and members of the Class to remain
9 on site during meal and rest breaks;
- 10 b) Whether Bank of America failed to relieve Plaintiff and members of the Class of
11 all duty during meal and rest breaks;
- 12 c) Whether Bank of America required Plaintiff and members of the Class to miss meal
13 periods, begin meal periods after the beginning of their sixth hour of work, or take
14 meal periods less than 30 minutes long;
- 15 d) Whether Bank of America and Plaintiff and members of the Class agreed in writing
16 to "on duty" meal and rest periods;
- 17 e) Whether Bank of America had a policy which unlawfully failed to monitor and
18 categorize missing, late, or short meal and/or rest periods;
- 19 f) Whether Bank of America's failure to record the reasons for missed, short, or late
20 meal and/or periods creates a presumption that all such periods were missed, short,
21 or late involuntarily;
- 22 g) Whether Bank of America had a policy or practice of not automatically paying
23 Plaintiff and members of the Class required meal and rest period premium wages
24 for involuntarily missed, short, and/or late meal or rest periods;
- 25 h) Whether Bank of America's failure to have a policy or practice for automatically
26 paying the Class members required meal and rest period premium wages for non-

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1 complaint meal or rest periods violated the California Labor Code and applicable
2 Wage Order;

3 i) Whether Plaintiff and the Class members were damaged by Bank of America's
4 conduct;

5 j) Whether Bank of America's actions or inactions violated the statutes invoked
6 herein;

7 k) Whether Plaintiff is entitled to a preliminary and permanent injunction enjoining
8 Bank of America's conduct; and

9 l) Whether restitutionary disgorgement of the value to Bank of America non-
10 complaint meal and/or rest periods is appropriate under Business & Professions
11 Code section 17203.

12 33. **Predominance of Common Questions:** Common questions of law and fact
13 predominate over questions that affect only individual members of the Class because all members
14 of the Class were subject to the identical policies and practices. The common questions of law
15 set forth above are numerous and substantial and stem from Defendants' practices applicable to
16 each individual Class member. As such, these common questions predominate over individual
17 questions concerning each individual Class member's showing as to his or her eligibility for
18 recovery or as to the amount of his or her damages.

19 34. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the
20 Class because, among other things, Plaintiff and all Class members were comparably injured
21 through Bank of America's misconduct described above. As alleged herein, Bank of America
22 subjected all of the members of the class to similar violations of the California Industrial Welfare
23 Commission Wage Orders (California Code of Regulations), the California Labor Code, and
24 California Business and Professions Code section 17200, which prohibits unlawful and/or unfair
25 business practices.

26 35. **Adequacy of Representation:** Plaintiff is an adequate class representative because
27 he is fully prepared to take all necessary steps to represent fairly and adequately the interests of
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1 the members of the Class, and because his interests do not conflict with the interests of other
2 Class members they seek to represent. Moreover, Plaintiff's attorneys are ready, willing and able
3 to fully and adequately represent Plaintiff and the members of the Class. Plaintiff's attorneys are
4 experienced in complex class action litigation, and they will prosecute this action vigorously.
5 Plaintiff and his counsel, who are experienced class action lawyers, will fairly and adequately
6 protect the Class members' interests.

7 36. Superiority: The nature of this action and the laws available to Plaintiff and
8 members of the Class make the class action format a particularly efficient and appropriate
9 procedure to redress the violations alleged herein. If each Class member were required to file an
10 individual lawsuit, Bank of America would necessarily gain an unconscionable advantage since
11 it would be able to exploit and overwhelm the limited resources of each individual plaintiff with
12 its vastly superior financial and legal resources. Moreover, the prosecution of separate actions by
13 the individual Class members, even if possible, would create a substantial risk of inconsistent or
14 varying verdicts or adjudications with respect to the individual Class members against Bank of
15 America, and which would establish potentially incompatible standards of conduct for Bank of
16 America and/or legal determinations with respect to individual Class members which would, as
17 a practical matter, be dispositive of the interests of the other Class members not parties to
18 adjudications or which would substantially impair or impede the ability of the Class members to
19 protect their interests. Further, the claims of the individual members of the Class are not
20 sufficiently large to warrant vigorous individual prosecution considering all of the concomitant
21 costs and expenses attending thereto.

22 37. A community of interest also exists in ensuring that the relief granted is sufficient
23 to adequately compensate the members of the Class.

24 38. A practice or policy of not paying meal and rest period premiums presents an issue
25 "suitable for class treatment." (*Safeway, supra*, 238 Cal.App.4th at 1159.)

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FIRST CAUSE OF ACTION

Failure to Provide Compliant Meal Breaks

[Cal. Lab. Code §§ 226.7 and 512; IWC Wage Order No. 4 § 11]

39. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as though set forth in full.

40. California Labor Code section 512(a) sets forth the relevant meal period requirement, as follows: "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes...."

41. California Labor Code section 226.7 provides for a remedy for non-complaint meal periods as follows:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

42. The Wage Order likewise sets forth the meal period requirements and penalties above for workers, as follows:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes...Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time. Unless the employee is relieved of all duty during a 30 minute

1 though set forth in full.

2 47. The Wage Order sets forth the rest period requirements and penalties above for
3 workers in professional, technical, clerical, mechanical and similar occupations, as follows:

4 (A) Every employer shall authorize and permit all employees to take rest periods, which
5 insofar as practicable shall be in the middle of each work period. The authorized rest
6 period time shall be based on the total hours worked daily at the rate of ten (10) minutes
7 net rest time per four (4) hours or major fraction thereof.....

8 ...

9 (B) If an employer fails to provide an employee a rest period in accordance with the
10 applicable provisions of this order, the employer shall pay the employee one (1) hour of
11 pay at the employee's regular rate of compensation for each workday that the rest period is
12 not provided.

13 48. California Labor Code section 226.7 provides for a remedy for non-compliant rest
14 periods as follows:

15 (a) No employer shall require any employee to work during any meal or rest period
16 mandated by an applicable order of the Industrial Welfare Commission.

17 (b) If an employer fails to provide an employee a meal period or rest period in accordance
18 with an applicable order of the Industrial Welfare Commission, the employer shall pay the
19 employee one additional hour of pay at the employee's regular rate of compensation for
20 each work day that the meal or rest period is not provided.

21 49. Based on all allegations set forth in paragraphs 13-28, Defendants' rest break
22 policies are entirely inadequate and fail to comply with California law.

23 50. Pursuant to Labor Code § 226.7(b) and IWC Wage Order No. 4, Plaintiff and each
24 member of the putative Class is entitled to recover from Defendants the sum of one hour of pay
25 at their regular rate for each noncompliant rest period.

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THIRD CAUSE OF ACTION

Failure to Accurately Report Itemized Time and Wages

[Labor Code § 226, 1174; IWC Wage Order No. 4 § 7]

51. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as though set forth in full.

52. Labor Code § 226 and Wage Order No. 4 require Defendants to provide to Plaintiff and the members of the Class, at the time of the payment of wages, "an accurate itemized statement" in writing that states, *inter alia*, all wages earned, all applicable pay rates, and all hours worked.

53. Labor Code § 1174 requires Defendants to keep records payroll records showing the hours worked daily by and the wages paid to employees. Labor Code 1174.5 provides that "[a]ny person employing labor who willfully fails to maintain the records required by subdivision ... accurate and complete records required by subdivision (d) of Section 1174... shall be subject to a civil penalty of five hundred dollars (\$500)."

54. The wage statements presented to Plaintiff and the Class members were and are not correct or accurate in that they failed to account for all time worked, including premium wages for missed, interrupted, late, "on duty," and on-the-premises meal and/or rest breaks.

55. As a result of these violations, Plaintiff and the members of the Class suffered actual injury, insofar as they were completely dependent on Defendants to capture and report hours worked, calculate proper rates of pay, and identify and categorize "on duty," missed, late, and short meal breaks. Defendants' failure to accurately report these items resulted in the employees not receiving all compensation owed to them, in violation of California law, as set forth herein.

56. As a result of the above, Plaintiff and members of the Class are entitled to the statutory penalty set forth in subdivision (e) of section 226, to the civil penalty set forth in section 226.3, an injunction against Defendants, under subdivision (h), and the civil penalties imposed by section 1174.5, as well as an award of costs and reasonable attorney's fees.

FOURTH CAUSE OF ACTION**Failure to Pay All Wages Due Upon Discharge****{Labor Code § 203}**

57. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as though set forth in full.

58. California law requires that employees whose employment is terminated be paid all wages earned and unpaid, at the time of the worker's separation from the employer. Plaintiff recently separated from Defendants and was not paid all earned and unpaid wages at the time of his termination of employment, including unpaid minimum wages, unpaid overtime, unpaid reporting time wages, and unpaid premiums for missed meal and rest breaks.

59. At all times pertinent hereto, Defendants had it within their abilities to capture all time worked and consult their business records and properly calculate and pay all of the said unpaid wages, at the time of Plaintiff's employment ended. However, Defendants, and each of them, willfully and intentionally failed and refused to pay the earned and unpaid wages to Plaintiff. Plaintiff alleges, on information and belief, that Defendants have similarly treated the other employees whose employment with Defendants has terminated within the three years prior to the filing of this complaint.

60. Plaintiff did not hide himself, or in any manner refuse or obfuscate any attempt by Defendants to tender the balance of the earned and unpaid wages. Plaintiff alleges, on information and belief, that the same is true of the other employees whose employment with Defendants has terminated within the three years prior to the filing of this complaint.

61. Pursuant to California law, Plaintiff and the other Class Members whose employment has terminated within the last three years, are entitled to a penalty equal to their regular daily rate, up to a maximum of 30 days.

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FIFTH CAUSE OF ACTION**Failure to Reimburse for Business Expenses****[Cal. Lab. Code § 2802]**

62. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as though set forth in full.

63. Under California Labor Code § 2802, employees are entitled to be indemnified "for all necessary expenditures or losses incurred by them in direct consequence of the discharge of their duties."

64. Bank of America has failed to reimburse Plaintiff and members of the Class for their ordinary business expenses that were incurred on behalf of and for the benefit of Bank of America including but not limited to cell phones and other expenses to be determined in discovery.

65. Plaintiff and members of the Class are, therefore, entitled to be indemnified, pursuant to Labor Code § 2802(b), with interest at the statutory rate, plus attorneys' fees, penalties, and costs.

SIXTH CAUSE OF ACTION**Unfair Competition****[Business & Professions Code § 17200, *et. seq.*]**

66. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as though set forth in full.

67. Defendants' failure to provide lawful meal breaks, authorize and provide lawful rest breaks, and/or failure to pay vested meal and rest period premium wages constitutes an unlawful and unfair business practice under Bus. & Prof. Code § 17200, *et seq.*, as it violates the provisions of the Labor Code and Wage Order No. 4 as described above.

68. Defendants' conduct described herein is "unfair" under Bus. & Prof. Code § 17200 because it is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious, and any utility of such practices is outweighed by the harm caused to the Plaintiff, the

1 Class, and the public.

2 69. Defendants' employment practices were also unfair because they undermine
3 California's wage and hour laws, which reflect the strong public policy favoring protection of
4 workers' general welfare and society's interest in a stable job market.

5 70. The gravity of harm Defendants' employment practices places on its employees
6 substantially outweighs any utility, reasons, justifications, and motives Defendants can provide
7 for these practices.

8 71. Defendants' wrongful conduct is ongoing and part of a pattern or generalized
9 course of conduct repeated on thousands of occasions yearly.

10 72. By and through their unfair and unlawful business practices described herein,
11 Defendants have obtained valuable property, money, and services from Plaintiff, members of the
12 Class, and the general public, and have deprived them of valuable rights and benefits guaranteed
13 by law, all to their detriment.

14 73. Plaintiff seeks order requiring Defendants to make full restitution and to disgorge
15 their ill-gotten gains wrongfully obtained from members of the Class as permitted by Bus. &
16 Prof. Code § 17203.

17 74. Pursuant to Bus. & Prof. Code § 17203, Plaintiff seeks an injunction on behalf of
18 the general public enjoining Defendants from continuing to engage in the unfair competition
19 described above, or any other act prohibited by law.

20 75. Additionally, Plaintiff and the Class members seek an order requiring Defendants
21 to pay attorneys' fees pursuant to Cal. Civ. Code § 1021.5.

22 **SEVENTH CAUSE OF ACTION**

23 **Civil Penalties Under the Private Attorney General Act of 2004**

24 **[Labor Code §§ 2698, *et seq.*]**

25 76. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as
26 though set forth in full.

27 77. Under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code
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1 §§ 2698, et seq., any employee aggrieved by an employer's violation of the Labor Code has the
2 right to file an action on behalf of all aggrieved employees for the civil penalties established by
3 § 2699 and/or other Labor Code sections.

4 78. Plaintiff is an employee who has been aggrieved by Defendants' violations of the
5 aforementioned Labor Code provisions, and brings this cause of action on behalf of himself and
6 as a representative of other similarly aggrieved employees who were subject to Defendants'
7 wrongful conduct described above.

8 79. The aforementioned wrongful acts and omissions of Defendants were violations of
9 the Labor Code, as set forth herein.

10 80. During the relevant time period, Defendants engaged in each of the wrongful acts
11 and/or omissions detailed above. As a result, Plaintiff and Class Members are entitled to one
12 hundred dollars (\$100) for each initial Labor Code violation and two hundred dollars (\$200) for
13 each subsequent violation, and/or any and all other penalties permitted by PAGA, Labor Code
14 § 2699(f)(2).

15 81. On March 22, 2019, Plaintiff provided timely written notice to the Labor and
16 Workforce Development Agency ("LWDA") pursuant to Labor Code § 2699.3. If the LWDA
17 refuses to investigate the above claims, Plaintiff will seek leave to amend the Complaint to claim
18 penalties under PAGA.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf
21 this suit is brought against Defendants, jointly and severally, and for an Order follows:

- 22 a) certifying the proposed Class defined herein;
- 23 b) appointing Plaintiff as Class Representative;
- 24 c) appointing Plaintiff's counsel as Class Counsel;
- 25 d) declaring Defendants' conduct to be unlawful;
- 26 e) awarding compensatory damages in an amount according to proof with interest
- 27 thereon
- 28

- 1 f) On the First Cause of Action, for damages and/or penalties, as provided by law, in
2 an amount according to proof at the time of trial;
- 3 g) On the Second Cause of Action, for damages and/or penalties, as provided by law,
4 in an amount according to proof at the time of trial;
- 5 h) On the Third Cause of Action, for damages and/or penalties, as provided by law,
6 in an amount according to proof at the time of trial;
- 7 i) On the Fourth Cause of Action, for all earned wages due and owing at the time of
8 separation from Defendants, plus waiting time penalties, pursuant to Labor Code
9 § 203, according to proof at the time of trial;
- 10 j) On the Fifth Cause of Action for reimbursement of all necessary business expenses
11 advanced by Plaintiff and the Class members, in an amount according to proof at
12 the time of trial;
- 13 k) On the Sixth Cause of Action, for restitution to Plaintiff and other similarly situated
14 members of the general public of all funds unlawfully acquired by Defendants by
15 means of any acts or practices declared by the Court to be in violation of Bus. &
16 Prof. Code §§ 17200 *et seq.*, for an injunction to prohibit Defendants from engaging
17 in the unfair business practices complained of herein, for an injunction requiring
18 Defendants to give notice, to persons to whom restitution is owing, of the means
19 by which to file and make claim for restitution;
- 20 l) On the Seventh Cause of Action, for penalties pursuant to Labor Code §§ 2698-
21 2699;
- 22 m) awarding penalties and all available relief pursuant to the Labor Code and Wage
23 Order No. 4;
- 24 n) preliminarily and permanently enjoining Defendants from engaging in the unlawful
25 and unfair practices alleged herein;
- 26 o) awarding attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 226.7,
27 2802, and Code of Civil Procedure § 1021.5; and
28

1 p) granting such other and further relief as this Court deems just and proper.

2
3 **DEMAND FOR JURY TRIAL**

4 Plaintiffs hereby request a trial by jury for all matters so triable in this action.

5
6 Dated: March 22, 2019

MARLIN & SALTZMAN, LLP

7
8
9 By: 

10 Bradley R. Fagnani, Esq.
11 Stanley D. Saltzman, Esq.
12 Attorneys for Plaintiffs and the Class
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Exhibit C

859 HARRISON STREET ST. CA 94107

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Stanley D. Saltzman (SBN 90058) Bradley R. Fagnani (SBN 261330) MARLIN & SALTZMAN, LLP 29800 Agoura Road, Suite 210 Agoura Hills, CA 91301 TELEPHONE NO. (818) 991-8080 FAX NO. (818) 991-8081 ATTORNEY FOR (Name) Plaintiff		FILED 2019 MAR 25 A 10:28 CLERK OF THE SUPERIOR COURT COUNTY OF CONTRA COSTA, CA JUDGE: _____ DEPT: _____
SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA STREET ADDRESS 1020 Ward Street MAILING ADDRESS 1020 Ward Street CITY AND ZIP CODE Martinez, CA 94553 BRANCH NAME A. F. BRAY COURTHOUSE		
CASE NAME: MENDOZA V. BANK OF AMERICA		
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 610-00575

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 (18) <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 (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (08) <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)

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. ☐ Large number of separately represented parties d. ☒ Large number of witnesses
- b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☒ Substantial amount of documentary evidence f. ☐ 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 (7)
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 22, 2019

Bradley R. Fagnani

(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.

Page 1 of 1

Form Adopted for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Legal Solutions Plus

Cal. Rules of Court, rules 3.30, 3.220, 3.400-3.403, 3.740,
 Cal. Standards of Judicial Administration, std. 3.10

Exhibit C

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint *(not specified above)* (42)
Declaratory Relief Only
Injunctive Relief Only *(non-harassment)*
Mechanics Lien
Other Commercial Complaint Case *(non-tort/non-complex)*
Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition



SUPERIOR COURT - MARTINEZ
COUNTY OF CONTRA COSTA
MARTINEZ, CA 94553



MIGUEL MENDOZA VS BANK OF AMERICA

MSC19-00575

NOTICE OF ASSIGNMENT TO DEPARTMENT THIRTY-NINE FOR CASE
MANAGEMENT DETERMINATION

THIS FORM, A COPY OF THE NOTICE TO PLAINTIFFS, THE ADR INFORMATION SHEET, AND A BLANK CASE MANAGEMENT STATEMENT ARE TO BE SERVED UPON ALL OPPOSING PARTIES, ALL PARTIES SERVED WITH SUMMONS AND COMPLAINT/CROSS-COMPLAINT.

1. This matter has been assigned to Department 39, Judge E. Weil presiding, for all purposes; Department 39 is designated as the complex litigation department of the Court and as such (a) hears all cases wherein a designation of complex case has been made and (b) conducts hearings, in cases that this court determines, on a preliminary basis may be complex, to determine whether the case should remain in the complex litigation program.
2. All counsel are required to appear in Dept. 39 on 06/05/19 at 8:30 a.m.
 - (a) If the case has been designated as complex, and no counter-designation has been filed, the Court will hold its first case management conference at that time.
 - (b) If the case has been assigned to Department 39 on a preliminary basis the Court will hold a hearing to determine if the matter is, or is not, complex. If the matter is determined to be complex, the Court will then proceed with the first case management conference.
3. Each party shall file and serve a Case Management Conference Statement five (5) days before this hearing and be prepared to participate effectively in the Conference, including being thoroughly familiar with the case and able to discuss the suitability of the case for private mediation, arbitration or the use of a special master or referee.
4. Prior to the conference counsel for plaintiff shall meet and confer with counsel for each other party in an effort to precisely define the the issues in the case, discuss the possibility of early mediation, the identities of possible other parties, and their respective plans for discovery.
5. Until the time of the conference the following INTERIM ORDERS shall be in effect:
 - A. Plaintiff shall diligently proceed in locating and serving each and every defendant. It is the Court's intention that each party be served in sufficient time to have entered an appearance within the time allowed by law and to attend the first conference.
 - B. All discovery shall be stayed excepting as all parties to the action might otherwise stipulate or the Court otherwise order.
 - C. No party shall destroy any writing or other evidence in its possession or under its control which bears in any way upon the matters which are the subject of this litigation.

Exhibit D

- D. Within the time for any party to file an answer or demurrer such party may alternatively file a notice of general appearance. In such event the time for filing of an answer or demurrer shall be extended to twenty (20) days following the first conference unless the Court shall, at that time, set a different schedule.
- E. Counsel for each party shall do a conflict check to determine whether such counsel might have a possible conflict of interest as to any present or contemplated future party.

BY ORDER OF THE COURT

Exhibit D

The ADR Department is located at:

Spinetta Family Law Center (locations/spinetta.aspx)
751 Pine Street
Martinez, CA 94553
(925) 608-2075
(925) 608-2109 Fax
adrweb@contracosta.courts.ca.gov (<mailto:adrweb@contracosta.courts.ca.gov>)

There are many ways to settle disputes without going to trial. ADR stands for Alternative Dispute Resolution. It refers to processes that are "alternatives" to having a trial to resolve your dispute. Mediation is the leading alternative, but arbitration and neutral case evaluation are also common options. Detailed rules for these options are found in the Court's Local Rules starting at Local Rule 3.200 ([link](#)) Different ADR processes are designed for different disputes, or different phases of the same dispute, and provide different results. You can choose the process that will best meet your objectives. Here are some specific suggestions for each process offered by the Contra Costa County Superior Court.

Mediation (civil/mediation.aspx)

You may choose mediation because you want to maintain control of the outcome of your dispute, but are having trouble speaking to the other side. You may also choose mediation because there is a relationship you wish to preserve. For example, to keep a business relationship with a customer, or an employee might choose mediation to resolve a dispute with an employer because they do not wish to look for a new job. A mediator will work with both sides, together and separately, trying to help you reach resolution. [More Information] (civil/mediation.aspx)

Judicial Arbitration (Non-binding) (civil/judicial-arbitration.aspx)

You may choose non-binding arbitration because you would like to have a neutral decision-maker hear your case, while maintaining the right to go to trial. The arbitrator will review evidence and arguments very much like a trial and will make a decision (award). An arbitrator's award can be helpful to parties who are disagreeing about liability or the law. Once you have received an award from the arbitrator you can decide whether to accept or reject the award. If you decide to reject the award, you can file for a new trial (Trial de Novo). While the arbitrator will not help you communicate or negotiate, you can negotiate your own agreement outside of the arbitration, go to a mediator for assistance, or proceed with a trial. [More Information] (civil/judicial-arbitration.aspx)

Neutral Case Evaluation (civil/neutral-case-evaluation.aspx)

A neutral evaluator gives an independent opinion about what would happen if the case went to trial, and can provide all parties with important feedback regarding the weaknesses and strengths of their case. The evaluator does not facilitate agreement discussions or decide who is right or wrong. After the case evaluation, you can use the information you learned to settle the case or enter a different ADR process such as mediation. Some parties find a neutral case evaluation particularly helpful in assessing personal injury damages or the extent of business losses. [More Information] (civil/neutral-case-evaluation.aspx)

Settlement Mentor (civil/settlement-conference.aspx)

An experienced lawyer selected by the ADR Program at the request of the Judge will help parties, before the scheduled trial or settlement conference, explore ways to settle their case. If settlement is not possible, the scheduled trial or conference will begin, often on the same day or soon after. A settlement mentor can help parties assess the risks they face in going to trial. The settlement mentor conference is not confidential, and your mentor can share information with the judge. [More Information] (civil/settlement-conference.aspx)

What are the advantages of using ADR?

ADR can have a number of advantages over traditional court litigation.

- **ADR can save time.** Even in a complex case, a dispute can be resolved through ADR in a matter of months or weeks while a lawsuit can take years.
- **ADR can save money.** By producing earlier settlements, ADR can save parties and courts money that might otherwise be spent on litigation costs (attorney's fees and court expenses.)
- **ADR provides more participation.** Parties have more opportunity with ADR to express their own interests and concerns, while litigation focuses exclusively on the parties' legal rights and responsibilities.
- **ADR provides more control and flexibility.** Parties can choose the ADR process most appropriate for their particular situation and that will best serve their particular needs.
- **ADR can reduce stress and provide greater satisfaction.** ADR encourages cooperation and communication, while discouraging the adversarial atmosphere found in litigation. Surveys of disputants who have gone through ADR have found that satisfaction with ADR is generally high, especially among those with extensive ADR experience.

For Parties

- ▶ ADR-201 Selection Form (docs/ADR-201_Selection_Form_FILLABLE.pdf)
- ▶ CV-655b Stip and Order Unlimited (docs/CV-655b_Stip_and_Order_Unlimited.pdf)
- ▶ CV-659d ADR Case Mgmt Stip (Limited) (docs/CV-659d%20ADR%20Case%20Mgmt%20Stip%20(Limited).pdf)

Mediation Forms

- ▶ ADR-303 Mediation Instruction-parties (docs/ADR-303_Med_Instruction-parties_FILLABLE.pdf)
- ▶ ADR-306 Mediation Survey (docs/ADR-306_Mediation_Survey.pdf)
- ▶ ADR-313 Mediation Worksheet (docs/ADR-313-INFO_Mediation_Worksheet_FILLABLE.pdf)

Arbitration Forms

- ▶ ADR-403 Arbitration Instruction (docs/ADR-403_Arb_Instruction_FILLABLE.pdf)
- ▶ ADR-406 Arbitration Survey (docs/ADR-406_Arbitration_Survey.pdf)

Neutral Case Evaluation Forms

- ▶ ADR-503 NCE Instruction-parties (docs/ADR-503_NCE_Instruction-parties_FILLABLE.pdf)
- ▶ ADR-506 NCE Survey (docs/ADR-506_NCE_Survey.pdf)

Settlement Mentor Forms

- ▶ ADR-206 Settlement Mentor Survey (docs/ADR-206_Settlement_Mentor_Survey_FILLABLE.pdf)

For Panel Members

- ▶ ADR-202 Panel Application Form (docs/ADR-202_Panel_Application_Form.pdf)
- ▶ ADR-203 Panel Update Form (docs/ADR-203_Panel_Update_Form.pdf)
- ▶ ADR-302 Info Sheet-Mediator (docs/ADR-302-INFO_Mediation_Info_Sheet.pdf)
- ▶ ADR-301 Mediation Notice of Date Time & Place (docs/ADR-301_Med_Notice_of_Date_Time_Place_FILLABLE.pdf)
- ▶ ADR-305 Mediator Report (docs/ADR-305_Mediator_Report_FILLABLE.pdf)
- ▶ ADR-402 Info Sheet-Arbitrator (docs/ADR-402-INFO_Arbitrator_Info_Sheet.pdf)
- ▶ ADR-401 Arbitration Notice of Date Time & Place (docs/ADR-401_Arb_Notice_of_Date_Time_Place_FILLABLE.pdf)
- ▶ ADR-405 Arbitration Award (docs/ADR-405_Arb_Award_FILLABLE.pdf)
- ▶ ADR-501 NCE Notice of Date Time & Place (docs/ADR-501_NCE_Notice_of_Date_Time_Place_FILLABLE.pdf)
- ▶ ADR-502 Info Sheet-NCE (docs/ADR-502-INFO_NCE_Info_Sheet.pdf)
- ▶ ADR-505 Evaluator Report (docs/ADR-505_NCEvaluator_Report_FILLABLE.pdf)

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):		FOR COURT USE ONLY	
TELEPHONE NO.: FAX NO. (Optional):			
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF			
STREET ADDRESS:			
MAILING ADDRESS:			
CITY AND ZIP CODE:			
BRANCH NAME:			
PLAINTIFF/PETITIONER:			
DEFENDANT/RESPONDENT:			
CASE MANAGEMENT STATEMENT (Check one): <input type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)		CASE NUMBER:	
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: Time: Dept.: Div.: Room: Address of court (if different from the address above): <input type="checkbox"/> Notice of Intent to Appear by Telephone, by (name):			

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties (answer one):**
 - a. ☐ This statement is submitted by party (name):
 - b. ☐ This statement is submitted jointly by parties (names):
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
 - a. The complaint was filed on (date):
 - b. ☐ The cross-complaint, if any, was filed on (date):
3. **Service (to be answered by plaintiffs and cross-complainants only)**
 - a. ☐ All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
 - b. ☐ The following parties named in the complaint or cross-complaint
 - (1) ☐ have not been served (specify names and explain why not):
 - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
 - (3) ☐ have had a default entered against them (specify names):
 - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):
4. **Description of case**
 - a. Type of case in ☐ complaint ☐ cross-complaint (Describe, including causes of action):

Exhibit F

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request ☐ a jury trial ☐ a nonjury trial. (If more than one party, provide the name of each party requesting a jury trial):

6. Trial date

a. ☐ The trial has been set for (date):

b. ☐ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

a. ☐ days (specify number):

b. ☐ hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☐ by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

f. Fax number:

e. E-mail address:

g. Party represented:

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference (specify code section):

10. Alternative dispute resolution (ADR)

a. ADR information package. Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel ☐ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.

b. Referral to judicial arbitration or civil action mediation (if available).

(1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3) ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. (specify exemption):

Exhibit F

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
--	--------------

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

11. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
- (1) Name of case:
- (2) Name of court:
- (3) Case number:
- (4) Status:
- ☐ Additional cases are described in Attachment 13a.
- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (*name party*):

14. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- ☐ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

16. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☐ The following discovery will be completed by the date specified (*describe all anticipated discovery*):
- | <u>Party</u> | <u>Description</u> | <u>Date</u> |
|--------------|--------------------|-------------|
| | | |
- c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

17. Economic litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

18. Other issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

19. Meet and confer

- a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

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
Miguel Mendoza

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Marlin & Saltzman LLP
Stanley D. Saltzman, Esq. (SBN 90058) and Bradley R. Fagnani, Esq. (SBN 261330)
29800 Agoura Road, Suite 210, Agoura Hills, CA 91301, Tel: (818) 991-8080

DEFENDANTS
Bank of America Corporation and DOES 1 through 100, inclusive

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

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

Attorneys *(If Known)*
McGuireWoods LLP, Matthew C. Kane, Esq. (SBN 171829), 1800 Century Park East, 8th
Floor, Los Angeles, CA 90067, Tel: (310) 315-8200; Sylvia J. Kim, Esq. (SBN 258363), Two
Embarcadero Center, Suite 1300, San Francisco, CA 94111, Tel: (415) 844-9944

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)*

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act
120 Marine	310 Airplane	690 Other	423 Withdrawal 28 USC § 157	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability	LABOR	PROPERTY RIGHTS	400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	710 Fair Labor Standards Act	820 Copyrights	410 Antitrust
150 Recovery of Overpayment of Veteran's Benefits	330 Federal Employers' Liability	720 Labor/Management Relations	830 Patent	430 Banks and Banking
151 Medicare Act	340 Marine	740 Railway Labor Act	835 Patent—Abbreviated New Drug Application	450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	751 Family and Medical Leave Act	840 Trademark	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	<input checked="" type="checkbox"/> 790 Other Labor Litigation	SOCIAL SECURITY	470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	355 Motor Vehicle Product Liability	791 Employee Retirement Income Security Act	861 HIA (1395ff)	480 Consumer Credit
190 Other Contract	360 Other Personal Injury	IMMIGRATION	862 Black Lung (923)	490 Cable/Sat TV
195 Contract Product Liability	362 Personal Injury -Medical Malpractice	462 Naturalization Application	863 DIWC/DIWW (405(g))	850 Securities/Commodities/Exchange
196 Franchise	CIVIL RIGHTS	465 Other Immigration Actions	864 SSID Title XVI	890 Other Statutory Actions
REAL PROPERTY	PRISONER PETITIONS		865 RSI (405(g))	891 Agricultural Acts
210 Land Condemnation	HABEAS CORPUS		FEDERAL TAX SUITS	893 Environmental Matters
220 Foreclosure	440 Other Civil Rights		870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act
230 Rent Lease & Ejectment	441 Voting		871 IRS—Third Party 26 USC § 7609	896 Arbitration
240 Torts to Land	442 Employment			899 Administrative Procedure Act/Review or Appeal of Agency Decision
245 Tort Product Liability	443 Housing/Accommodations			950 Constitutionality of State Statutes
290 All Other Real Property	445 Amer. w/Disabilities—Employment			
	446 Amer. w/Disabilities—Other			
	448 Education			
	OTHER			
	540 Mandamus & Other			
	550 Civil Rights			
	555 Prison Condition			
	560 Civil Detainee—Conditions of Confinement			

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)*:
28 U.S.C. §§ 1332 and 1441
Brief description of cause:
Claims for meal and rest break violations and related penalties

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 Laurel Beeler

DOCKET NUMBER 3:18-cv-01202-LB; 3:18-cv-01983-LB

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only)

☒ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

☐ EUREKA-MCKINLEYVILLE

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.

CERTIFICATE 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 May 8, 2019, I served the following document described as **CIVIL COVER SHEET** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Stanley D. Saltzman
 Bradley R. Fagnani
 MARLIN & SALTZMAN LLP
 29800 Agoura Road, Suite 210
 Agoura Hills, California 91301
 Telephone: (818) 991-8080
 Facsimile: (818) 991- 8081

Attorneys for Plaintiff Miguel Mendoza

☒ **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 FACSIMILE:** At approximately _____, I caused said document(s) to be transmitted by facsimile pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was 310.315.8210. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The document was transmitted by facsimile transmission, and the sending facsimile machine properly issued a transmission report confirming that the transmission was complete and without error.

☐ **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 May 8, 2019, 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 Sued by Ex-Manager Over Allegedly Unpaid, On-Duty Breaks](#)
