

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**IN RE: BANK OF AMERICA
WAGE AND HOUR EMPLOYMENT
PRACTICES LITIGATION**

(This document relates to all cases)

MDL No. 2138

Case No: 10-md-2138-JWL-KGS

CONSOLIDATED COMPLAINT

Plaintiffs Amanda Brawner, Judy Chang, Sonia Fortner, Edward Franco, Juan Franco, Andrew Gordillo, Gynon Hamilton, Julia Hernandez, Sanaz Masourian, Susie Miller, Brian Allen Rush and Curtis Schreiber, on behalf of themselves, and all others similarly situated, by and through counsel, for their Consolidated Complaint against Defendants Bank of America, N.A., and Bank of America, Corporation, (collectively, “BOA” or “Defendants”) hereby state and allege as follows:

PROCEDURAL BACKGROUND

1. This MDL proceeding brings together numerous actions brought against BOA on behalf of current and former non-exempt retail branch and call center employees seeking damages, including back pay for unpaid wages, overtime and other related remedies, penalties and restitution.

2. BOA moved for transfer and consolidation of these cases for pretrial purposes pursuant to [28 U.S.C. § 1407](#), and on April 14, 2010, the Judicial Panel on Multidistrict Litigation transferred these actions to this Court. Subsequently, this Court issued its Scheduling Order No. 1 on May 14, 2010 and instructed Plaintiffs to “file their consolidated class action/collective action complaint(s).” ([Doc. No. 33](#)). Plaintiffs, therefore, submit this

Consolidated Complaint, on behalf of the Plaintiffs in all transferred actions, and on behalf of the classes defined below.

NATURE OF THE ACTION

3. BOA is one of the world's largest financial institutions and provides financial services – including banking, lending, credit card and insurance services – to individual and business consumers nationwide.

4. BOA's policy and practice is to deny earned wages, including overtime pay, to its non-exempt hourly employees at its retail branch and call center facilities throughout the country. In particular, BOA requires its employees to be present and perform work in excess of eight hours per day and/or forty hours per work week but fails to pay them overtime accordingly, and further fails to pay for all straight time hours worked. Also, BOA requires such employees to perform work tasks during unpaid breaks, fails to provide meal and rest breaks, fails to timely compensate employees for all wages earned and vacation time accrued at termination, and fails to properly and accurately calculate overtime and report wages earned, hours worked, and wage rates. BOA additionally fails to properly pay overtime on non-discretionary bonuses provided to its non-exempt employees.

5. BOA's deliberate failure to pay its retail branch and call center employees their earned wages and overtime compensation violates the federal Fair Labor Standards Act ("FLSA"), the California Labor Code, the California Business & Professions Code, the Revised Code of Washington and the Washington Administrative Code, as well as other state labor laws nationwide.

6. Plaintiffs Amanda Brawner, Sonia Fortner, Edward Franco, Juan Franco, Gynon Hamilton and Julia Hernandez (the "FLSA Retail Branch Named Plaintiffs") bring a collective action claim under § 216(b) of the FLSA against BOA for unpaid overtime compensation and

related damages on behalf of themselves and all other similarly situated non-exempt retail branch employees nationwide.

7. Plaintiffs Judy Chang, Juan Franco and Brian Rush (the “California Retail Branch Class Representatives”) bring a class action under [Federal Rule of Civil Procedure 23](#) against BOA on behalf of all non-exempt retail branch employees employed in California for unpaid compensation; unpaid overtime compensation; penalties for failing to provide meal and rest periods, failing to provide itemized wage statements and failing to provide vacation pay; waiting time penalties and other related penalties and damages under the California Labor Code and California Business & Professions Code.

8. Plaintiffs Sanaz Masourian and Susie Miller (the “Washington Retail Branch Class Representatives”) bring a class action under [Federal Rule of Civil Procedure 23](#) against BOA on behalf of all non-exempt retail branch employees employed in Washington for unpaid compensation, unpaid overtime compensation, failure to provide meal and rest breaks, failure to provide accurate pay information and related penalties and damages under Washington law.

9. Plaintiff Curtis Schreiber (the “FLSA Call Center Named Plaintiff”) brings a collective action claim under § 216(b) of the FLSA against BOA for unpaid overtime compensation and related damages on behalf of himself and all other similarly situated non-exempt call center employees nationwide.

10. Plaintiff Andrew Gordillo (the “California Call Center Class Representative”) brings a class action under [Federal Rule of Civil Procedure 23](#) against BOA for unpaid compensation, unpaid overtime compensation, failure to provide itemized wage statements, failure to provide vacation pay, waiting time penalties and other related penalties and damages under the California Labor Code and California Business & Professions Code, on behalf of

himself and all other similarly situated non-exempt call center employees employed in California.

PARTIES

11. Defendant Bank of America, N.A. is a nationally chartered bank with its principal place of business in North Carolina. Bank of America, N.A. does business in this judicial district and nationwide.

12. Defendant Bank of America, Corporation is a Delaware corporation with its principal place of business in North Carolina. Bank of America, Corporation does business in this judicial district and nationwide.

13. Plaintiff Amanda Brawner is a current resident of Overland Park, Kansas. Plaintiff Brawner was employed as a Teller for Defendant from April 2005 to August 2008. Plaintiff Brawner worked at Defendant's Mission Center Branch located in Mission, Kansas.

14. Plaintiff Judy Chang is a current resident of San Francisco, California. Plaintiff Chang was employed as a Personal Banker from February 2008 to May 2009 at various BOA branches in San Francisco, California.

15. Plaintiff Sonia Fortner is a current resident of Harris County, Texas. Plaintiff Fortner was employed as a Small Business Specialist from approximately September 2005 until July 2009 at Defendant's Katy, Texas branch.

16. Plaintiff Edward Franco is a current resident of Lehigh Acres, Florida. Plaintiff Edward Franco was employed as a Personal Banker from August 2000 until October 2, 2008 at Defendant's Fort Myers, Florida branch.

17. Plaintiff Juan Franco is a current resident of Los Angeles, California. Plaintiff Juan Franco was employed as a Sales Service Specialist from 2008 to the present at various BOA branches in Los Angeles County, California.

18. Plaintiff Andrew Gordillo is a current resident of Las Vegas, Nevada. Plaintiff Gordillo previously worked as a call center employee at BOA's call center in Fresno, California, from December 2005 to February 2008.

19. Plaintiff Gynon Hamilton is a current resident of Kansas City, Kansas. Plaintiff Hamilton was employed as a Teller for Defendant from May 2006 to September 2008. Plaintiff Hamilton worked at Defendant's Mission Center Branch located in Mission, Kansas, and its Platte County, in-store, Branch located in Platte County, Missouri.

20. Plaintiff Julia Hernandez is a current resident of Chicago, Illinois. Plaintiff Hernandez was employed as an Assistant Branch Manager from February 2004 to December 2008 at Defendant's branches in Chicago, Illinois and Des Plaines, Illinois.

21. Plaintiff Sanaz Masourian is a current resident of Bellevue, King County, Washington. Plaintiff Masourian was employed as a Teller and a Teller Operations Specialist for BOA from December 28, 2004 to February 19, 2007 at BOA's Bellevue, Washington branch.

22. Plaintiff Susie Miller is a current resident of Des Moines, King County, Washington. Plaintiff Miller was employed as a Personal Banker by BOA from February 12, 1999 to February 2, 2009. Plaintiff Miller worked at BOA's Des Moines, Washington branch.

23. Plaintiff Brian Rush is a current resident of Long Beach, California. Plaintiff Rush was employed as a Teller from June 2007 to February 2008 and as a Personal Banker from September 2008 to May 2009 at Defendant's branches in Long Beach, California.

24. Plaintiff Curtis Schreiber is a current resident of Haysville, Kansas. Plaintiff Schreiber worked as a call center employee at BOA's call center in Wichita, Kansas from May 2008 to August 2009.

JURISDICTION AND VENUE

25. This Court has original federal question jurisdiction under [28 U.S.C. § 1331](#) for the claims brought under the FLSA, [29 U.S.C. § 201 et seq.](#)

26. This Court has supplemental jurisdiction for all claims asserted under the California Labor Code, the California Business & Professions Code, the Revised Code of Washington and the Washington Administrative Code in that the claims under these California and Washington state laws are part of the same case and controversy as the FLSA claims, the state and federal claims derive from a common nucleus of operative fact, the state claims will not substantially dominate over the FLSA claims, and exercising supplemental jurisdiction would be in the interests of judicial economy, convenience, fairness and comity.

27. Independently, this Court has original jurisdiction for the California and Washington state law claims pursuant to the Class Action Fairness Act, [28 U.S.C. § 1332](#), in that the estimated damages involved in the California and Washington claims will exceed \$5,000,000 and the parties to this action are residents of different states.

28. The United States District Court for the District of Kansas has personal jurisdiction because BOA conducts business within this District.

29. Venue is proper in this Court pursuant to [28 U.S.C. § 1391\(b\)](#), inasmuch as BOA has offices, conducts business and can be found in the District of Kansas, and the causes of action set forth herein have arisen and occurred in part in the District of Kansas. Venue is further proper under [29 U.S.C. § 1132\(e\)\(2\)](#) because BOA has substantial business contacts within the state of Kansas. Venue is also proper pursuant to the [April 14, 2010 Order of the United States Judicial Panel on Multidistrict Litigation](#) transferring multiple actions to this District for coordinated or consolidated pretrial proceedings.

FACTUAL ALLEGATIONS

30. BOA is one of the world's largest financial institutions, serving more than 58 million customers worldwide and generating over \$120 billion in revenues. *See* 2009 Bank of America Annual Report 28, available at <http://thomson.mobular.net/thomson/7/3054/4156/>.

31. To service the financial needs of its individual and business customers, BOA operates approximately 6,000 retail branch locations throughout the United States. Additionally, BOA operates at least eight call centers throughout the United States, including in California, Florida, Kansas, Maine, Nevada, New Mexico, Rhode Island, and Texas. *See* 2009 Bank of America Annual Report 28, available at <http://thomson.mobular.net/thomson/7/3054/4156/>.

32. At all relevant times, BOA has been, and continues to be, an "employer" engaged in the interstate "commerce" and/or in the production of "goods" for "commerce" within the meaning of FLSA, [29 U.S.C. § 203](#). At all relevant times, BOA has employed, and/or continues to employ, "employee[s]," including each of the Plaintiffs, including the putative Class Members. At all times relevant herein, BOA has had gross operating revenues in excess of the \$500,000.00 threshold test for the "enterprise" requirement under the FLSA.

33. At all relevant times, BOA has been, and continues to be, a "person" as that term is defined under the [California Business & Professions Code § 17021](#), and the [California Labor Code § 1-29.5](#).

34. At all relevant times, BOA has been and continues to be, an "employer" as that term is defined under the [Revised Code of Washington 49.46.010](#).

A. BOA Retail Branches.

35. In its retail branch locations, BOA employs non-exempt workers under several job titles, including: Tellers, Senior Tellers, Teller Operations Specialists, Personal Bankers,

Senior Personal Bankers, Sales & Service Specialists, Customer Service Managers and Assistant Branch Managers (collectively “Retail Branch Employees”).

36. These Retail Branch Employees are all classified as non-exempt by BOA and entitled to receive overtime pay. Retail Branch Employees are paid an hourly wage based upon a forty hour work week.

37. The primary job of Retail Branch Employees is to assist customers with their banking needs, including: opening and closing the bank branch, counting money, maintaining the cashier’s drawer, performing bank transactions (including withdrawals and deposits), offering and selling financial products and services, taking loan applications and handling other customer service requests.

38. All non-exempt BOA Retail Branch Employees share a common chain of command. All non-exempt Retail Branch Employees report to a Branch Manager. The Branch Manager reports directly to a Market Manager and/or a Market Executive. In turn, these individuals report to a Regional Executive.

39. All Retail Branch Employees are similarly situated in that they share common job duties and descriptions and are all subject to BOA’s policy and practice that requires them to perform work, including overtime, without compensation.

40. The requirement to work overtime by Retail Branch Employees was frequent and unavoidable due to understaffing and/or unrealistic sales quotas, and Retail Branch Employees were required to work overtime hours in order to complete their job duties, including before and after their shift, as well as on their meal and rest breaks.

41. Branch Managers were under instructions and significant pressure from Defendant to restrict the amount of overtime to be paid within a branch and were only allowed a

finite number of hours or amount of money that could be paid to non-exempt employees. These systematic and company-wide policies originating at the corporate level were a cause of the illegal pay practices.

42. BOA implements its unlawful policy and practice of failing to pay for all overtime hours worked by Retail Branch Employees under the following means: (a) BOA does not allow them to record all hours worked, including hours in excess of forty per work week; (b) BOA erases or modifies their recorded hours, or requires them to erase or modify their recorded hours, on its *eWorkplace* system to eliminate or reduce hours worked, including hours in excess of forty per work week; (c) BOA provides “comp time” in lieu of paying overtime for hours worked in excess of forty per work week; and/or (d) BOA requires them to work during uncompensated breaks.

43. BOA could easily and accurately record the actual time worked by all Retail Branch Employees, including, for example, by providing a punch card clock at the door of the retail branches. However, BOA has failed to install an immutable time-keeping system that was not subject to manipulation.

44. In light of BOA’s failure to accurately record time worked, BOA failed to provide accurate wage statements to Retail Branch Employees identifying all hours worked.

45. Retail Branch Employees are also eligible for quarterly nondiscretionary bonuses for opening new BOA accounts. BOA fails to include bonuses in calculating Retail Branch Employees’ regular rate of pay for purposes of compensating overtime.

46. The same unlawful practices and procedures described above affect non-exempt BOA workers employed nationwide, including in the states of California and Washington.

B. BOA Call Centers.

47. BOA employs thousands of telephone-dedicated call center employees in numerous call centers located nationwide (“Call Center Employees”).

48. The principal job duty of a BOA Call Center Employee is to take calls from, or make calls to, new or existing BOA customers in order to provide customer service. The customer service provided by BOA Call Center Employees includes activating or updating accounts, assisting with billing inquiries, addressing billing, credit and collections issues, and selling or suggesting BOA products and services, including mortgage loan products, credit cards and/or borrower protection plans.

49. BOA pays its Call Center Employees on an hourly basis, and classifies them as non-exempt and entitled to receive overtime pay.

50. BOA Call Center Employees are not permitted to accurately record all the time they work. Call Center Employees are not allowed to clock in until the beginning of their scheduled shifts; however, they must be ready to take phone calls as soon as their shifts begin.

51. A number of critical tasks must be performed before Call Center Employees are ready to take calls from, or make calls to, BOA customers. These tasks include: (1) finding a computer station; (2) retrieving their headsets and other necessary equipment from their lockers; (3) logging in to a computer; (4) logging in to BOA’s network; (5) opening relevant computer programs and software applications; (6) reviewing memoranda and e-mail; and (7) completing other essential tasks. Call Center Employees are not compensated for this time, yet they cannot perform their job duties without accomplishing these integral and indispensable tasks.

52. Call Center Employees are required to clock out immediately upon the conclusion of their last call of the day. BOA’s policy is not to pay for time spent: (1) shutting down the relevant computer programs and software applications; (2) logging off of BOA’s network; (3)

logging off of the computer; (4) cleaning up their workstations; (5) returning their equipment to their lockers; and (6) completing other essential tasks.

53. BOA could easily and accurately record the actual time Call Center Employees spend working, including, for example, by placing a time clock at the door of the call center. In fact, BOA requires Call Center Employees to swipe a security badge that automatically records when they arrive at and leave the call center, but this system is not used for payroll.

54. Upon information and belief, BOA is adhering to the same policy and practice with respect to Call Center Employees at all of its other call centers nationwide.

C. Timekeeping and *eWorkplace*.

55. All non-exempt BOA Retail Branch and Call Center Employees (also called “overtime eligible associates”) use a nationwide centralized time keeping system – *eWorkplace* – to record their hours worked. *eWorkplace* is provided by Fidelity Investments.

56. If an employee does not enter their time worked for a particular work week, *eWorkplace* automatically populates all overtime eligible associates’ timesheets with their scheduled hours, including automatic deductions for lunch breaks.

57. Retail Branch and Call Center Employees were routinely instructed not to record overtime and informed that this time would not be paid.

58. In accordance with BOA’s policy and practice, Retail Branch and Call Center Employees often did not change their pre-populated timecards in *eWorkplace* when they worked more than forty hours in a given week. BOA’s timekeeping system records and tracks all occasions where the pre-populated timecards were submitted and should readily be available on a class wide basis.

59. All Retail Branch and Call Center Employees were required to submit their timesheets to management for approval.

60. As a part of the approval process, BOA permitted and encouraged managers to unilaterally modify or decrease the time recorded by the Retail Branch or Call Center Employees, if time was recorded in addition to the pre-populated scheduled hours to deny the payment of wages, including overtime.

61. BOA also permitted and encouraged managers to instruct Retail Branch and Call Center Employees to modify or decrease their recorded time before the manager would approve. Requiring Retail Branch and Call Center Employees to change their own time sheets helped cover the fact that overtime was being deleted at BOA's direction.

62. Upon information and belief, BOA routinely deletes overtime hours worked by Retail Branch and Call Center Employees and/or requires its employees themselves to delete such recorded overtime hours, to avoid paying overtime.

63. Because BOA's timekeeping system records and tracks all modifications and deletions made to the time entered by Retail Branch and Call Center Employees, instances of changes and illegal reductions of overtime will be readily ascertainable on a class-wide basis.

D. Facts Regarding Willfulness of Violation.

64. BOA engaged in systematic and uniform time-keeping practices with respect to its overtime eligible associates that were unlawful, unfair and deceptive to BOA's overtime eligible associates.

65. BOA systematically failed to maintain a time-keeping system for its Retail Branch and Call Center Employees that was immutable and not subject to manipulation at each and every retail branch or call center.

66. At all relevant times, BOA was aware of the fact that its time-keeping practices were improper and mutable. BOA was put on notice of this systemic unlawful, unfair and deceptive practice as a result of complaints filed on April 12, 2006 in *Anderson v. Bank of*

America, Los Angeles Superior Court Case No. BC350582 (“*Anderson*”), and on August 30, 2006 in *Harris v. Bank of America*, Los Angeles Superior Court Case No. BC357822 (“*Harris*”), both of which alleged that BOA systematically failed to compensate non-exempt retail banking employees for all hours worked. BOA paid money to settle these cases but failed to implement reasonable employment practices to accurately record the hours worked by non-exempt Retail Branch Employees.

67. Similarly, because the operators of “call centers” have been recognized by the government to routinely violate wage and hour laws, the United States Department of Labor has issued guidance concerning the application of the FLSA to employees working in “call centers.” The Department of Labor has instructed: “Covered employees must be paid for all hours worked in a workweek. In general, ‘hours worked’ includes all time an employee must be on duty, or on the employer’s premises . . . from the beginning of the first principal activity of the workday to the end of the last principal activity of the workday. Also included is any additional time the employee is allowed (i.e., suffered or permitted) to work. An example of the first principal activity of the day for agents/specialists/representatives working in call centers includes starting the computer to download work instructions, computer applications, and work-related emails.” See Fact Sheet #64: Call Centers under the Fair Labor Standards Act (FLSA), U.S. Dept. of Labor, Employment Standards Admin., Wage and Hour Div. (Revised July 2008) (emphasis added).

68. BOA knew or should have known about the DOL’s directive to compensate call center employees for all pre- and post-shift time, and yet continued to violate the FLSA and related state labor laws.

69. The net effect of BOA's policy and practice, instituted and approved by company managers, is that BOA willfully fails to pay overtime compensation and willfully fails to keep accurate time records, in order to save payroll costs. BOA enjoys millions of dollars in ill-gained profits at the expense of its hourly employees.

CLASS AND COLLECTIVE ACTION ALLEGATIONS

A. FLSA Collective Actions.

70. FLSA Retail Branch Class: The FLSA Retail Branch Named Plaintiffs Amanda Brawner, Sonia Fortner, Edward Franco, Juan Franco, Gynon Hamilton, and Julia Hernandez bring Count I, the FLSA claim, as a nationwide "opt-in" collective action pursuant to [29 U.S.C. § 216\(b\)](#), on behalf of themselves and on behalf of the following class of persons:

All current and former non-exempt employees of BOA who have worked in the United States at a BOA retail branch at any time during the last three years, plus periods of applicable tolling.

71. FLSA Call Center Class: The FLSA Call Center Named Plaintiff Schreiber brings Count I, the FLSA claim, as a nationwide "opt-in" collective action pursuant to [29 U.S.C. § 216\(b\)](#), on behalf of himself and on behalf of the following class of persons:

All current and former non-exempt employees of BOA who have worked in the United States at a BOA call center at any time during the last three years, plus periods of applicable tolling.

72. The FLSA claim may be pursued by those who opt-in to this case, pursuant to [29 U.S.C. § 216\(b\)](#) and who have previously filed consent to join forms in any of the transferred actions.

73. The FLSA Retail Branch Named Plaintiffs and the FLSA Call Center Named Plaintiff (collectively "FLSA Named Plaintiffs"), individually and on behalf of other similarly situated employees, seek relief on a collective basis challenging, among other FLSA violations, BOA's practice of failing to accurately record all hours worked, failing to pay employees for all

hours worked, including overtime compensation, and failing to properly calculate and pay overtime compensation that was recorded. The number and identity of other plaintiffs yet to opt-in and consent to be party plaintiffs may be determined from BOA's records, and potential class members may easily and quickly be notified of the pendency of this action.

B. California Rule 23 Classes.

74. California Retail Branch Class: The California Retail Branch Class Representatives Judy Chang, Juan Franco and Brian Allen Rush bring Counts II - X as a class action pursuant to [Federal Rule of Civil Procedure 23\(b\)\(3\)](#), on behalf of themselves and the following class of persons:

All current and former non-exempt employees of BOA who have worked in California at a retail bank branch at any time since February 13, 2005.

75. California Call Center Class: California Call Center Class Representative Andrew Gordillo brings Counts II - X as a class action pursuant to [Federal Rule of Civil Procedure 23\(b\)\(3\)](#), on behalf of himself and the following class of persons:

All current and former non-exempt employees of BOA who have worked in California at a call center at any time since November 23, 2005.

76. Excluded from the California Retail Branch Class and the California Call Center Class (collectively the "California Class" or "California Class Members") are BOA, any entity in which BOA has a controlling interest or which has a controlling interest in BOA, and BOA's legal representatives, assignees and successors. Also excluded are the judge to whom this case is assigned and any member of the judge's immediate family.

77. The California state law claims, if certified for class-wide treatment, may be pursued by all similarly situated persons who do not opt-out of the California Retail Branch Class and/or the California Call Center Class.

C. Washington Rule 23 Class.

78. Washington Retail Branch Class: Washington Retail Branch Class Representatives Sanaz Masourian and Susie Miller bring Counts XI - XVI as a class action pursuant to [Federal Rule of Civil Procedure 23](#), on behalf of themselves and the following class of persons:

All current and former non-exempt retail branch employees who have worked for BOA in Washington state at any time since September 15, 2005.

79. Excluded from the Washington Retail Branch Class are BOA, any entity in which BOA has a controlling interest or which has a controlling interest in BOA, and BOA's legal representatives, assignees and successors. Also excluded are the judge to whom this case is assigned and any member of the judge's immediate family.

80. The Washington state law claims, if certified for class-wide treatment, may be pursued by all similarly situated persons who do not opt-out of the Washington Retail Branch Class.

D. State Law Class Action Allegations.

81. Numerosity: The members of the California Class and Washington Class are so numerous that joinder of all members is impracticable. The exact number of class members is unknown at the present time for each of these Classes, but the number should easily be in the hundreds, if not thousands.

82. Commonality. There are numerous questions of law and fact common to the California Retail Branch and Call Center Class Representatives and California Class Members, and to the Washington Retail Branch Class Representatives and Washington Class Members. These questions include, but are not limited to, the following:

- a. Whether BOA's policies and practices described in this Complaint were and are illegal;
- b. Whether BOA has engaged in a common course of failing to compensate its non-exempt employees for all hours worked, including straight time and overtime;
- c. Whether BOA has engaged in a common course of requiring or permitting its non-exempt employees to work off the clock without compensation;
- d. Whether BOA has engaged in a common course of requiring or permitting its non-exempt employees not to report all hours worked;
- e. Whether BOA has engaged in a common course of failing to maintain true and accurate time records for all hours worked by its non-exempt employees;
- f. Whether BOA has engaged in a common course of failing to factor in all forms of remuneration to calculate overtime pay rates;
- g. Whether BOA has engaged in a common course of failing to provide non-exempt employees with accurate itemized wage statements;
- h. Whether BOA has engaged in a common course of altering the time records of its non-exempt employees;
- i. Whether BOA has engaged in a common course of failing to provide its non-exempt employees with rest breaks;
- j. Whether BOA has engaged in a common course of failing to provide its non-exempt employees with uninterrupted meal breaks;
- k. Whether BOA has engaged in a common course of failing to pay non-exempt employees all wages due upon termination;

l. Whether BOA has engaged in a common course of failing to pay its non-exempt employees for all vested and unused vacation pay at the time of termination;

m. Whether BOA has engaged in unfair competition by the above-listed conduct; and

n. Whether BOA's actions were willful.

83. Typicality. The claims of each Class Representative are typical of the claims of their respective Classes. The Class Representatives were paid under the same policy and procedure as all members of their respective Classes. Similarly, the Class Representatives' claims, like the claims of their respective Classes, arise out of the same common course of conduct by BOA and are based on the same legal and remedial theories.

84. Adequacy. The Class Representatives will fairly and adequately protect the interests of their respective Classes. The Class Representatives have retained competent and capable attorneys who are experienced trial lawyers with significant experience in complex and class action litigation, including employment litigation. The Class Representatives and their counsel are committed to prosecuting this action vigorously on behalf of the various Classes and have the financial resources to do so. Neither the Class Representatives nor their counsel have interests that are contrary to or that conflict with those of the proposed Classes.

85. Predominance: Class certification of the respective classes is appropriate under [Federal Rule of Civil Procedure 23\(b\)\(3\)](#) because questions of law and fact common to class members predominate over any questions affecting only individual members. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy. Moreover, there are no unusual difficulties likely to be encountered in the management of this case as a class action.

86. Superiority: The class action mechanism is superior to any alternatives that might exist for the fair and efficient adjudication of these claims. Proceeding as a class action would permit the large number of injured parties to prosecute their common claims in a single forum simultaneously, efficiently and without unnecessary duplication of evidence, effort and judicial resources. A class action is the only practical way to avoid the potentially inconsistent results that numerous individual trials are likely to generate. Moreover, class treatment is the only realistic means by which Plaintiffs can effectively litigate against a large, well-represented corporate defendant like BOA. In the absence of a class action, BOA would be unjustly enriched because they would be able to retain the benefits and fruits of the many wrongful violations of the California and Washington state laws. Numerous repetitive individual actions would also place an enormous burden on the courts as they are forced to take duplicative evidence and decide the same issues relating to BOA's conduct over and over again.

87. Appropriateness of Injunctive and Declaratory Relief. BOA has acted or refused to act on grounds generally applicable to the California and Washington Classes, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the California and Washington Classes as a whole. Prosecution of separate actions by individual members of the California and Washington Classes would create the risk of inconsistent or varying adjudications with respect to individual members of the California and Washington Classes that would establish incompatible standards of conduct for BOA.

COUNT I

FAIR LABOR STANDARDS ACT (29 U.S.C. § 216(B))

**(BROUGHT BY THE FLSA RETAIL BRANCH AND CALL CENTER NAMED
PLAINTIFFS ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED)**

88. Plaintiffs repeat and reallege the preceding and subsequent paragraphs as though set forth herein.

89. At all times material herein, Plaintiffs have been entitled to the rights, protections, and benefits provided under the FLSA, [29 U.S.C. §§ 201 et seq.](#)

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

91. BOA is subject to the overtime pay requirements of the FLSA because it is an enterprise engaged in interstate commerce and its employees are engaged in commerce.

92. BOA violated the FLSA by failing to pay and properly calculate overtime. In the course of perpetrating these unlawful practices, BOA has also willfully failed to keep accurate records of all hours worked by its employees.

93. BOA failed to compensate the FLSA Retail Branch and Call Center Named Plaintiffs and all similarly situated employees at a rate of not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a work week, and therefore, BOA has violated, and continues to violate, the FLSA, [29 U.S.C. §§ 201 et seq.](#), including [29 U.S.C. § 207\(a\)\(1\).](#)

94. Section 13 of the FLSA, codified at [29 U.S.C. § 213](#), exempts certain categories of employees from overtime pay obligations. None of the FLSA exemptions apply to FLSA Retail Branch and Call Center Named Plaintiffs and all other similarly situated employees.

95. FLSA Retail Branch and Call Center Named Plaintiffs and all similarly situated employees are victims of a uniform and company-wide compensation policy. Upon information and belief, BOA is applying this uniform policy of illegally reducing or modifying recorded hours, including overtime hours, to all non-exempt Retail Branch and Call Center Employees

employed nationwide during the last three years. Additionally, BOA is applying its uniform policy of: refusing to allow FLSA Retail Branch and Call Center Named Plaintiffs, and all other similarly situated Retail Branch and Call Center Employees, to properly record all hours worked, including hours worked in excess of forty per work week; erasing or modifying their timesheets to eliminate or reduce hours worked, including overtime hours; providing “comp time” in lieu of paying overtime; requiring them to work during uncompensated breaks; and failing to pay overtime on bonus pay.

96. FLSA Retail Branch and Call Center Named Plaintiffs and all similarly situated employees are entitled to damages equal to the mandated overtime premium pay within the three years preceding the filing of this Complaint, plus periods of equitable tolling, because BOA acted willfully and knew, or showed reckless disregard of whether, its conduct was prohibited by the FLSA.

97. BOA has acted neither in good faith nor with reasonable grounds to believe that its actions and omissions were not a violation of the FLSA, and as a result thereof, FLSA Retail Branch and Call Center Named Plaintiffs and other similarly situated employees are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid overtime pay described pursuant to Section 16(b) of the FLSA, codified at [29 U.S.C. § 216\(b\)](#). Alternatively, should the Court find BOA did act with good faith and reasonable grounds in failing to pay overtime pay, FLSA Retail Branch and Call Center Named Plaintiffs and all similarly situated employees are entitled to an award of pre-judgment interest at the applicable legal rate.

98. As a result of the aforesaid willful violations of the FLSA’s overtime pay provisions, overtime compensation has been unlawfully withheld by BOA from FLSA Retail

Branch and Call Center Named Plaintiffs and all similarly situated employees. Accordingly, BOA is liable for compensatory damages pursuant to [29 U.S.C. § 216\(b\)](#), together with an additional amount as liquidated damages, pre-judgment and post-judgment interest, reasonable attorneys' fees, costs of this action, and such other legal and equitable relief as the Court deems just and proper.

WHEREFORE, FLSA Retail Branch and Call Center Named Plaintiffs, on behalf of themselves and all others similarly situated, pray for relief as follows:

a. Designation of this action as a collective action on behalf of the proposed FLSA classes and promptly issue notice pursuant to [29 U.S.C. § 216\(b\)](#) to all members of the FLSA Retail Branch and Call Center opt-in classes apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual consents to join pursuant to [29 U.S.C. § 216\(b\)](#);

b. A declaration that BOA is financially responsible for notifying all FLSA Class Members of its alleged wage and hour violations;

c. Designation of Donelon, P.C.; Stueve Siegel Hanson, LLP; and Marlin & Saltzman LLP, as the attorneys representing the putative collective action plaintiffs;

d. A declaratory judgment that the practices complained of herein are unlawful under the FLSA, [29 U.S.C. § 201 et seq.](#);

e. An award of damages for overtime compensation due to the FLSA Retail Branch and Call Center Named Plaintiffs and all others similarly situated, including liquidated damages, to be paid by BOA;

f. Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees;

- g. Pre-Judgment and post-Judgment interest, as provided by law; and
- h. Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper.

COUNT II
FAILURE TO PAY STRAIGHT TIME WAGES
(CALIFORNIA LABOR CODE §§ 204, 218)
(BROUGHT BY CALIFORNIA RETAIL BRANCH AND CALL CENTER CLASS REPRESENTATIVES ON
BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED)

99. Plaintiffs repeat and reallege the preceding and subsequent paragraphs as though set forth herein.

100. California law requires an employer to pay its employees for all hours worked.

101. Plaintiffs allege that BOA maintained a practice of paying employees without regard to the number of hours actually worked. BOA's practice included requiring employees to work off the clock without pay on a systematic and daily basis. In doing so, BOA required California Retail Branch and Call Center Representatives and the California Class Members to inaccurately under-report the amount of time worked, and BOA underpaid the actual amount of hours worked.

102. Because of BOA's failures as alleged herein, California Retail Branch and Call Center Representatives and the California Class Members did not receive compensation for all hours actually worked for BOA.

103. BOA's respective failure to pay the correct amount of straight-time hourly wages permits a civil suit to recover wages due to the California Retail Branch and Call Center Representatives and the California Class Members under [California Labor Code § 204](#) and [§ 218](#), as well as recovery of interest.

COUNT III
FAILURE TO PAY OVERTIME WAGES
(CALIFORNIA LABOR CODE §§ 204, 210, 510, 515 558, 1194)
(BROUGHT BY THE CALIFORNIA RETAIL BRANCH AND CALL CENTER CLASS
REPRESENTATIVES ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED)

104. Plaintiffs repeat and reallege the preceding and subsequent paragraphs as though set forth herein.

105. California Retail Branch and Call Center Representatives, on behalf of themselves and the California Class Members, bring a claim for BOA's violation the [California Labor Code §§ 204, 210, 510, 515, 558 and 1194](#) and California Industrial Wage Order No. 4 ([8 C.C.R. § 11040](#), as amended throughout the Class Period) for its failure to pay them and the California Class Members for hours worked in excess of eight per day, or forty per work week.

106. [California Labor Code § 204](#) requires employers to pay employees for all hours worked.

107. [California Labor Code § 515](#) sets out various categories of employees who are exempt from the overtime requirements of the law. None of these exemptions are applicable to the California Retail Branch and Call Center Representatives and the California Class Members.

108. Throughout the liability period, IWC Wage Order No. 4 ([8 C.C.R. § 11040](#)) and [California Labor Code § 510](#) required payment of overtime premium(s) for hours worked in excess of eight in a given workday, forty in a given workweek, or up to eight hours on the seventh day worked in a single workweek. This premium increases to double-time for all hours worked over twelve in a workday or eight on the seventh day worked in a single workweek.

109. California Retail Branch and Call Center Representatives and the California Class Members often worked in excess of the maximum number of straight-time hours allowed by law without payment of the applicable overtime premiums.

110. BOA failed to pay the California Retail Branch and Call Center Representatives and the California Class Members the overtime required by California law.

111. BOA's failure to pay the correct amount of overtime violates IWC Wage Order No. 4 ([8 C.C.R. § 11040](#), as amended during the Class Period), and [California Labor Code §§ 510 and 1198](#), and is therefore unlawful.

112. Because BOA failed to properly pay overtime as required by law, the California Retail Branch and Call Center Representatives and the California Class Members are entitled under [California Labor Code § 1194\(a\)](#) to recover the unpaid overtime balance, interest thereon, reasonable attorneys' fees, and costs of suit.

COUNT IV
FAILURE TO PAY WAGES DUE AND OWING AT TIME OF TERMINATION
(CALIFORNIA LABOR CODE §§ 201-203)
(BROUGHT BY THE CALIFORNIA RETAIL BRANCH AND CALL CENTER CLASS
REPRESENTATIVES ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED)

113. Plaintiffs repeat and reallege the preceding and subsequent paragraphs as though set forth herein.

114. California Retail Branch and Call Center Representatives, on behalf of themselves and the California Class Members, bring a claim for BOA's violation of [California Labor Code §§ 201-203](#) by failing to timely pay all wages owed upon the termination of California Retail Branch and Call Center Representatives and all California Class Members whose employment terminated during the class period.

115. [California Labor Code § 201](#) requires an employer who discharges an employee to pay compensation due and owing to said employee upon discharge.

116. [California Labor Code § 202](#) requires an employer to promptly pay compensation due and owing to a quitting employee within 72 hours of that employee's notice of resignation.

117. [California Labor Code § 203](#) provides that, if an employer willfully fails to pay compensation upon discharge or resignation, the wages of the employee shall continue for a period up to thirty days.

118. BOA has willfully failed to pay all compensation and wages owed, including straight time and overtime pay, upon discharge or within 72 hours of termination. As a result, BOA is liable to the California Retail Branch and Call Center Representatives and the former California Class Members for continuation wages in an amount to be determined at trial. California Retail Branch and Call Center Representatives and the former California Class Members are also entitled to payment of their reasonable attorneys' fees, interest and costs of suit incurred in recovering the additional pay.

COUNT V

FAILURE TO PROVIDE ACCURATE WAGE STATEMENT

(CALIFORNIA LABOR CODE §§ 226)

(BROUGHT BY THE CALIFORNIA RETAIL BRANCH AND CALL CENTER CLASS REPRESENTATIVES ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED)

119. Plaintiffs repeat and reallege the preceding and subsequent paragraphs as though set forth herein.

120. California Retail Branch and Call Center Representatives, on behalf of themselves and the California Class Members, bring a claim for BOA's violation the [California Labor Code § 226](#) by failing to provide an accurately itemized statement in writing showing the correct amount of pay for gross wages earned, hours worked, applicable hourly rates, and the corresponding number of hours worked at each hourly rate.

121. [California Labor Code § 226](#) requires an employer to provide its employees with an accurate itemized statement in writing showing, among other things, the total hours worked by the employee. [California Labor Code § 226](#) provides for damages and penalties for a knowing and intentional failure by an employer to comply with this requirement.

122. BOA has knowingly and intentionally failed to provide accurate itemization of the California Retail Branch and Call Center Representatives and California Class Members' hours worked per paycheck.

123. Had the California Retail Branch and Call Center Representatives and California Class Members received an accurate itemization of their hours worked, they, among other things, would have been able to discover that BOA's policy was to underpay them for their actual time worked. Failure to provide an itemization of hours worked assisted BOA in perpetrating its policy and not paying for actual hours worked.

124. As a result, BOA is liable to the California Retail Branch and Call Center Representatives and the California Class Members for damages in an amount to be determined at trial. In addition, the California Retail Branch and Call Center Representatives and the California Class Members are entitled to penalties as provided in [§ 226](#). California Retail Branch and Call Center Representatives and the California Class Members are also entitled to payment of their reasonable attorneys' fees and costs of suit incurred in recovering the additional pay.

COUNT VI
FAILURE TO PROVIDE REST AND MEAL BREAKS
(CALIFORNIA LABOR CODE §§ 226.7, 512)
(BROUGHT BY THE CALIFORNIA RETAIL BRANCH AND CALL CENTER CLASS
REPRESENTATIVES ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED)

125. Plaintiffs repeat and reallege the preceding and subsequent paragraphs as though set forth herein.

126. California Retail Branch and Call Center Representatives, on behalf of themselves and the California Class Members, bring a claim for BOA's violations of [California Labor Code §§ 226.7](#) and California Industrial Wage Order No. 4 ([8 C.C.R. § 11040](#)), as amended throughout the Class Period) by failing to provide off-duty rest and meal periods. In particular, BOA

requires the California Retail Branch and Call Center Representatives and the California Class Members to perform work during break times.

127. California Retail Branch and Call Center Representatives and the California Class Members regularly worked in excess of five (5) hours per day without being afforded at least one half-hour meal period in which they were relieved of all duty, as required by [California Labor Code §§ 226.7 and 512](#) and Wage Order No. 4 ([8 C.C.R. § 11040](#)).

128. California Retail Branch and Call Center Representatives and the California Class Members routinely worked in excess of four hours per day without being afforded a 10-minute rest period.

129. California Retail Branch and Call Center Representatives and the California Class Members routinely worked in excess of eight hours per day without being afforded either or both of the two (2) 10-minute rest periods as required by [California Labor Code § 226.7](#) and Wage Order No. 4 ([8 C.C.R. § 11040](#)).

130. For each time that a member of the California Class was not provided the rest and/or meal period, that individual is entitled to recover back pay wages in the amount of one additional hour of pay at each employee's regular rate of compensation pursuant to IWC Wage Order No. 4 ([8 C.C.R. § 11040](#)) and [California Labor Code § 226.7](#).

131. California Retail Branch and Call Center Representatives and the California Class Members are entitled to payment for back pay for each rest and/or meal period that BOA failed to provide during the Class Period. California Retail Branch and Call Center Representatives and the California Class Members are also entitled to payment of their reasonable attorneys' fees and costs of suit incurred in recovering the additional pay.

COUNT VII

**VIOLATION OF THE CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200
(BROUGHT BY THE CALIFORNIA RETAIL BRANCH AND CALL CENTER CLASS
REPRESENTATIVES ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED)**

132. Plaintiffs repeat and reallege the preceding and subsequent paragraphs as though set forth herein.

133. California Retail Branch and Call Center Representatives, on behalf of themselves and the California Class Members, bring a claim for BOA's violation of the [California Business & Professions Code § 17200 et seq.](#), including but not limited to its violations of FLSA and California state law (including the failure to maintain accurate employee time records, the failure to pay for all hours worked, including overtime compensation, the failure to provide and pay for meal and rest periods, and the failure to pay all wages due upon discharge or termination). This conduct by BOA constitutes unlawful, unfair, fraudulent, and misleading conduct. Such unlawful and unfair acts constitute a violation of [California Business and Professions Code § 17200 et seq.](#)

134. At all times material herein, California Retail Branch and Call Center Representatives and the California Class Members have been entitled to the rights, protections and benefits provided under the FLSA, [29 U.S.C. § 201 et. seq.](#)

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

136. BOA was, and is, subject to the timekeeping and overtime pay requirements of the FLSA because BOA is an enterprise engaged in commerce and its employees are engaged in commerce.

137. BOA violated the FLSA by failing to keep accurate records of hours worked and failing to pay the California Retail Branch and Call Center Representatives and the California Class Members for all time worked.

138. The California Retail Branch and Call Center Representatives and the California Class Members are victims of a company-wide policy that led to BOA's failure to: (i) record and maintain accurate time records; and (ii) pay for all hours worked.

139. As a result of the aforesaid violations of the FLSA's provisions, BOA has violated the [California Business & Professions Code § 17200 et seq.](#)

140. Further, BOA's violation of the California Labor Code's and IWC Wage Order's provisions as discussed above are predicate acts that constitute a violation of [§ 17200](#) as to California Retail Branch and Call Center Representatives and the California Class Members.

141. BOA's actions, including but not limited to their FLSA and California state law violations (including the failure to maintain accurate employee time records, failure to pay for all time worked, failure to pay overtime compensation, failure to provide and pay for rest and meal periods and to pay all amounts due at the time of termination of employment) constitute unlawful, unfair, fraudulent and misleading conduct. Such actions are also unfair business practices in violation of [California Business & Professions Code § 17200, et seq.](#)

142. Defendant's unlawful, unfair and deceptive practices are uniform as to all retail banking locations and all hourly employees in California, and the propriety of which are therefore amenable to class wide adjudication. The predominate common questions applicable to all of the California Class Members include whether Defendant's mutable time-keeping system used for retail locations complies with Defendant's legal burden and obligations as an employer under California law.

143. California Retail Branch and Call Center Representatives are informed and believe that BOA continues its unlawful and unfair conduct as previously described because BOA continues to refuse to pay for all wages earned by the California Retail Branch and Call Center Representatives and the California Class Members. As a result of said conduct, BOA has unlawfully and unfairly obtained monies owed to the California Retail Branch and Call Center Representatives and the California Class Members and has unfairly competed in the marketplace.

COUNT VIII
PRIVATE ATTORNEY GENERAL'S ACT
(CALIFORNIA LABOR CODE § 2698 ET SEQ.)
(BROUGHT BY THE CALIFORNIA RETAIL BRANCH AND CALL CENTER CLASS
REPRESENTATIVES ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED)

144. Plaintiffs repeat and reallege the preceding and subsequent paragraphs as though set forth herein.

145. During the Class Period, BOA violated [California Labor Code §§ 201-204, 223, 226\(a\), 226.7, 227.3, 510, 512 and 1194](#).

146. [California Labor Code §§ 2699\(a\) and \(g\)](#) authorize an aggrieved employee, on behalf of himself and other current and/or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in [California Labor Code § 2699.3](#).

147. Pursuant to [California Labor Code §§ 2699\(a\) and \(f\)](#), the California Retail Branch and Call Center Representatives and California Class Members are entitled to recover civil penalties for BOA's violations of [California Labor Code §§ 201-204, 223, 226\(a\), 227.3, 510, 512 and 1194](#) during the Class Period in the following amounts:

a. For violations of [California Labor Code §§ 201-203 and 1194](#), one-hundred dollars (\$100) for each aggrieved employee per pay period for each initial violation and two-hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by [California Labor Code § 2699\(f\)\(2\)](#));

b. For violations of [California Labor Code § 204](#), one-hundred dollars (\$100) for each aggrieved employee for each initial violation and two-hundred dollars (\$200) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by [California Labor Code § 210](#));

c. For violations of [California Labor Code § 223](#), one-hundred dollars (\$100) for each aggrieved employee for each initial violation and two-hundred dollars (\$200) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by [California Labor Code § 225.5](#));

d. For violations of [California Labor Code § 227.3](#), one-hundred dollars (\$100) for each aggrieved employee per pay period for each initial violation and two-hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by [California Labor Code § 2699\(f\)\(2\)](#));

e. For violations of [California Labor Code § 226\(a\)](#), one-hundred dollars (\$100) per each aggrieved employee for each initial violation and two-hundred dollars (\$200) per each aggrieved employee for each subsequent violation (penalty amounts established by [California Labor Code § 226.3](#)); and,

f. For violations of [California Labor Code § 510 and § 512](#), fifty dollars (\$50) for each aggrieved employee for each initial violation per pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages and one-hundred dollars (\$100) for each underpaid employee for each pay period for which the employee

was underpaid in addition to an amount sufficient to recover unpaid wages (penalty amounts established by [California Labor Code § 558](#)).

148. The California Retail Branch and Call Center Representatives have complied with the procedures for bringing suit specified in [California Labor Code § 2699.3](#). The California Retail Branch and Call Center Representatives in the *Gold, Gordillo, Kauffman, Paulino*, and *Juan Franco* actions gave written notice by certified mail to the California Labor and Workforce Development Agency (“LWDA”) and BOA of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. The LWDA either affirmatively indicated to the aforementioned California Retail Branch and Call Center Representatives that it would not investigate the allegations raised in the respective letters or failed to respond in any way within thirty days as required by [California Labor Code § 2699.3](#). Therefore, the California Retail Branch and Call Center Representatives are authorized to commence a civil suit pursuant to [California Labor Code § 2699](#).

149. Pursuant to [California Labor Code § 2699\(g\)](#), the California Retail Branch and Call Center Representatives and the California Class Members are entitled to an award of reasonable attorneys’ fees and costs in connection with their claims for civil penalties.

COUNT IX
FORFEITURE OF VACATION PAY
(CALIFORNIA LABOR CODE § 227.3)
(BROUGHT BY THE CALIFORNIA RETAIL BRANCH AND CALL CENTER CLASS
REPRESENTATIVES ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED)

150. Plaintiffs repeat and reallege the preceding and subsequent paragraphs as though set forth herein.

151. [California Labor Code § 227.3](#) makes it unlawful for an employer to cause an employee to forfeit vacation pay without compensating the employee for the vacation time at the rate of pay in effect at the time of forfeiture.

152. During the Class Period, BOA caused the California Retail Branch and Call Center Representatives and California Class Members to forfeit vested paid vacation days without providing monetary compensation for it, based on their rate of pay in effect at that time. The California Retail Branch and Call Center Representatives are informed and believe and thereon allege that BOA has maintained a policy and/or practice of causing the members of the California Class to forfeit vested paid vacation days without compensating them for forfeited days based on their rates of pay in effect at the time of forfeiture.

153. As a result of the above, the California Retail Branch and Call Center Representatives and California Class Members seek damages and restitution, plus interest, penalties, attorneys' fees, expenses and costs of suit, on behalf of both themselves and the other California Class Members, for forfeited vacation days in amounts subject to proof at trial.

WHEREFORE, the California Retail Branch and Call Center Class Representatives, on behalf of themselves and the California Class Members, pray for relief as follows for Counts II through X of this Consolidated Complaint:

a. Designation of this action as a class action under [Federal Rule of Civil Procedure 23](#) on behalf of the California Class Members and issuance of notice to all California Class Members, apprising them of the pendency of this action;

b. A declaration that BOA is financially responsible for notifying all California Class Members of its alleged wage and hour violations;

c. Designation of Judy Chang, Juan Franco and Brian Allen Rush as California Retail Branch Class Representatives for the California Retail Branch Class Members, and Andrew Gordillo as the Call Center Class Representative of the California Call Center Class Members;

d. Designation of Stueve Siegel Hanson LLP, Donelon, P.C., and Marlin & Saltzman LLP as Class Counsel for the California Class Members;

e. A declaratory judgment that the practices complained of herein are unlawful under the California Labor Code, IWC Wage Order and the California Business & Professions Code;

f. An injunction against BOA and its officers, agents, successors, employees, representatives and any and all persons acting in concert with BOA, as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein;

g. An award of damages, including for straight time and overtime compensation due and unpaid vacation days as well as any liquidated, punitive or penalty damages allowed under California law, to be paid by BOA;

h. An award of restitution for wages due to the California Retail Branch and Call Center Class Representatives and California Class Members to be paid by BOA in accordance with proof at trial;

i. Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees;

j. Pre-judgment and post-judgment interest, as provided by law; and,

k. Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper.

COUNT X

FAILURE TO PAY OVERTIME

(REVISED CODE OF WASHINGTON 49.46.130)

**(BROUGHT BY THE WASHINGTON RETAIL BRANCH CLASS REPRESENTATIVES
ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED)**

154. Plaintiffs repeat and reallege the preceding and subsequent paragraphs as though set forth herein.

155. [RCW 49.46.130](#) provides that “no employer shall employ any of his employees for a workweek longer than 40 hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.”

156. By the actions alleged above, BOA has violated the provisions of [RCW 49.46.130](#).

157. As a result of the unlawful acts of BOA, the Washington Retail Branch Class Representatives and the Washington Class have been deprived of compensation in amounts to be determined at trial and pursuant to [RCW 49.46.090](#), the Washington Retail Branch Class Representatives and the Washington Class are entitled to recovery of such damages, including interest thereon, as well as attorneys’ fees and costs.

COUNT XI
FAILURE TO PAY MINIMUM WAGE
(REVISED CODE OF WASHINGTON 49.46.090)
(BROUGHT BY THE WASHINGTON RETAIL BRANCH CLASS REPRESENTATIVES
ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED)

158. Plaintiffs repeat and reallege the preceding and subsequent paragraphs as though set forth herein.

159. Under [RCW 49.46.090](#), employers must pay employees all wages to which they are entitled under the Washington Minimum Wage Act. If the employer fails to do so, [RCW 49.46.090](#) requires that the employer pay the employees the full amount of the statutory minimum wage rate less any amount actually paid to the employee.

160. By the actions alleged above, BOA has violated the provisions of [RCW 49.46.090](#).

161. As a result of the unlawful acts of BOA, the Washington Retail Branch Class Representatives and the Washington Class have been deprived of compensation in amounts to be

determined at trial and, pursuant to [RCW 49.46.090](#), are entitled to recovery of such damages, including interest thereon, as well as attorneys' fees and costs.

COUNT XII
FAILURE TO PROVIDE REST AND MEAL BREAKS
(WASHINGTON ADMINISTRATIVE CODE 296-126-092
AND REVISED CODE OF WASHINGTON 49.12.020)
(BROUGHT BY THE WASHINGTON RETAIL BRANCH CLASS REPRESENTATIVES
ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED)

162. Plaintiffs repeat and reallege the preceding and subsequent paragraphs as though set forth herein.

163. [RCW 49.12.010](#) provides that “[t]he welfare of the state of Washington demands that all employees be protected from conditions of labor which have a pernicious effect on their health. The state of Washington, therefore, exercising herein its police and sovereign power declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect.”

164. [RCW 49.12.020](#) provides that “[i]t shall be unlawful to employ any person in any industry or occupation within the state of Washington under conditions of labor detrimental to their health.”

165. Pursuant to [RCW 49.12.005](#) and [WAC 296-126-002](#), conditions of labor “means and includes the conditions of rest and meal periods” for employees.

166. [WAC 296-126-092](#) provides that employees shall be allowed certain paid rest periods during their shifts. [WAC 296-126-092](#) further provides that employees shall be allowed certain meal periods during their shifts.

167. By the actions alleged above, BOA has violated the provisions of [WAC 296-126-092](#) and [RCW 49.12.020](#).

168. As a result of the unlawful acts of BOA, the Washington Retail Branch Class Representatives and the Washington Class have been deprived of compensation in amounts to be

determined at trial and pursuant to [RCW 49.48.030](#), the Washington Retail Branch Class Representatives and the Washington Class are entitled to recovery of such damages, including interest thereon, as well as attorneys' fees and costs.

COUNT XIII
FAILURE TO PAY WAGES OWED
(REVISED CODE OF WASHINGTON 49.48.010)
(BROUGHT BY THE WASHINGTON RETAIL BRANCH CLASS REPRESENTATIVES
ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED)

169. Plaintiffs repeat and reallege the preceding and subsequent paragraphs as though set forth herein.

170. [RCW 49.48.010](#) provides that “[w]hen any employee shall cease to work for an employer, whether by discharge or by voluntary withdrawal, the wages due him on account of his employment shall be paid to him at the end of the established pay period.” The statute further provides that it shall be unlawful “for any employer to withhold or divert any portion of an employee’s wages.”

171. By the actions alleged above, BOA violated the provisions of [RCW 49.48.010](#).

172. As a result of BOA’s unlawful acts, the Washington Retail Branch Class Representatives and the Washington Class Members have been deprived of compensation in amounts to be determined at trial and pursuant to [RCW 49.48.030](#), the Washington Retail Branch Class Representatives and the Washington Class Members are entitled to recovery of such damages, including interest thereon, as well as attorneys’ fees and costs.

COUNT XIV
WILLFUL REFUSAL TO PAY WAGES
(REVISED CODE OF WASHINGTON 49.52.050)
(BROUGHT BY THE WASHINGTON RETAIL BRANCH CLASS REPRESENTATIVES
ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED)

173. Plaintiffs repeat and reallege the preceding and subsequent paragraphs as though set forth herein.

174. [RCW 49.52.050](#) provides that any employer or agent of any employer who, “[w]ilfully and with intent to deprive the employee of any part of his wages, shall pay any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract” shall be guilty of a misdemeanor. The statute further provides that any employer or agent of any employer who “[s]hall collect or receive from any employee a rebate of any part of wages theretofore paid by such employer to such employee” shall be guilty of a misdemeanor.

175. Violations of [RCW 49.46.130](#), as discussed above, constitute violations of [RCW 49.52.050](#).

176. Violations of [WAC 296-126-092](#) and [RCW 49.12.020](#), as discussed above, constitute violations of [RCW 49.52.050](#).

177. Violations of [RCW 49.48.010](#), as discussed above, constitute violations of [RCW 49.52.050](#).

178. [RCW 49.52.070](#) provides that any employer who violates the provisions of [RCW 49.52.050](#) shall be liable in a civil action for twice the amount of wages withheld, attorneys’ fees and costs.

179. By the actions alleged above, BOA has violated the provisions of [RCW 49.52.050](#).

180. As a result of the willful, unlawful acts of BOA, the Washington Retail Branch Class Representatives and the Washington Class have been deprived of compensation in amounts to be determined at trial and pursuant to [RCW 49.52.070](#), the Washington Retail Branch Class Representatives and the Washington Class are entitled to recovery of twice such damages, including interest thereon, as well as attorneys’ fees and costs.

COUNT XV
VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT
(REVISED CODE OF WASHINGTON 19.86.010 – .920)
(BROUGHT BY THE WASHINGTON RETAIL BRANCH CLASS REPRESENTATIVES
ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED)

181. Plaintiffs repeat and reallege the preceding and subsequent paragraphs as though set forth herein.

182. At all relevant times, BOA has been, and continues to be, a “person” as that term is defined under the [RCW 19.86.010](#).

183. BOA has engaged in unfair or deceptive acts or practices by engaging in the following courses of conduct: (i) failing to record and pay employees for straight time and overtime; (ii) requiring or permitting employees to work off the clock; (iii) altering the time records of employees or failing to maintain true and accurate time records; (iv) failing to provide employees with rest and meal breaks; (v) violating [RCW 49.46.130](#); (vi) violating [RCW 49.46.090](#); (vii) violating [WAC 296-126-092](#); (viii) violating [RCW 49.12.020](#); (ix) violating [RCW 49.12.450](#); and (x) violating [RCW 49.52.050](#).

184. BOA’s unfair and deceptive acts and practices repeatedly occurred in BOA’s trade or business and were capable of deceiving a substantial portion of the public, particularly since BOA solicits employees from Washington’s general labor market.

185. BOA’s unfair and deceptive acts and practices affect the public interest. These unfair and deceptive acts and practices are a repeated part of BOA’s general course of business and have impacted numerous individuals. Moreover, BOA receives services from employees for which BOA does not pay, unlike its competitors.

186. As a direct and proximate cause of BOA’s unfair and deceptive acts and practices, the Washington Retail Branch Class Representatives and the Washington Class have been

injured and are entitled to recover treble damages, attorneys' fees and costs pursuant to [RCW 19.86.090](#).

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the members of the Washington Class, pray for judgment against BOA as follows:

- a. Certification of the proposed Class;
- b. A declaration that BOA is financially responsible for notifying all Washington Class Members of its alleged wage and hour violations;
- c. Appoint Plaintiffs Sanaz Masourian and Susie Miller as representatives of the Washington Class;
- d. Appoint Stueve Siegel Hanson, LLP, Donelon, P.C., and Marlin & Saltzman as class counsel for the Washington Class;
- e. Declare that BOA's actions complained of herein violate [RCW 49.46.130](#), [RCW 49.46.090](#), [RCW 49.52.050](#), [WAC 296-126-092](#), [RCW 49.12.020](#), [RCW 49.48.010](#), and [RCW 19.86.010 – .920](#);
- f. Enjoin BOA and its officers, agents, successors, employees, representatives, and any and all persons acting in concert with BOA, as provided by law, from engaging in the unlawful and wrongful conduct set forth herein;
- g. Award Washington Retail Branch Class Representatives and the Washington Class compensatory and exemplary damages, as allowed by law;
- h. Award Washington Retail Branch Class Representatives and the Washington Class attorneys' fees and costs, as allowed by law;
- i. Award Washington Retail Branch Class Representatives and the Washington Class pre-judgment and post-judgment interest, as provided by law; and

- j. Grant such other and further relief as the Court deems necessary, just, and proper.

DEMAND FOR TRIAL

Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to which they and all members of the proposed classes have a right to a jury trial.

Respectfully submitted,

s/ George A. Hanson

George A. Hanson, KS #16805
Virginia Stevens Crimmins, KS 20617
Stueve Siegel Hanson LLP
460 Nichols Road, Suite 200
Kansas City, Missouri 64112
Tel: (816) 714-7100
Fax: (816) 714-7101
hanson@stuevesiegel.com
crimmins@stuevesiegel.com

/s/ Brendan J. Donelon

Brendan J. Donelon, KS #17420
Donelon, PC
802 Broadway, 7th Floor
Kansas City, Missouri 64105
Tel: (816) 221-7100
Fax: (816) 472-6805
brendan@donelonpc.com

Jason Lindner, CA #211451
Stueve Siegel Hanson LLP
550 Corporate Center
West C Street, Suite 610
San Diego, CA 92101
Tel: (619) 400-5825
lindner@stuevesiegel.com

Daniel W. Craig, KS Fed. #78146
Donelon, PC
1125 Grand Blvd., Ste 900
Kansas City, Missouri 64106
Tel: (816) 221-7772
Fax: (816) 283-3823
DCraig@DanCraigPC.com

Co-Lead/Liaison Counsel for All Plaintiffs

Co-Lead Counsel for All Plaintiffs

/s/ Stanley D. Saltzman

Stanley D. Saltzman
Marcus Bradley
Louis M. Marlin
Christina A. Humphrey
Kiley L. Grombacher
Marlin & Saltzman, LLP
29229 Canwood Street
Suite 208
Agoura Hills, CA 91301
Tel: (818) 991-8080
Fax: (818) 991-8081
ssaltzman@marlinsaltzman.com
mbradley@marlinsaltzman.com
louis.marlin@marlinsaltzman.com
chumphrey@marlinsaltzman.com
kgrombacher@marlinsaltzman.com

Co-Lead Counsel for All Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served on all attorneys of record via the Court's electronic case filing system on the date reflected in the Court's electronic case filing records.

/s/ George A. Hanson _____