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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **OAKLAND DIVISION**
14

15 BEATRICE ALILA-KATITA, GINA AMINZAI,
16 WILLIAM ANDERSON, SCOTT
ARMSTRONG, ALFRED AYALA, SILVIA
17 BACOLOT, CATHY BAIGENT, MICHELLE
18 BARRETTO-HAMILTON, ANGELA BATES,
ANTHONY BELL, KATHLEEN BERG,
19 ANDREW BLACKHURST, CRAIG BOHI,
STEVEN BRADLEY, COLLEEN BRADY,
20 KURT BROGGER, DONNA BRUNE, DENISE
BYRD, JOSEPH CABRERA, MARCOS
21 CASTRO, CLARK CHU, JUSTIN CHU,
22 CAROLE COLEMAN, WENDELL COVAL,
MICHAEL CRAIG, JESSE CRUZ, PAUL
23 DEMERS, DENISE DIBELLO, ELISA
DIMAGGIO, LORETTO DIZON, EDWARD
24 DUARTE, TIM DUNAHAY, TIMOTHY
25 EASTER, JANET ENGLISH, AL ESPINELLI,
NILOOFAR ETEMADHAERI, JOEL EVERITT,
26 DERYL FEINNER, CARIANNE FELIX,
COLLEEN FINNEY, JAMES FOX, TROY
27 FREEMAN, ROBERT FRIEDERICH, GARY
28 GALLAGHER, JOHN GALLARZA, ISIDRO

Case No.: 3:16-cv-03950-JSW

SECOND AMENDED COMPLAINT

1 GAMA, JAMES GARDNER, RICHARD
2 GIBSON, TIMOTHY GRADY, STACY
3 GRAHAM, MATT GREEN, JEFFREY
4 GREENSTEIN, FRANCES GUERIN, CHRIS
5 HADDOW, DENNIS HADICK, TINA HARO,
6 JEREMIAH HARRINGTON, LARRY HICKS,
7 BIENVENIDA HINRICHSEN, JAMES
8 HODGE, CHRIS HOLZGRAF, JAMES
9 HRUNDAS, JANET HSIEH, VICTOR HUEZO,
10 JAMAAL JACKSON, JOHN JACOBS, ANITA
11 JIMENEZ, CAROL JOHNSON, ROBERT
12 KAEMPEN, JOSEPH KARAMIAN, NICOLE
13 KAYES, BRENT KENEFICK, SILVIA KLOC,
14 ADNEY KOGA, NICHOLAS KRAMER,
15 JEFFREY KROESE, IRWIN KWAN, CHIA-
16 SAUN LAI, JASON LAMPKIN, LINDA
17 LANCASTER, JACK LANE, JACOB LARSEN,
18 SHERILYN LAUGHLIN, CHERYL LEBEDA,
19 TYRONE LESLIE, NATHAN LEVERENZ,
20 PENNY LEVIN, CLARENCE LEWIS, ALVIN
21 LIM, LARRY LINDSAY, JOHN LONERGAN,
22 MINH LY, MICHAEL LYNCH, ROBERT
23 MAAG, ANGELA MACHADO, DIANNE
24 MAHROOM, DAVID MANNION, VALERIE
25 MANSON, DANIEL MARTELLO, ARTHUR
26 MARTINEZ, MICHAEL MASON, NANCY
27 MCCARTHY, LEONA MCCOACH, ANNE
28 MCDOUGLE, RONALD MEYERS, KAREN
MITCHELL, SCOTT MIZE, DONNA
MONTANA, VALERIE MORALES, WILLIAM
MORALES, REBECCA NEAL, KENNETH
NORDGREN, RAUL OLIVARES, RODOLFO
ORTEGA, MICHEL OTTOLIA, KIM PARCO,
B.J. PARKER, GREGORY PENTLAND, CHAD
PENZA, AMY PETERSEN, PHYLLIS
PETERSON, TRINELE POLLARD,
DHARMENDRA PRASAD, CHRISTOPHER
RABENOLD, KENNETH RATTAY, WILLIAM
RAY, AL REANO, CHRISTOPHER RENNELS,
MATTHEW ROBERSON, RAMIRO ROJAS,
ELAINE ROSENBERGER, DAN ROSLUND,
SCOTT ROSSER, LYNNETTE RUSSI, RAUL
SANDOVAL, PETER SAVIDGE, KRISTINA
SCHMALE, DEBRA SCHNELL, PERRITA
SCOTT, ANDY SIDIKPRAMANA, MARISSA
SIMPSON, KIT SKELTON, TYLER SMITH,

1 CHRISTOPHER SMITH, TONI SPROUSE,
2 TAMARA STANLEY, DEAN STEHLIK,
3 NICHOLAS STERNAD, PETER STONE,
4 KEVIN SULLIVAN, JOBIE TAN, DAN
5 TEZENO, EUGENIO TOBOLA, JOSE
6 TORRES, HIEU TRAN, BENJAMIN TUCKER,
7 KENT TWOMEY, CHRISTOPHER
8 VALCARCEL, JENNIFER VENTIMIGLIA,
9 CAROL VI, RICARDO VILLA, BRENDA
10 VINCENT, NOEL VITUG, JONATHAN VU,
11 PETE WAINWRIGHT, ANNETTE WALKER,
12 MICHAEL WATKINS, STEVEN WEILER,
13 DAVID WEISS, KAREN WILKINS, GEORGE
14 SCOTT WILSON, DEBBIE WINDER, CRAIG
15 WINTERHALDER, ELENORA WITT, LOUISE
16 WYLIE, AND BRUCE YOUNG,

11 Plaintiffs,

12 vs.

13 U.S. BANK NATIONAL ASSOCIATION,

14 Defendant.

1 1. Venue is proper in Alameda County as at least some of the acts complained of herein
2 occurred in Alameda County as Defendant owns and operates banks in Alameda County. At all
3 times herein mentioned, the Plaintiffs worked as employees for Defendant in salaried positions in
4 Defendant's branch and retail locations under the business name "U.S. Bank." Defendant's salaried
5 small business banker/business banking officer position is not a position which falls into an
6 exception to the California Labor Code § 1194 and/or California Industrial Welfare Commission
7 orders applicable to Defendant's business.

8 2. Plaintiffs have been employed as small business bankers and/or business banking
9 officers with Defendant within four years preceding the filing date of the class action complaints
10 entitled *Duran et al. v. US Bank*, Alameda County Superior Court Case 2001-035537 and/or
11 *Trahan v. U.S. Bank National Association*, Northern District of California Case 4:09-cv-03111-
12 JSW. The filing of the *Duran* class action complaint on December 26, 2001 (under the original
13 named plaintiff Rafiqzada) tolled the statute of limitations for the Plaintiffs from four years from
14 the filing of the *Duran* class action complaint, December 26, 1997, to the present. The filing of the
15 *Trahan* class action complaint on May 28, 2009 tolled the statute of limitations for the Plaintiffs
16 from four years of the *Trahan* class action complaint, May 28, 2005, to the present. Plaintiffs are
17 and were victims of the policies, practices and customs of Defendant complained of in this action in
18 ways that have deprived them of the rights guaranteed them by California Labor Code §§ 203, 204,
19 226, 226.7, 512, 1174, 1194, 1198, and California Business and Professions Code § 17200, *et seq.*,
20 (Unfair Practices Act) and the applicable wage order(s) issued by the Industrial Welfare
21 Commission including IWC Wage Order No. 4, §§ 11 and 12.

22 3. Plaintiffs are informed and believe and thereon allege that all times herein mentioned
23 Defendant is a corporation licensed to do business and actually doing business in the State of
24 California, Alameda County. Defendant owns and operates an industry, business and establishment
25 including within Alameda County for the purpose of selling banking services and products. As
26 such, and based upon all the facts and circumstances incident to Defendant's business in California,
27 Defendant is subject to California Labor Code §§ 1194, *et seq.*, the Unfair Competition Law and the
28 applicable wage order(s) issued by the Industrial Welfare Commission.

1 4. Plaintiffs do not know the true names or capacities, whether individual, partner or
2 corporate, of all defendants who may have caused or contributed to the harms complained of herein
3 but will seek to amend this complaint when the true names and capacities are known. Plaintiffs are
4 informed and believe and thereon allege that each defendant was responsible in some way for the
5 matters alleged herein and proximately caused Plaintiffs to be subject to the illegal employment
6 practices, wrongs and injuries complained of herein.

7 5. At all times herein mentioned, each defendants participated in the doing of the acts
8 hereinafter alleged to have been done and furthermore, the defendants, and each of them, were the
9 agents, servants and employees of each of the other defendants, as well as the agents of all
10 defendants, and at all times herein mentioned, were acting within the course and scope of said
11 agency and employment.

12 6. At all times herein mentioned, defendants, and each of them, were members of, and
13 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
14 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

15 7. At all times herein mentioned, the acts and omissions of various defendants, and
16 each of them, concurred and contributed to the various acts and omissions of each and all of the
17 other defendants in proximately causing the injuries and damages as herein alleged.

18 8. At all times herein mentioned, defendants, and each of them, ratified each and every
19 act or omission complained of herein. At all times herein mentioned, the defendants, and each of
20 them, aided and abetted the acts and omissions of each and all of the other defendants in
21 proximately causing the damages as herein alleged. Further, at all times mentioned herein, the wage
22 and hour related compensation policies of defendant's branch locations in California are and were
23 dictated by, controlled by, and ratified by the defendants herein and each of them.

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

28 10. Plaintiffs were regularly scheduled as a matter of uniform company policy to work

1 and in fact worked as salaried bank employees in excess of eight hours per workday and/or in
2 excess of forty hours per workweek without receiving straight time or overtime compensation for
3 such overtime hours worked in violation of California Labor Code §§ 510, 1194 and California
4 Industrial Welfare Commission Wage Order 4-2001. Defendant has failed to meet the requirements
5 for establishing the exemption because all Plaintiffs (a) regularly spent more than 50% of their time
6 performing nonexempt work, (b) did not customarily and regularly exercise discretion and
7 independent judgment on matters of significance, (c) did not have the authority to hire or fire or
8 make meaningful recommendations regarding same, (d) did not customarily and regularly supervise
9 at least two employees or the equivalent, (e) did not perform work directly related to the
10 management policies or the general business operations of Defendant or Defendant's customers, (f)
11 did perform nonexempt production and/or sales work a majority of their time (i.e., in excess of
12 50%) consistent with Defendant's realistic expectations, (g) did not customarily and regularly spend
13 more than 50% of their time away from the Defendant's places of business selling or obtaining
14 orders or contracts, and (h) did not earn more than 50% of their compensation in a bona fide
15 commission plan. Thus, Plaintiffs were not exempt from the overtime requirements of California
16 law for these reasons.

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

20 12. Plaintiffs regularly worked more than 40 hours per week and/or 8 hours per day but
21 were not paid overtime.

22 13. Plaintiffs did not meet any of the tests for exempt status under the California Wage
23 Orders and/or the California Labor Code.

24 14. Defendant has committed an act of unfair competition under California Business &
25 Professions Code § 17200 *et seq.* by not paying the required state law overtime pay to Plaintiffs.

26 15. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs request an order requiring
27 Defendant to make restitution of all overtime wages due and seek attorneys' fees and costs pursuant
28 to CCP § 1021.5.

PRAYER FOR RELIEF

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WHEREFORE, Plaintiffs pray for judgment as follows:

1. For restitution to Plaintiffs all funds unlawfully acquired by Defendant by means of any acts or practices declared by this Court to be in violation of the mandate established by California Business and Professions Code § 17200 *et seq.*;
2. For pre-judgment interest;
3. For reasonable attorneys' fees, expenses and costs; and,
4. For such other and further relief the Court may deem just and proper.

Dated: March 8, 2017

WYNNE LAW FIRM

/s/Edward J. Wynne
Edward J. Wynne
Plaintiffs' Counsel