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20 UNITED STATES DISTRICT COURT  
21 NORTHERN DISTRICT OF CALIFORNIA

22 Gina McLeod, individually and on behalf of all  
23 others similarly situated,

24 Plaintiff,

25 v.

26 Bank of America, N.A. and DOES 1 through 10,  
27 inclusive,

28 Defendant.

Case No. 3:16-cv-03294-SK

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

- (1) **FAILURE TO REIMBURSE BUSINESS EXPENSES (LABOR CODE § 2802);**
- (2) **UCL VIOLATIONS (BUS. & PROF. CODE § 17200-04); and**
- (3) **PENALTIES (LABOR CODE § 2699)**

**JURY TRIAL DEMANDED**

Plaintiff Gina McLeod (“Plaintiff”), on behalf of herself and all others similarly situated (hereinafter “Class Members”), complains and alleges as follows:

**A. INTRODUCTION**

1. This is a class action, under California Code of Civil Procedure § 382, seeking reimbursement for business expenses, and interest thereon; declaratory relief; equitable relief;

1 penalties, and reasonable attorneys' fees and costs, under California Labor Code §§ 2802 and 2699,  
2 Code of Civil Procedure § 1021.5, and Business and Professions Code § 17200, et seq., on behalf  
3 of Plaintiff and all other individuals who are or have been employed as Loan Officers (defined  
4 below) by Defendant Bank of America, National Association (hereafter "Bank of America" or  
5 "Defendant"), in California during the four years prior to the filing of this action. Plaintiff and  
6 similarly situated outside salespersons employed by Defendant during the Class Period as defined  
7 below (hereinafter "Class Members") are salespersons who paid out-of-pocket business expenses  
8 reasonably necessary for the performance of their jobs as Loan Officers employed by Defendant,  
9 for which Plaintiff and Class Members have not received reimbursement from Defendant.  
10 Plaintiff, on behalf of herself and Class Members, seeks damages and restitution of all unjust  
11 enrichment Defendant has enjoyed from their failure to reimburse business expenses incurred by  
12 Plaintiff and Class Members.

13 2. The "Class Period" is designated as the period from May 9, 2012 through the date  
14 the Court grants class certification. The violations of California's employee expense  
15 reimbursement law, as described more fully below, have been ongoing for at least the past four  
16 years, are continuing at present, and will continue unless and until enjoined by the Court.

17 3. Plaintiff and Class Members are or were engaged in the sales of residential and  
18 commercial mortgage products on behalf of Bank of America in California. Many of these sales-  
19 related duties are or were performed in the field, away from Defendant's offices or facilities. Many  
20 of these activities also involved travel between Bank of America's offices or facilities. Defendant  
21 expects and requires Loan Officers to drive their own vehicles to and from sites of customers and  
22 prospective customers and to and from Bank of America's offices, facilities, and branches.  
23 Defendant expects their Loan Officers to spend much of their work time away from Bank of  
24 America locations. Plaintiff and similarly situated Loan Officers are expected by Defendant to  
25 pay, and have personally paid, expenses incurred operating their personal vehicles. Defendant has  
26 willfully failed and refused to timely and fully reimburse Plaintiff and other present and former  
27 Loan Officers for these business expenses that were incurred in the regular course of their duties as  
28 Defendant's outside sales employees, as required by Labor Code § 2802.

**B. JURISDICTION**

1  
2 4. This Court has jurisdiction over the claims for reimbursement of business expenses  
3 under Labor Code § 2802.

4 5. This Court has jurisdiction over the claims for injunctive relief and restitution of  
5 gains arising from Defendant’s unlawful business practices, under California’s Unfair Competition  
6 Law (“UCL”), Business & Professions Code §§ 17203 and 17204.

7  
**C. VENUE**

8 6. Venue as to Defendant is proper in Alameda County, pursuant to Code of Civil  
9 Procedure §§ 395, 395.5. Bank of America is a foreign corporation that has not designated a  
10 principal business office in California according to its latest Statement of Information (Foreign  
11 Corporation) on file with the California Secretary of State. Defendant maintains branches,  
12 facilities and offices from which Defendant transacts business in a variety of locations in Alameda  
13 County, and Defendant is otherwise within this Court’s jurisdiction for purposes of service of  
14 process. The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly  
15 situated within the State of California and within Alameda County. Defendant has employed Class  
16 Members in Alameda County, who have also incurred unreimbursed business expenses while  
17 conducting Defendant’s business in Alameda County in the State of California during the Class  
18 Period.

19  
**D. PARTIES**

20 7. Plaintiff Gina McLeod resides in San Diego, California. Plaintiff has been  
21 employed by Defendant from approximately February 2014 to the present. During the Class  
22 Period, she worked as a Loan Officer for Defendant throughout Southern California, including her  
23 home branch in San Diego, California. During this time, Plaintiff was subject to Defendant’s  
24 unlawful business expense reimbursement policies and/or practices set forth herein.

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

27 9. The true names and capacities of persons or entities, whether individual, corporate,  
28 associate, or otherwise, sued herein as DOES 1 through 10, inclusive, are currently unknown to

1 Plaintiff, who therefore sues Defendant by such fictitious names under Code of Civil Procedure §  
2 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants  
3 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to  
4 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and  
5 capacities of the Defendants designated hereinafter as DOES when such identities become known.  
6 Hereinafter Defendant and the DOE Defendants shall be referred to collectively as “Defendant.”

7 10. All of Plaintiff’s claims stated herein are asserted against Defendant and any of their  
8 owners, predecessors, successors, subsidiaries, and/or assigns.

### 9 **E. FACTUAL BACKGROUND**

10 11. Defendant operates, and at all times during the liability period, has done business in  
11 Alameda County, California and throughout California.

12 12. Since at least four years prior to the filing of this action, Defendant has maintained  
13 business expense policies and/or practices that deny lawful reimbursement and/or compensation to  
14 its Loan Officers. Those policies and/or practices require, and/or with knowledge thereof permit,  
15 Loan Officers to pay for expenses incurred in direct consequence of discharging their sales duties  
16 on behalf of Defendant, including maintenance of a motor vehicle and all travel-related expenses,  
17 including vehicle insurance, mileage, gasoline, parking, and tolls incurred while driving their  
18 vehicles for business.

19 13. Defendant has maintained these same business expense policies and/or practices or  
20 substantially similar ones throughout the Class Period.

21 14. Defendant is aware that Loan Officers regularly incur business expenses in the  
22 discharge of their duties as employees Defendant nevertheless fail and refuse to reimburse Loan  
23 Officers for such business expenses incurred by them in their work as they sell mortgage products  
24 to Defendant’s clients and prospective clients at locations throughout Defendant’s business areas.

25 15. Plaintiff and Class Members have been harmed by Defendant’s unlawful business  
26 expense policies and/or practices in that they have not been paid for certain business expenses  
27 incurred while employed by Defendant, as alleged above, thereby diminishing their agreed-upon  
28 compensation, in amounts to be proved at trial.

**F. CLASS ACTION ALLEGATIONS**

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

All persons who are or have been employed, at any time from May 9, 2016 through the date of the Court’s granting of class certification in this matter, by Bank of America, National Association (“Bank of America”) in California under the job titles Loan Officer, Mortgage Loan Officer, and Branch Loan Officer (collectively “Loan Officers” or “Class Members”).

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

a. Numerosity: The potential members of the Class as defined are numerous and therefore joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that Defendant has employed hundreds of Loan Officers in California subject to Defendant’s business expense reimbursement policy at all times during the Class Period. Joinder of all members of the proposed class is not practicable.

b. Commonality: There are questions of law and fact common to the Plaintiff and the Class that predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, without limitation:

(i) Whether Plaintiff and Class Members have incurred unreimbursed business expenses in the discharge of their duties as employees, included but not limited to expenses for such items as motor vehicle use and maintenance, mileage, insurance, parking, and tolls.

(ii) Whether Defendant expected Plaintiff and Class Members to spend a significant portion of their work time away from Bank of America locations.

1 (iii) Whether Defendant intended, suffered and permitted, and/or were  
2 aware that Plaintiff and Class Members incurred such business expenses in the  
3 discharge of their duties as employees.

4 (iv) Whether Defendant failed and/or refused to reimburse, fully or at all,  
5 business expenses incurred by Plaintiff and Class Members in the discharge of their  
6 duties.

7 (v) Whether Defendant's failure to reimburse business expenses incurred  
8 by Plaintiff and Class Members, fully or at all, was the result of, and/or pursuant to,  
9 a business policy or regular practice of Defendant.

10 (vi) Whether Defendant violated Labor Code § 2802 by denying Plaintiff  
11 and other Class Members reimbursement for their business expenses.

12 (vii) Whether Defendant violated Business and Professions Code § 17200  
13 by failing to pay business expenses for Plaintiff and Class Members.

14 (viii) The proper formula(s) for calculating restitution, damages, and  
15 interest owed to Plaintiff and the Class Members.

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

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

27 e. Superiority of Class Action: A class action is superior to other available  
28 means for the fair and efficient adjudication of this controversy. Individual joinder of all

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

17  
18 **FIRST CAUSE OF ACTION**  
19 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**  
20 **(LABOR CODE § 2802)**

21 18. The allegations of Paragraphs 1 through 17 are re-alleged and incorporated herein  
22 by reference, and Plaintiff alleges as follows a cause of action on behalf of herself and the above-  
23 described class of similarly situated Loan Officers.

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

27 20. In order to discharge their sales-related duties for Defendant, Plaintiff and similarly  
28 situated Loan Officers were required and/or expected by Defendant to use their own personal  
motor vehicles for work-related travel. However, Defendant did not fully pay for expenses

1 incurred as a result of Plaintiff and Class Members' use of their own motor vehicles for work,  
2 including for liability insurance, mileage, gas, parking, tolls, and other travel-related expenses.

3 21. Plaintiff and similarly situated Loan Officers are entitled to reimbursement for these  
4 necessary expenditures, plus interest and attorneys' fees and costs, under Labor Code § 2802.

5 22. As a result of Defendant's violations of Labor Code § 2802, Defendant is also liable  
6 for attorneys' fees and costs under Labor Code § 2802(c).

7 23. Plaintiff, on behalf of herself and Class Members, request relief as described below.

8  
9 **SECOND CAUSE OF ACTION**  
10 **UNFAIR COMPETITION LAW VIOLATIONS**  
11 **(BUS. & PROF. CODE § 17200)**

12 24. The allegations of Paragraphs 1 through 23 are re-alleged and incorporated herein  
13 by reference, and Plaintiff alleges as follows a cause of action on behalf of herself and the above-  
14 described class of similarly situated Loan Officers.

15 25. Business & Professions Code § 17200 (the "UCL") prohibits unfair competition in  
16 the form of any unlawful, unfair, or fraudulent business act or practice. Business & Professions  
17 Code § 17204 allows "any person who has suffered injury in fact and has lost money or property"  
18 to prosecute a civil action for violation of the UCL.

19 26. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the  
20 filing of this action, and continuing to the present, Defendant has committed unlawful, unfair,  
21 and/or fraudulent business acts and practices as defined by Business & Professions Code § 17200,  
22 by failing to reimburse and indemnify Plaintiff and similarly situated Loan Officers for  
23 employment-related business expenses and losses, in violation of Labor Code § 2802.

24 27. In order to discharge their sales-related duties for Defendant, Plaintiff and similarly  
25 situated Loan Officers were required, expected, and/or permitted by Defendant to use their own  
26 personal motor vehicles for work-related travel. However, Defendant did not fully pay for  
27 expenses incurred as a result of Plaintiff's and Class Members' use of their own property or  
28 expenditures for services used in the course of their work for Defendant.

///



1           28. As a direct and proximate result of Defendant’s unlawful, unfair, and/or fraudulent  
2 acts and practices described herein, Defendant has received and continues to hold ill-gotten gains  
3 belonging to Plaintiff and Class Members in the form of unreimbursed employee business expenses  
4 that reduced or offset compensation earned by Plaintiff and Class Members. As a direct and  
5 proximate result of Defendant’s unlawful business practices, Plaintiff and Class Members have  
6 suffered economic injuries including, but not limited to out-of-pocket business expenses, and  
7 resulting reductions or offsets to earned compensation. Defendant has profited from their  
8 unlawful, unfair, and/or fraudulent acts and practices in the amount of those business expenses and  
9 interest accrued thereon.

10           29. Plaintiff and similarly situated Loan Officers are entitled to restitution pursuant to  
11 Business & Professions Code §§ 17203 and 17208 for all unpaid business expenses, and interest  
12 thereon accruing, from four years prior to the filing of this action to the date of such restitution, and  
13 Defendant should be required to disgorge all the profits and gains they have reaped and restore  
14 such profits and gains to Plaintiff and Class Members, from whom they were unlawfully taken.

15           30. Plaintiff has assumed the responsibility of enforcement of the laws and public  
16 policies specified herein by suing on behalf of herself and other similarly situated members of the  
17 public previously and presently employed by Defendant in California. Plaintiff’s success in this  
18 action will enforce important rights affecting the public interest. Plaintiff will incur a financial  
19 burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys’  
20 fees to Plaintiff is appropriate pursuant to Code of Civil Procedure § 1021.5.

21           31. Plaintiff, on behalf of herself and similarly situated Loan Officers, requests relief as  
22 described below.

23   **THIRD CAUSE OF ACTION**  
24                                   **THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**  
25   **(Labor Code §§ 2699 et seq.)**  
26   **(Claim on behalf of the Class)**

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

          33. As alleged above, Defendant failed to comply with the California Labor Code. As

1 such, Plaintiff is an “aggrieved employee” as defined in Labor Code § 2699(a). Pursuant to Labor  
2 Code § 2699, the Labor Code Private Attorneys General Act of 2004, Plaintiff brings this action on  
3 behalf of herself and other current and former Loan Officers against Bank of America, National  
4 Association, and seeks recovery of applicable civil penalties as follows:

5 a. where civil penalties are specifically provided in the Labor code for each of the  
6 violations alleged herein, Plaintiff seeks recovery of such penalties;

7 b. where civil penalties are not established in the Labor Code for each of the  
8 violations alleged herein, Plaintiff seeks recovery of the penalties established in §  
9 2699(e) of the Labor Code Private Attorneys General Act of 2004, and in  
10 accordance with § 200.5 of the Labor Code.

11 34. On May 12, 2016, Plaintiff caused to be served written notice, via certified mail, to  
12 the Labor and Workforce Development Agency and to Defendant Bank of America, national  
13 Association of Plaintiff’s intent to amend the complaint to add a cause of action pursuant to Labor  
14 Code §§ 2699 *et seq.* Included with the notice was the original complaint.

15 35. The Labor and Workforce Development Agency declined to issue notice of its  
16 intention to pursue civil penalties. Labor Code § 2699(a)(2)(C) authorizes Plaintiff, as a matter of  
17 right, to amend the existing complaint to add a claim arising under PAGA within 60 days of the  
18 specified time periods. Accordingly, Plaintiff commences this PAGA claim for civil remedies as  
19 provided for under Labor Code § 2699.

20 36. Plaintiff requests relief as described below.

21 **JURY DEMAND**

22 Plaintiff hereby requests a trial by jury.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff requests the following relief:

25 1. That the Court determine that this action may be maintained as a class action under  
26 Code of Civil Procedure § 382, and define the Class as requested herein;

27 2. That the Court find and declare that Defendant’s business expense policies and/or  
28 practices violate California law, including Labor Code § 2802 by refusing and/or failing to

1 reimburse all business expenses incurred by Plaintiff and other Loan Officers in the discharge of  
2 their duties as employees of Defendant;

3 3. That the Court find and declare that Defendant has violated Business and  
4 Professions Code § 17200 and committed unfair and unlawful business practices by failing to  
5 reimburse Plaintiff and similarly situated Loan Officers for business expenses incurred by them in  
6 the course of their duties for the benefit of Defendant, their employers;

7 4. That the Court declare that Defendant's business expense policies and/or practices  
8 violate California law by causing a denial or forfeiture of compensation, including earned wages.

9 5. That the Court award to Plaintiff and Class Members all unreimbursed business  
10 expenses, and interest thereon, that they are owed, pursuant to Labor Code § 2802, in an amount to  
11 be proved at trial;

12 6. That Defendant be ordered to pay restitution to Plaintiff and the Class, due to  
13 Defendant's UCL violations, pursuant to Business and Professions Code §§ 17200-17205, in the  
14 amount of their unreimbursed business expenses and interest thereon;

15 7. That the Court award civil penalties to Plaintiff and the Class as provided by  
16 California Labor Code § 2699;

17 8. That Plaintiff and the Class be awarded reasonable attorneys' fees and costs  
18 pursuant to Labor Code § 2802 and Code of Civil Procedure § 1021.5, and/or other applicable law;

19 9. That the Court award such other and further relief as this Court may deem  
20 appropriate.

21 DATED: June 22, 2016

WYNNE LAW FIRM

22  
23 /s/ Edward J. Wynne

By: Edward J. Wynne

24 DATED: June 22, 2016

LEONARD CARDER, LLP

25  
26 /s/ Aaron Kaufmann

By: Aaron Kaufmann

27  
28 *Attorneys for Plaintiff and the putative class*