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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO  
UNLIMITED CIVIL JURISDICTION**

17 JOSE GONZALEZ, DAVID LU, REQUIBA  
18 HERNDON-ALLEN, DAVID DANIEL,  
19 AND MARTIN BERMUDEZ, on behalf of  
20 themselves and all those similarly situated,

Plaintiffs,

v.

BANK OF THE WEST,

Defendant.

Case No. 23CV001422

**FIRST AMENDED CLASS ACTION  
COMPLAINT AND COMPLAINT FOR  
PENALTIES PURSUANT TO PRIVATE  
ATTORNEYS GENERAL ACT, LABOR  
CODE § 2698 ET SEQ.;**

**DEMAND FOR JURY TRIAL**

BY FAX

1 Plaintiffs Jose Gonzalez, David Lu, Requiba Herndon-Allen, David Daniel, and Martin  
2 Bermudez, on behalf of themselves and all others similarly situated, file this class and representative  
3 action under the California Code of Civil Procedure, California Labor Code, and Private Attorneys  
4 General Act of 2004, Labor Code § 2698, *et seq.*, (“PAGA”), allege as follows:

5 **SUMMARY OF CLAIMS**

6 1. Plaintiffs Gonzalez, Lu, Herndon-Allen, Daniel, and Bermudez are individuals who  
7 worked as Mortgage Bankers (“MB”)<sup>1</sup> for Bank of the West (“BOTW”).<sup>2</sup> Plaintiffs bring this class and  
8 PAGA action on behalf of themselves and all other similarly situated current and former BOTW  
9 employees, as set forth below.

10 2. Plaintiffs allege that BOTW has violated and continues to violate the California Labor  
11 Code protections applicable to MBs because BOTW fails to reimburse them for necessary business  
12 expenses.

13 3. Plaintiffs, individually and on behalf of all others similarly situated, bring their claims  
14 under the California Code of Civil Procedure, California Labor Code, and PAGA on behalf of all MBs  
15 in California who worked from March 24, 2018 through January 27, 2023 (“Aggrieved Employees”).

16 **JURISDICTION AND VENUE**

17 4. The Court has jurisdiction over Plaintiffs’ claims under the California Code of Civil  
18 Procedure and the California Labor Code.

19 5. The Court has personal jurisdiction over this matter because BOTW conducts substantial  
20 business activity in this state and engaged in the unlawful acts described herein in this state.

21 6. Venue is proper in this county under California Code of Civil Procedure § 395.5 because  
22 a substantial part of the events and omissions giving rise to the claims alleged herein occurred in this  
23 county.

24 7. Notice of Plaintiffs’ claims on behalf of Aggrieved Employees was provided to the  
25 California Labor & Workforce Development Agency (“LWDA”) and to BOTW on December 8, 2022.

26 <sup>1</sup> This includes employees in the job titles Mortgage Banker, Mortgage Banker HC NonNetwork,  
27 Mortgage Banker Private, and Mortgage Banker Std NonNetwork.

28 <sup>2</sup> On February 1, 2023, the acquisition of Bank of the West by BMO Financial Corp. and BMO Harris  
Bank N.A. (collectively, “BMO”) was completed.

1 The LWDA has not taken any action with regard to the claims, including providing notice of an intent to  
2 pursue the claims.

3 **THE PARTIES**

4 8. BOTW is part of BMO, a leading North American bank and financial services company  
5 headquartered in Chicago, Illinois. It is the eighth largest bank in North America by assets.

6 9. BOTW is a California corporation authorized to do business in this state.

7 10. Plaintiff Jose Gonzalez is a resident of Riverside, California. Gonzalez worked as an MB  
8 from approximately February 2019 to September 2019 in California.

9 11. Plaintiff David Lu is a resident of Las Vegas, Nevada. Lu worked as an MB from  
10 approximately February 2018 to July 2019 in California.

11 12. Plaintiff Requiba Herndon-Allen is a resident of Hayward, California. Herndon-Allen  
12 worked as an MB from approximately April 2018 to October 2019 in California.

13 13. Plaintiff David Daniel is a resident of San Jose, California. Daniel worked as an MB  
14 from approximately January 2019 to May 2020 in California.

15 14. Plaintiff Martin Bermudez is a resident of Temecula, California. Bermudez worked as an  
16 MB from approximately February 2020 to July 2021 in California.

17 **CLASS DEFINITION**

18 15. Plaintiffs bring this action on behalf of a proposed California class of individuals working  
19 as MBs anywhere in California from March 24, 2018 through January 27, 2023, under California state  
20 law, as set forth in more detail below (the "California Class").

21 **FACTUAL BACKGROUND**

22 16. MBs incur necessary and reasonable business expenses including, but not limited to,  
23 expenses for internet and cell phone usage, home computing equipment, and automobile mileage.

24 17. Gonzalez incurred necessary and reasonable business expenses including mileage and  
25 home computing equipment and internet use for business purposes. He was not reimbursed for these  
26 expenses.



1 18. Lu incurred necessary and reasonable business expenses including mileage; home  
2 internet use for business purposes; and personal cell phone usage. He was not reimbursed for these  
3 expenses.

4 19. Herndon-Allen incurred necessary and reasonable business expenses including mileage  
5 and home internet use for business purposes. She was not reimbursed for these expenses.

6 20. Daniel incurred necessary and reasonable business expenses including mileage; home  
7 computing equipment and internet use for business purposes; and personal cell phone usage. He was not  
8 reimbursed for these expenses.

9 21. Bermudez incurred necessary and reasonable business expenses including mileage home  
10 computing equipment and internet use for business purposes. He was not reimbursed for these  
11 expenses.

12 22. BOTW fails to reimburse MBs for all of the necessary and reasonable out of pocket  
13 expenses they incur in performing their duties.

14 23. Upon information and belief, BOTW is aware that MBs incur mileage, internet usage,  
15 and personal cell phone usage and that they must use personal home computing equipment to perform  
16 BOTW work, but fails to ensure that they are fully reimbursed for these expenses.

17 24. BOTW's policies and practices violate Labor Code § 2802, which requires every  
18 California employer to indemnify its employees for all necessary expenditures or losses incurred by the  
19 employees in direct consequence of the discharge of his or her duties, or of his or her obedience to the  
20 directions of the employer.

21 **CALIFORNIA CLASS ALLEGATIONS**

22 28. Plaintiffs incorporate all other paragraphs as though fully set forth herein.

23 29. Plaintiffs bring this action as a class action pursuant to the California Code of Civil  
24 Procedure on behalf of the "California Class," as defined in paragraph 15, above.

25 30. **Numerosity.** Plaintiffs estimate the size of the California Class to be at least 100  
26 individuals. This size makes bringing the claims of each individual member of the class before this  
27 Court impracticable. Likewise, joining each individual member of the California Class as a plaintiff in  
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1 this action is impracticable. The identity of the members of the California Class (“California Class  
2 Members”) will be determined from BOTW’s records. As such, a class action is a reasonable and  
3 practical means of resolving these claims. To require individual actions would prejudice the California  
4 Class and BOTW.

5 31. **Typicality.** Plaintiffs’ claims are typical of those of the California Class because like the  
6 California Class Members, Plaintiffs were subject to BOTW’s uniform policies and practices and were  
7 compensated in the same manner as others in the California Class. BOTW failed to reimburse the  
8 California Class Members for business expenses. Plaintiffs and the California Class Members have not  
9 been reimbursed as a result of BOTW’s common policies and practices, which failed to comply with  
10 California law.

11 32. **Adequacy.** Plaintiffs are representative parties who will fairly and adequately protect the  
12 interests of the California Class because it is in their interest to effectively prosecute the claims herein  
13 alleged in order to obtain the unreimbursed business expenses and penalties owed to them under  
14 California law. Plaintiffs have retained attorneys who are competent in both class actions and wage and  
15 hour litigation. Plaintiffs do not have any interest which may be contrary to or in conflict with the  
16 claims of the California Class they seek to represent.

17 33. **Commonality.** Common issues of fact and law predominate over any individual  
18 questions in this matter. The common issues of fact include, but are not limited to whether BOTW  
19 failed to indemnify Plaintiffs and the California Class Members for their expenses and losses; whether  
20 Plaintiffs and the California Class are entitled to compensatory damages; the proper measure of damages  
21 sustained by Plaintiffs and the California Class; and whether BOTW’s actions were “willful.”

22 34. **Superiority.** A class action is superior to other available means for the fair and efficient  
23 adjudication of this lawsuit. Even in the event any member of the California Class could afford to  
24 pursue individual litigation against companies the size of BOTW, doing so would unduly burden the  
25 court system. Individual litigation would magnify the delay and expense to all parties and flood the  
26 court system with duplicative lawsuits. Prosecution of separate actions by individual members of the  
27

1 California Class would create the risk of inconsistent or varying judicial results and establish  
2 incompatible standards of conduct for BOTW.

3 35. **Manageability.** A class action, by contrast, presents far fewer management difficulties  
4 and affords the benefits of uniform adjudication of the claims, financial economy for the parties, and  
5 comprehensive supervision by a single court. By concentrating this litigation in one forum, judicial  
6 economy and parity among the claims of individual California Class Members are promoted.  
7 Additionally, class treatment in this matter will provide for judicial consistency. Trial of Plaintiffs' class  
8 claims will be manageable because Plaintiffs can rely on BOTW's records, corporate testimony from  
9 BOTW's management, and representative testimony from Class Members.

10 36. Notice of the pendency and any resolution of this action can be provided to the California  
11 Class by mail, electronic mail, print, broadcast, internet and/or multimedia publication. The identity of  
12 members of the California Class is readily identifiable from BOTW's records.

13 37. This type of case is well-suited for class action treatment because: (1) BOTW's practices,  
14 policies, and/or procedures were uniform; and (2) the burden is on BOTW to prove that it properly  
15 reimbursed Plaintiffs and Class Members.

16 38. Ultimately, a class action is a superior form to resolve the California claims detailed  
17 herein because of the common nucleus of operative facts centered on the continued failure of BOTW to  
18 pay Plaintiffs and the California Class Members according to applicable California laws.

19 **FIRST CAUSE OF ACTION**

20 **Failure to Indemnify Employees' Expenses and Losses (California Labor Code § 2802)**

21 39. Plaintiffs, on behalf of themselves and all California Class Members, reallege and  
22 incorporate by reference all other paragraphs as if they were set forth again herein.

23 40. California Labor Code § 2802 provides that an employer shall indemnify his or her  
24 employee for all necessary expenditures or losses incurred by the employee in direct consequence of the  
25 discharge of his or her duties.

26 41. During all relevant times, BOTW knowingly and willfully violated California Labor  
27 Code § 2802 by failing to pay Plaintiffs and members of the California Class all expenses owed as  
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1 alleged herein. BOTW is therefore liable to Plaintiffs and members of the California Class for expenses  
2 incurred in direct consequence of the discharge of Plaintiffs' duties.

3 42. Plaintiffs, individually and on behalf of the members of the California Class, respectfully  
4 request that the Court award all expenses and losses due and the relief requested below in the Prayer for  
5 Relief.

6 **SECOND CAUSE OF ACTION**

7 **Violation of the Private Attorneys General Act (California Labor Code § 2698 *et seq.*)**

8 43. Plaintiffs, on behalf of themselves and all aggrieved employees, reallege and incorporate  
9 by reference all other paragraphs as if they were set forth again herein.

10 44. Plaintiffs are aggrieved employees under PAGA, as they were employed by BOTW  
11 during the applicable statutory period and suffered one or more of the Labor Code violations set forth  
12 herein. Accordingly, they seek to recover on behalf of themselves and all other current and former  
13 aggrieved employees of BOTW, the civil penalties provided by PAGA, plus reasonable attorney's fees  
14 and costs.

15 45. Plaintiffs seek civil penalties pursuant to PAGA for

16 46. failure to reimburse for all reasonably necessary expenditures and losses incurred by MBs  
17 in direct consequence of the discharge of their duties, in violation of Labor Code § 2802.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs, on behalf of the State of California, the California Class and aggrieved  
20 employees, pray for the following relief:

21 A. Certifying that this action may proceed as a California class action under the California  
22 Code of Civil Procedure;

23 B. Awarding damages, liquidated damages, restitution, and/or statutory penalties and  
24 interest thereon as allowed by law to be paid by BOTW for the causes of action alleged herein;

25 C. Awarding attorneys' fees and costs of suit, including expert fees and costs, pursuant to  
26 the California;

27 D. Appropriate service payments to Plaintiffs for their service as a class and PAGA  
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1 representatives; and

2 E. Such other and further relief as the Court deems just and proper.

3 Dated: June 21, 2023

Respectfully submitted,

4  
5  
6 By: 

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