

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

AMANDA BRAWNER)
9815 Larsen)
Overland Park, KS 66048)

JURY TRIAL DEMANDED

GYNON HAMILTON)
1701 Meadowlark Ct., #104)
Kansas City, KS 66102)

Case no.: 09-CV-2073-JWL

BYRON HARDIMAN)
8306 Prospect)
Kansas City, MO 64132)

On Behalf of Themselves and)
All Others Similarly Situated,)

Plaintiffs,)

vs.)

BANK OF AMERICA, N.A.)
President, Consumer & Small Business)
Bank: Liam E. McGee)
Bank of America, N.A.)
Bank of America Corporate Center)
100 N. Tryon Street)
Charlotte, NC 28255)

Defendant.)

FIRST AMENDED COMPLAINT
Collective Action Under the FLSA

COME NOW the Plaintiffs Amanda Brawner, Gynon Hamilton, and Byron Hardiman on behalf of themselves, and all others similarly situated, by and through counsel, and hereby set forth this representative action for violation of the Fair Labor Standards Act under 29 U.S.C. §216(b) as follows:

PRELIMINARY STATEMENT

1. Plaintiffs bring this action against Defendant Bank of America, N.A. (“BOA”) for unpaid overtime compensation and related penalties and damages. Defendant’s practice and policy is to willfully fail and refuse to properly pay overtime compensation due Plaintiffs, and all other similarly situated employees, in the positions of bank teller and personal banker. In particular, Defendant requires such persons to be present at work and perform work, including both before and after their scheduled shifts, but fails to pay them overtime accordingly. Also, Defendant requires such persons to perform work tasks during meal break time that is deducted from their pay. Doing so denies such persons overtime pay and is direct in violation of the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* (FLSA).
2. Defendant’s practices are in direct violation of the FLSA, and Plaintiffs seek injunctive and declaratory relief; compensation for work performed, overtime premiums for all overtime work required, suffered, or permitted by Defendant; liquidated and/or other damages as permitted by applicable law; and attorney’s fees, costs, and expenses incurred in this action.

PARTIES

3. Plaintiff Amanda Brawner currently resides at 9815 Larsen, Overland Park, Johnson County, Kansas. Plaintiff was employed as a bank teller for the Defendant. Plaintiff worked at Defendant’s Mission Center Branch located in Mission, Kansas.
4. Plaintiff Gynon Hamilton currently resides 1701 Meadowlark Ct, #104, Kansas City, Wyandotte County, Kansas. Plaintiff was employed as a bank teller for the Defendant.

Plaintiff worked at Defendant's Mission Center Branch located in Mission, Kansas, and its Platte County, in-store, Branch located in Platte County, Missouri.

5. Plaintiff Byron Hardiman currently resides at 8306 Prospect, Kansas City, Missouri. Plaintiff was employed as a personal banker for the Defendant. Plaintiff worked at Defendant's Brookside and Watkins Crossing branches in Kansas City, Missouri.
6. Defendant Bank of America, N.A. ("BOA") is a nationally chartered bank registered to do business in the state of Kansas and operating branch locations throughout the state of Kansas. Defendant BOA employs bank tellers and personal bankers throughout the United States at its branch locations. Defendant's principle place of business is Bank of America Corporate Center, 100 N. Tyron Street, Charlotte, NC 28255.

JURISDICTION AND VENUE

7. This Court has original federal question jurisdiction under 28 U.S.C. § 1311 for the claims brought under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.*
8. The United States District Court for the District of Kansas has personal jurisdiction because Defendant conducts business within this District.
9. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b), inasmuch as the Defendant has offices, conducts business and can be found in the District of Kansas, and the cause of action set forth herein has arisen and occurred in part in the District of Kansas. Venue is also proper under 29 U.S.C. §1132(e)(2) because Defendant has substantial business contacts within the state of Kansas.
10. At all relevant times, Defendant 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 the FLSA, 29 U.S.C. §203. At all relevant times, Defendant has employed,

and/or continues to employ, “employee[s],” including each of the putative representative action plaintiffs. At all times relevant herein, Defendant has had gross operating revenues in excess of \$500,000.00 (Five Hundred Thousand Dollars).

COUNT I – FLSA CLAIM for Bank Tellers

11. Plaintiffs hereby incorporate paragraphs 1 through 10 of this Complaint into this count.
12. Plaintiff Amanda Brawner was employed by the Defendant from on or about April 4, 2005 through on or about August 27, 2008 at the Defendant’s Mission Center Branch located in Mission, Kansas. Plaintiff was employed as a bank teller at this facility.
13. Plaintiff Gynon was employed by the Defendant from on or about May 9, 2006 through on or about September 5, 2008 at Defendant’s Mission Center Branch located in Mission, Kansas, and its Platte-County, in-store, Branch located in Platte County, Missouri. Plaintiff was employed as a bank teller at these facilities.
14. Like the Plaintiffs, the Defendant employs bank tellers at all its branch locations throughout the United States. All such bank tellers are hereby referred to as the “putative representative action plaintiffs.”
15. Defendant compensates its bank tellers as non-exempt employees under the FLSA entitled to receive overtime. Defendant compensates its bank tellers by paying them an hourly wage based upon a forty hour work week.
16. The FLSA requires each covered employer, such as Defendant, to compensate all non-exempt employees for services performed and to compensate them at a rate of not less than one and one-half the regular rate of pay for work performed in excess of forty hours in a work week.

17. All bank tellers working for Defendant are similarly situated in that they all perform essentially the same job functions.
18. All bank tellers are similarly situated in that they are all subject to Defendant's same compensation policies and plan that requires bank tellers to perform work and/or requires them to be present at work while not compensating them for their services. In turn, this denies bank tellers the compensation for services performed, and denies bank tellers their overtime compensation. Defendant's conduct is in violation of the FLSA.
19. In particular, the Defendant's policy that applies to all bank tellers are as follows: (a) Defendant does not allow bank tellers to record hours worked in excess of forty per work week, (b) Defendant erases or modifies bank tellers' recorded hours to eliminate hours worked in excess of forty per work week, and/or (c) Defendant provides "comp time" to tellers in lieu of paying overtime for hours worked in excess of forty per work week. Defendant's conduct is in violation of the FLSA.
20. All bank tellers are similarly situated in that they are all subject to Defendant's same compensation policies and plan that requires bank tellers to perform work during meal breaks, even though the Defendant does not compensate the bank tellers for this time. In turn, this denies bank tellers overtime compensation. This conduct is in violation of the FLSA.
21. Plaintiffs bring this Complaint as a collective action pursuant to 29 U.S.C. §216(b) of the FLSA, on behalf of all persons who were, are, or will be employed by the Defendant as bank tellers within three years from the commencement of this action who have not been compensated for at one and one-half times the regular rate of pay for all services performed in excess of forty hours per week.

22. This Complaint is being brought and maintained as an “opt-in” collective action pursuant to 29 U.S.C. §216(b) of the FLSA for all claims asserted by the Plaintiffs because their claims are similar to the claims of the putative representative action plaintiffs.
23. The names and addresses of the putative representative action plaintiffs are available from Defendant. To the extent required by law, notice will be provided to said individuals via First Class Mail and/or by the use of techniques and a form of notice similar to those customarily used in representative actions.
24. The Defendant failed to compensate Plaintiffs and the putative representative action plaintiffs 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, Defendant has violated, and continues to violate, the FLSA, 29 U.S.C. §§201, *et seq.*, including 29 U.S.C. §207(a)(1).
25. The foregoing conduct, as alleged herein, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. §255(a).
26. The Plaintiffs, on behalf of themselves and all similarly situated employees of Defendant who compose the putative representative action plaintiffs, seek damages in the amount of all respective unpaid overtime compensations at a rate of one and one-half times the regular rate of pay for work performed in excess of forty hours in a work week, plus liquidated damages, as provided by the FLSA, 29 U.S.C. §216(b), and such other legal and equitable relief as the Court deems just and proper.
27. The Plaintiffs, on behalf of themselves and all similarly situated employees of Defendant who compose putative representative action plaintiffs, seek recovery of all attorneys’

fees, costs, and expenses of this action, to be paid by Defendant, as provided by the FLSA, 29 U.S.C. §216(b).

COUNT II – FLSA CLAIM for Personal Bankers

28. Plaintiffs hereby incorporate paragraphs 1 through 27 of this Complaint into this count.
29. Plaintiff Byron Hardiman was employed by the Defendant from on or about June 25, 2005 through on or about April 1, 2007 at the Defendant's Brookside and Watkins Crossing Branches located in Kansas City, Missouri. Plaintiff was employed as a personal banker.
30. Like the Plaintiff Hardiman, the Defendant employs personal banker at all its branch locations throughout the United States. All such personal banker are hereby referred to as the "putative representative action plaintiffs."
31. Defendant compensates its personal bankers as non-exempt employees under the FLSA entitled to receive overtime. Defendant compensates its personal bankers by paying them an hourly wage based upon a forty hour work week.
32. The FLSA requires each covered employer, such as Defendant, to compensate all non-exempt employees for services performed and to compensate them at a rate of not less than one and one-half the regular rate of pay for work performed in excess of forty hours in a work week.
33. All personal bankers working for Defendant are similarly situated in that they all perform essentially the same job functions.
34. All personal bankers are similarly situated in that they are all subject to Defendant's same compensation policies and plan that requires bank tellers to perform work and/or requires them to be present at work while not compensating them for their services. In turn, this

denies personal bankers the compensation for services performed, and denies personal bankers their overtime compensation. Defendant's conduct is in violation of the FLSA.

35. In particular, the Defendant's policy that applies to all personal bankers are as follows:
(a) Defendant does not allow personal bankers to record hours worked in excess of forty per work week, (b) Defendant erases or modifies personal bankers' recorded hours to eliminate hours worked in excess of forty per work week, and/or (c) Defendant provides "comp time" to personal bankers in lieu of paying overtime for hours worked in excess of forty per work week. Defendant's conduct is in violation of the FLSA.
36. All personal bankers are similarly situated in that they are all subject to Defendant's same compensation policies and plan that requires personal bankers to perform work during meal breaks, even though the Defendant does not compensate the personal bankers for this time. In turn, this denies personal bankers overtime compensation. This conduct is in violation of the FLSA.
37. Plaintiffs bring this Complaint as a collective action pursuant to 29 U.S.C. §216(b) of the FLSA, on behalf of all persons who were, are, or will be employed by the Defendant as personal bankers within three years from the commencement of this action who have not been compensated for at one and one-half times the regular rate of pay for all services performed in excess of forty hours per week.
38. This Complaint is being brought and maintained as an "opt-in" collective action pursuant to 29 U.S.C. §216(b) of the FLSA for all claims asserted by the Plaintiff because their claims are similar to the claims of the putative representative action plaintiffs.
39. The names and addresses of the putative representative action plaintiffs are available from Defendant. To the extent required by law, notice will be provided to said

40. The Defendant failed to compensate Plaintiff and the putative representative action plaintiffs 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, Defendant has violated, and continues to violate, the FLSA, 29 U.S.C. §§201, *et seq.*, including 29 U.S.C. §207(a)(1).
41. The foregoing conduct, as alleged herein, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. §255(a).
42. The Plaintiff, on behalf of himself and all similarly situated employees of Defendant who compose the putative representative action plaintiffs, seek damages in the amount of all respective unpaid overtime compensations at a rate of one and one-half times the regular rate of pay for work performed in excess of forty hours in a work week, plus liquidated damages, as provided by the FLSA, 29 U.S.C. §216(b), and such other legal and equitable relief as the Court deems just and proper.
43. The Plaintiff, on behalf of himself and all similarly situated employees of Defendant who compose putative representative action plaintiffs, seek recovery of all attorneys' fees, costs, and expenses of this action, to be paid by Defendant, as provided by the FLSA, 29 U.S.C. §216(b).

WHEREFORE, Plaintiffs, on behalf of themselves and all proposed putative representative action plaintiffs, pray for relief as follows:

- a. Designation of this action as a collective action on behalf of the proposed putative representative action plaintiffs and prompt issuance of notice pursuant to 29 U.S.C.

- §216(b) to all putative representative action plaintiffs (the FLSA opt-in class), 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 U.S.C. §216(b);
- b. Designation of Plaintiffs Amanda Brawner and Gynon Hamilton as Representative Plaintiffs of the putative representative action plaintiffs of bank tellers and designation of Plaintiff Byron Hardiman as Representative Plaintiff of the putative representative action plaintiffs of personal bankers;
 - c. Designation of Donelon, P.C. and Brown & Associates, LLC as the attorneys representing the putative representative 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 injunction against Defendant and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with Defendant, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;
 - f. An award of damages for overtime compensation due for the Plaintiffs and the putative representative action plaintiffs, including liquidated damages, to be paid by Defendant;
 - g. Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees;
 - h. Pre-Judgment and Post-Judgment interest, as provided by law; and
 - i. Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper.

Demand for Jury 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 representative action have a right to jury trial.

Designated Place of Trial

COMES NOW the Plaintiffs by and through their counsel of record and hereby designate the place of trial as follows: **Kansas City, Kansas.**

the law office of **DONELON, P.C.** www.donelonpc.com

the law office of **DONELON, P.C.** www.donelonpc.com

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

/s/ Daniel W. Craig
Daniel W. Craig, KS.Fed. #78146
Of counsel
1125 Grand Blvd., Ste. 900
Kansas City, MO 64106
Tel: 816-221-7772
Fax: 816-283-3823
DCraig@DanCraigPC.com

/s/ Jason Brown
Jason Brown, KS.Fed.Ct. #70700
BROWN & ASSOCIATES, LLC
204B U.S. 169 Hwy.
Trimble, MO 64492
Tel: 816-505-4529
Fax: 816-379-4040
kclawyerbrown@yahoo.com

ATTORNEYS FOR PLAINTIFFS