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Plaintiffs and the Putative Collective*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

PHILLIP KARALI and GREGORY  
SHELLEY, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

Branch Banking and Trust Company; DOES 1-  
10, INCLUSIVE,

Defendants.

Case No. \_\_\_\_\_

**COLLECTIVE ACTION COMPLAINT**

**DEMAND FOR A JURY TRIAL**

1 Representative Plaintiffs Phillip Karali and Gregory Shelley (collectively, “the  
2 Representative Plaintiffs”), on behalf of themselves and all others similarly situated, by and  
3 through their attorneys, for their Complaint against Defendants Branch Banking and Trust  
4 Company (“BB&T”) and Does 1-10 (collectively, “Defendants”), allege as follows:

5 **PRELIMINARY STATEMENT**

6 1. This case is about Defendants, operating in New Jersey and throughout the  
7 country, and their willful refusal to pay overtime wages to their Review Appraisers (also known  
8 as Appraisal Review Officers, but referred to herein as “Review Appraisers”) and Production  
9 Appraisers (also known as Real Estate Evaluators, but referred to herein as “Production  
10 Appraisers”). Despite mounting legal authority that appraisers are entitled to overtime under the  
11 Fair Labor Standards Act 29 U.S.C. § 201, *et. seq.* (“FLSA”), Defendants have steadfastly  
12 refused to pay its in-house appraisers any overtime compensation in willful violation of the  
13 FLSA and state wage and hour protections.

14 2. Representative Plaintiffs Phillip Karali and Gregory Shelley bring this  
15 Nationwide Collective action against Defendants under the Fair Labor Standards Act, 29 U.S.C.  
16 § 201, *et. seq.* (“FLSA”) for failure to pay overtime, on behalf of a Nationwide Collective  
17 comprised of Review Appraisers and Production Appraisers who worked for Defendants without  
18 overtime compensation.

19 3. Plaintiff Karali also brings this action individually to remedy violations of New  
20 Jersey state law, including but not limited to New Jersey State Wage and Hour Law, N.J.S.A.  
21 34:11-56a4.

22 4. Defendants have willfully engaged in a pattern, policy, and practice of unlawful  
23 conduct for the actions alleged in this Complaint, in violation of the federal and state rights of the  
24 Representative Plaintiffs and similarly situated individuals.

**THE PARTIES**

**Plaintiffs**

5. Representative Plaintiff Karali is an adult individual who is a resident of New Jersey, and was employed by Defendants as an Appraisal Review Officer II in New Jersey from approximately August 2015 until March 2016. Prior to August 2015, Plaintiff Karali was employed by Susquehanna Bank in a similar position from October 2014 until Susquehanna Bank was acquired by Defendant BB&T in August 2015. Representative Plaintiff Karali has consented in writing to be a party to the FLSA claims in this action pursuant to 29 U.S.C. § 216(b). Representative Plaintiff Karali’s consent form is attached hereto as Exhibit A.

6. Representative Plaintiff Gregory Shelley is an adult individual who is a resident of Georgia, and was employed by Defendants as a Real Estate Evaluator II in Georgia from approximately August 2010 to November 2015. Representative Plaintiff Shelley has consented in writing to be a party to the FLSA claims in this action pursuant to 29 U.S.C. § 216(b). Representative Plaintiff Shelley’s consent form is attached hereto as Exhibit B.

7. The Representative Plaintiffs and others similarly situated are current and/or former employees of Defendants within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

8. Plaintiff Karali was an employee within the meaning of New Jersey State Wage and Hour Law section 34:11-4.1(b).

**Defendants**

9. Defendant BB&T is a North Carolina corporation doing business in and maintaining offices in several states throughout the United States. Defendant BB&T’s headquarters and principal place of business is located in Winston-Salem, North Carolina.

10. According to its website and corporate filings with the North Carolina Secretary of State, BB&T provides financial services to its customers, including personal banking, insurance, home mortgages, investment services, retirement plans, and wealth advisory services.

11. At all relevant times, BB&T has been an “employer” engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29

1 U.S.C. § 203(d). Specifically, BB&T provides financial services to customers in several states  
2 throughout the United States. BB&T's gross annual sales made or business done has been in  
3 excess of \$500,000.00 at all relevant times.

4 12. Defendants were employers within the meaning of New Jersey State Wage and  
5 Hour Law section 34:11-4.1(a).

6 13. Defendants DOES 1-10, inclusive, are sued herein under fictitious names, their  
7 true names and capacities being unknown to the Representative Plaintiffs. When their true names  
8 and capacities are ascertained, the Representative Plaintiffs will amend this complaint by  
9 inserting their true names and capacities. The Representative Plaintiffs are informed and believe,  
10 and thereon allege that each of the fictitiously-named Defendants is responsible in some manner  
11 for the occurrences herein alleged, and that the damages alleged herein were caused by such  
12 Defendants.

#### 13 **JURISDICTION AND VENUE**

14 14. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because  
15 this action involves a federal question under 29 U.S.C. §§ 207, 216(b).

16 15. This Court has supplemental jurisdiction over Plaintiff Karali's state law claim  
17 pursuant to 28 U.S.C. § 1367 because Plaintiff Karali's state law claim forms part of the same  
18 case or controversy as the Representative Plaintiffs' FLSA claims.

19 16. Venue in the District of New Jersey is proper pursuant to 28 U.S.C. § 1391  
20 because a substantial part of the events or omissions giving rise to the claim occurred in the  
21 District of New Jersey.

#### 22 **FACTUAL ALLEGATIONS**

23 17. During the applicable statutory period, the Representative Plaintiffs and those  
24 similarly situated worked as Review Appraisers and Production Appraisers for Defendants.  
25 Review appraisers were referred to as Appraisal Review Officer I-III, and will be referred to  
26 collectively as "Review Appraisers." Production Appraisers were referred to as Real Estate  
27 Evaluator I-III, and will be referred to as "Production Appraisers." Defendants, through their  
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1 policies, practices, and supervisors, directed the work activity of the Representative Plaintiffs  
2 and other Review and Production Appraisers. Employees of Defendants had the authority to  
3 discipline the Representative Plaintiffs and other Review and Production Appraisers.

4 18. Each corporate Defendant's gross annual sales made or business done has been  
5 \$500,000.00 or greater at all times relevant herein. Defendants operate in interstate commerce  
6 by, among other things, producing appraisals and mortgage loans in multiple states.

7 19. Defendants classified their Review and Production Appraisers, including the  
8 Representative Plaintiffs and those similarly situated, as exempt from overtime under the FLSA  
9 and state wage and hour protections.

10 20. Despite mounting legal authority, including both case law and Department of  
11 Labor guidance, that appraisers are non-exempt under the FLSA, Defendants have failed to  
12 reclassify either their Review Appraisers or Production Appraisers, choosing instead to willfully  
13 violate federal and state law by continuing to deny overtime payments to their Review  
14 Appraisers and Production Appraisers.

15 21. Defendants uniformly misrepresented to the Representative Plaintiffs and other  
16 Review and Production Appraisers that they were exempt employees and therefore ineligible to  
17 receive overtime pay. In reality, the Representative Plaintiffs and other Review and Production  
18 Appraisers are, and were, nonexempt production employees entitled to overtime pay.

19 22. The Representative Plaintiffs and those similarly situated routinely worked in  
20 excess of forty (40) hours per week for Defendants without receiving proper overtime pay.

21 23. By way of example, Representative Plaintiff Karali regularly worked ten hours  
22 per day on weekdays, and often on weekends. Plaintiff Karali worked such long hours to meet  
23 Defendants' production quotas, which required Plaintiff Karali to either review and approve  
24 detailed appraisal reports hundreds of pages long in less than approximately three hours and forty  
25 five minutes, or face discipline. Accordingly, Plaintiff worked far in excess of forty hours per  
26 week.

27 24. Similarly, Representative Plaintiff Shelley regularly worked twelve to fourteen  
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1 hours per day on weekdays, and often on weekends. Representative Plaintiff Shelley worked  
2 such long hours to meet Defendants' production quotas, which required Representative Plaintiff  
3 Shelley to generate a commercial appraisal report every weekday, or face discipline.  
4 Accordingly, Representative Plaintiff Shelley worked far in excess of forty hours per week.

5 25. Defendants' unlawful conduct has been widespread, repeated, and consistent.

6 26. Defendants' conduct, as set forth in this Complaint, was willful and in bad faith.  
7 Defendants operated under a scheme that has caused significant damages to the Representative  
8 Plaintiffs and similarly situated individuals.

9 **NATIONWIDE FLSA COLLECTIVE ALLEGATIONS**

10 27. The Representative Plaintiffs bring this action on behalf of themselves and other  
11 similarly situated employees as authorized under the FLSA, 29 U.S.C. § 216(b). The employees  
12 similarly situated are as follows:

13 **FLSA Collective:** All Persons who have been employed by Defendants as  
14 Appraisers, including employees with the job titles "Appraisal  
15 Review Officer" and "Real Estate Evaluator" and any other  
16 employee performing the same or similar duties for Defendants,  
17 within the United States at any time starting three years prior to the  
18 filing of this Complaint in this action until the final disposition of  
19 this case.

20 28. The primary duties of the Representative Plaintiffs and the putative Collective  
21 consist and consisted of routine mental work, dictated by detailed guidelines enforced by  
22 Defendants, such as the "Quality Control Compliance Checklist" and similar documents. They  
23 do not set policies or objectives for Defendants, advise property owners, advise management, nor  
24 bind Defendants to a particular course of conduct. In essence, the Representative Plaintiffs and  
25 the putative Collective members were required to follow a detailed "checklist" and retrieve or  
26 verify required data for each appraisal they produced.

27 29. Defendants knew that the Representative Plaintiffs and the putative FLSA  
28 Collective performed work that required overtime pay. Defendants operated under a scheme to  
deprive these employees of overtime compensation by failing to properly compensate them for

1 all hours worked.

2 30. Defendants are liable under the FLSA for failing to properly compensate the  
3 Representative Plaintiffs and the putative FLSA Collective, and as such, notice should be sent to  
4 all affected current and former employees. There are numerous similarly situated current and  
5 former employees of Defendants who have been denied overtime pay in violation of the FLSA  
6 who would benefit from the issuance of Court-supervised notice of this lawsuit and the  
7 opportunity to join. Those similarly situated employees are known to Defendants and are readily  
8 identifiable through Defendants' records.

9 31. Production Appraisers and Review Appraisers are not learned professionals  
10 because their work does not require advanced knowledge in a field of science or learning  
11 customarily acquired by a prolonged course of specialized intellectual instruction, as those terms  
12 are defined in the FLSA.

13 32. Production Appraisers and Review Appraisers do not supervise other employees  
14 so they are not subject to the FLSA's executive exemption.

15 33. Production Appraisers and Review Appraisers perform no sales, *i.e.*, generate no  
16 new loan business for Defendants, so they are not subject to any outside sales exemption under  
17 the FLSA. Rather, they conduct or review appraisals of properties as such appraisals are assigned  
18 to them by Defendants.

19 34. Production Appraisers and Review Appraisers were not employed as commission  
20 employees by retail establishments who are exempt under Section 7(i) of the FLSA from  
21 overtime.

22 35. The Representative Plaintiffs and the putative Collective members do not exercise  
23 discretion and independent judgment with respect to matters of significance, as those terms are  
24 defined in the FLSA. They cannot bind Defendants to decisions, and they make no decisions  
25 extending beyond individual appraisal reports specific to a single property. They are not  
26 administrators of Defendants' general business operations or makers of Defendants' overarching  
27 policies. Instead, they are subject to productivity requirements and are production workers who  
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1 repeatedly perform a transaction-specific task on the front lines of Defendants’ business.  
2 Accordingly, the administrative exemption does not apply to the Representative Plaintiffs and  
3 the putative Collective members.

4 **CAUSES OF ACTION**

5 **FIRST CLAIM FOR RELIEF – UNPAID OVERTIME**

6 **FAIR LABOR STANDARDS ACT, 29 U.S.C. § 207**

7 **(On behalf of the Representative Plaintiffs and the Nationwide FLSA Collective)**

8 36. The Representative Plaintiffs and the putative FLSA Collective allege and  
9 incorporate by reference the allegations in the preceding paragraphs.

10 37. At all relevant times, Defendants were each an “employer” engaged in interstate  
11 commerce and/or in the production of goods for commerce, within the meaning of the FLSA, 29  
12 U.S.C. § 203. At all relevant times, Defendants employed employees, including the  
13 Representative Plaintiffs and each member of the Collective.

14 38. The Representative Plaintiffs have consented in writing to be a part of this action,  
15 pursuant to 29 U.S.C. § 216(b). *See* Exhibits A and B. As this case proceeds, it is likely that  
16 additional individuals will sign consent forms and join as plaintiffs.

17 39. The FLSA requires each covered employer, such as Defendants, to compensate all  
18 non-exempt employees at a rate of not less than one and one-half times the regular rate of pay for  
19 work performed in excess of forty hours per work week.

20 40. The Representative Plaintiffs and the putative FLSA Collective are entitled to be  
21 paid overtime compensation for all hours worked. By failing to compensate the Representative  
22 Plaintiffs and the putative FLSA Collective overtime compensation, Defendants violated the  
23 FLSA, 29 U.S.C. § 201 *et seq.*

24 41. By failing to record, report, and/or preserve records of hours worked by the  
25 Representative Plaintiffs and the putative FLSA Collective, Defendants failed to make, keep, and  
26 preserve records with respect to each of their employees sufficient to determine their wages,  
27 hours, and other conditions and practice of employment, in violation of the FLSA, 29 U.S.C. §  
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1 201 *et seq.*

2 42. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA,  
3 within the meaning of 29 U.S.C. § 255(a).

4 43. The Representative Plaintiffs, on behalf of themselves and the putative FLSA  
5 Collective, seek damages in the amount of all unpaid overtime compensation owed to themselves  
6 and the Collective, liquidated damages as provided by the FLSA, 29 U.S.C. § 216(b), interest,  
7 and such other legal and equitable relief as the Court deems just and proper.

8 44. The Representative Plaintiffs, on behalf of themselves and the putative FLSA  
9 Collective, seek recovery of attorneys' fees and costs to be paid by Defendants, as provided by  
10 the FLSA, 29 U.S.C. § 216(b).

11 **SECOND CLAIM FOR RELIEF – UNPAID OVERTIME**

12 **NEW JERSEY STATE WAGE AND HOUR LAW – N.J.S.A. 34:11-56a4**

13 **(On behalf of the Representative Plaintiff)**

14 45. Representative Plaintiff Karali hereby repeats, re-alleges, and incorporates by  
15 reference the foregoing paragraphs of this Complaint.

16 46. The overtime wage provisions of the New Jersey State Wage and Hour Law  
17 (“NJSWH Law”) and its supporting regulations apply to Defendants and protect Representative  
18 Plaintiff Karali.

19 47. Defendants, pursuant to their policies and practices, failed to pay Representative  
20 Plaintiff Karali overtime wages for hours worked over 40 hours per workweek.

21 48. By failing to pay overtime wages to Representative Plaintiff Karali, Defendants  
22 violated Representative Plaintiff Karali’s statutory rights under the NJSWH Law.

23 49. Plaintiff Karali seeks damages in the amount of his unpaid wages, reasonable  
24 attorneys’ fees and costs of the action, interest, and such other legal and equitable relief as the  
25 Court deems proper.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, the Representative Plaintiffs, on behalf of themselves and the

1 Nationwide FLSA Collective, pray for judgment against Defendants as follows:

2 A. Designation of this action as a collective action on behalf of the Nationwide  
3 FLSA Collective and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to  
4 all similarly situated members of the Nationwide FLSA Collective apprising them  
5 of the pendency of this action by filing individual consent forms pursuant to 29  
6 U.S.C. § 216(b);

7 B. That the Representative Plaintiffs and the Nationwide FLSA Collective be  
8 determined and adjudicated as non-exempt employees of each Defendant under  
9 the FLSA;

10 C. That the practices of Defendants be determined and adjudicated as violations of  
11 the FLSA, 29 U.S.C. § 201, *et. seq.*;

12 D. That the practices of Defendants constitute willful violations of the FLSA, 29  
13 U.S.C. § 255;

14 E. Judgment against Defendants for an amount equal to the Representative Plaintiffs’  
15 and the Nationwide FLSA Collective’s unpaid wages pursuant to the FLSA, 29  
16 U.S.C. § 201, *et. seq.*;

17 F. Judgment against Defendants for an amount equal as liquidated damages pursuant  
18 to the FLSA, 29 U.S.C. § 216(b).;

19 G. An award of interest, costs, and attorneys’ fees, and all other relief available under  
20 the FLSA, 29 U.S.C. § 216(b);

21 H. For such further relief as the Court deems just and equitable.

22 WHEREFORE, Plaintiff Karali additionally prays for judgment against Defendants as  
23 follows:

24 A. That Plaintiff Karali be determined and adjudicated as a non-exempt employee of  
25 Defendants under relevant state law;

26 B. That the practices of Defendants complained of herein be determined and  
27 adjudicated to be violations of the relevant state law;

- C. Judgment against Defendants for unpaid wages rightly owed to Plaintiff Karali;
- D. All costs and reasonable attorneys’ fees incurred in prosecuting this claim to the extent allowed by law;
- E. Interest, including pre-judgment interest;
- F. Leave to amend this Complaint to add relevant claims and plaintiffs; and
- G. For such further legal and equitable relief as the Court deems just and equitable.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs and the FLSA Collective demand a trial by jury.

Dated: April 15, 2016

\_\_\_\_\_ s/ Patricia A. Barasch

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