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Jacqueline Sharkey

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MARCIA TOMLINSON and JACQUELINE  
SHARKEY, individually, and on behalf of other  
members of the general public similarly situated,

Plaintiff,

vs.

U.S. BANCORP, a Delaware corporation; U.S.  
BANK NATIONAL ASSOCIATION, a  
Nationally-Chartered Banking Association; and  
DOES 1 through 10, inclusive,

Defendants.

Case No.: 19STCV09493  
Related to Case No.: 20STCV19049

**FIRST AMENDED CLASS ACTION  
COMPLAINT & ENFORCEMENT ACTION  
UNDER THE PRIVATE ATTORNEYS  
GENERAL ACT, CALIFORNIA LABOR  
CODE §§ 2698, *ET SEQ.***

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (7) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses)
- (9) Civil Penalties for Violations of California

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- Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
  - (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

**Jury Trial Demanded**

1 Plaintiffs Marcia Tomlinson and Jacqueline Sharkey, individually and on behalf of all other  
2 members of the public similarly situated, and other aggrieved employees, allege as follows:

### 3 JURISDICTION AND VENUE

4 1. This class action is brought pursuant to California Code of Civil Procedure section 382  
5 and as an enforcement action under the Labor Code Private Attorneys General Act of 2004, California  
6 Labor Code section 2698, *et seq.* (“PAGA”) to recover civil penalties and any other available relief on  
7 behalf of Plaintiffs, the State of California, and all of Defendants’ non-exempt, hourly employees in the  
8 State of California who worked for one or more of Defendants’ mortgage processing centers during the  
9 period from March 19, 2018 to the present (“non-party Aggrieved Employees”). The monetary damages,  
10 penalties, and restitution sought by Plaintiffs exceed the minimal jurisdictional limits of the Superior  
11 Court and will be established according to proof at trial. Plaintiffs’ share of damages, penalties, and  
12 other relief sought in this action does not exceed \$75,000.

13 2. This Court has jurisdiction over this action pursuant to the California Constitution,  
14 Article VI, section 10. The statute under which this action is brought does not specify any other basis for  
15 jurisdiction.

16 3. This Court has jurisdiction over all Defendants because, on information and belief,  
17 Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise  
18 intentionally avail themselves of the California market so as to render the exercise of jurisdiction over  
19 them by the California courts consistent with traditional notions of fair play and substantial justice.  
20 There is no basis for federal diversity jurisdiction in this action given that the State of California, as the  
21 real party in interest in this action, is not a “citizen” for purposes of satisfying diversity jurisdiction.  
22 *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil  
23 penalties cannot be aggregated to satisfy the amount in controversy requirement for federal diversity  
24 jurisdiction in this action, and that diversity jurisdiction cannot be established when Plaintiffs’ share of  
25 the civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

26 4. Venue is also proper in this Court, because Defendants employ persons in this county  
27 and employed Plaintiff Tomlinson in this county, and thus a substantial portion of the transactions and  
28 occurrences related to this action occurred in this county.

## THE PARTIES

5. Plaintiff Marcia Tomlinson is a resident of Westlake Village, in Los Angeles County, California. Defendants employed Plaintiff Tomlinson as a non-exempt, hourly paid Mortgage Loan Processor 2 from approximately November 28, 2016, to July 17, 2018. During her employment, Plaintiff Tomlinson worked for Defendants at their branch in Westlake Village, California. Plaintiff Tomlinson worked approximately eight (8) hours or more per day, five (5) days per week, and forty (40) hours or more per week. Her job duties included, without limitation, processing mortgage applications before escrow, assessing risk of applicants based on financial history, communicating with applicants regarding necessary documentation, and coordinating information with sales representatives.

6. Plaintiff Jacqueline Sharkey is a resident of Huntington Beach, in Orange County, California. Defendants employed Plaintiff Sharkey as a non-exempt, hourly paid Mortgage Underwriter from approximately March 2012 to March 2019. During her employment, Plaintiff Sharkey worked for Defendants at their branch location in Los Alamitos, California. Plaintiff Sharkey worked approximately eight (8) hours or more per day, five (5) days per week, from 7:00 a.m. to 4:00 p.m. Her job duties included, without limitation, reviewing documentation, such as bank statements, title reports, and tax returns; calculating income; and conferring with loan officers to approve loans for customers.

7. Defendant U.S. BANCORP was and is, upon information and belief, a Delaware corporation doing business in California, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

8. Defendant U.S. BANK NATIONAL ASSOCIATION was and is, upon information and belief, a Nationally Chartered Banking Association doing business in California, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

9. Plaintiffs are unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

10. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10 were the

1 partners, agents, owners, or managers of U.S. BANCORP and/or U.S. BANK NATIONAL  
2 ASSOCIATION, at all relevant times.

3 11. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts and  
4 omissions alleged herein was performed by, or is attributable to, U.S. BANCORP, U.S. BANK  
5 NATIONAL ASSOCIATION, and/or DOES 1 through 10 (collectively “Defendants” or “US BANK”),  
6 each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of  
7 the other co-Defendants and was acting within the course and scope of such agency, employment, joint  
8 venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all  
9 Defendants were in accordance with, and represent, the official policy of Defendants.

10 12. At all relevant times, Defendants, and each of them, ratified each and every act or  
11 omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted  
12 the acts and omissions of each and all the other Defendants in proximately causing the damages herein  
13 alleged.

14 13. Plaintiffs are informed and believe, and thereon allege, that each of said Defendants is in  
15 some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences,  
16 and transactions alleged herein.

17 14. Under California law, Defendants are jointly and severally liable as employers for the  
18 violations alleged herein because they have each exercised sufficient control over the wages, hours,  
19 working conditions, and employment status of Plaintiffs and other non-party Aggrieved Employees.  
20 Each Defendant had the power to hire and fire Plaintiffs and other non-party Aggrieved Employees,  
21 supervised and controlled their work schedule and/or conditions of employment, determined their rate of  
22 pay, and maintained their employment records. Defendants suffered or permitted Plaintiffs and other  
23 non-party Aggrieved Employees to work and/or “engaged” Plaintiffs and other non-party Aggrieved  
24 Employees so as to create a common-law employment relationship. As joint employers of Plaintiffs and  
25 other non-party Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties  
26 available to Plaintiffs and other non-party Aggrieved Employees under the law.

27 15. Plaintiffs are informed and believe, and thereon allege, that at all relevant times,  
28 Defendants, and each of them, have acted as joint employers with respect to Plaintiffs and other non-

1 party Aggrieved Employees because Defendants have:

- 2 (a) jointly exercised meaningful control over the work performed by Plaintiffs and  
3 other non-party Aggrieved Employees;
- 4 (b) jointly exercised meaningful control over Plaintiffs' and other non-party  
5 Aggrieved Employees' wages, hours, and working conditions, including the  
6 quantity, quality standards, speed, scheduling, and operative details of the tasks  
7 performed by Plaintiffs and other non-party Aggrieved Employees;
- 8 (c) jointly required that Plaintiffs and other non-party Aggrieved Employees  
9 perform work which is an integral part of Defendants' businesses; and
- 10 (d) jointly exercised control over Plaintiffs and other non-party Aggrieved  
11 Employees as a matter of economic reality in that Plaintiffs and other non-party  
12 Aggrieved Employees were dependent on Defendants, who shared the power to  
13 set the wages of Plaintiffs and other non-party Aggrieved Employees and  
14 determine their working conditions, and who jointly reaped the benefits from the  
15 underpayment of their wages and noncompliance with other statutory provisions  
16 governing their employment.

17 16. Plaintiffs are informed and believe, and thereon allege, that at all relevant times there has  
18 existed a unity of interest and ownership between Defendants such that any individuality and  
19 separateness between the entities has ceased.

20 17. U.S. BANCORP, U.S. BANK NATIONAL ASSOCIATION, and DOES 1 through 10  
21 are therefore alter egos of each other.

22 18. Adherence to the fiction of the separate existence of Defendants would permit an abuse  
23 of the corporate privilege, and would promote injustice by protecting Defendants from liability for the  
24 wrongful acts committed by them under the name US BANK.

25 19. Plaintiffs further allege, upon information and belief, that Defendants U.S. BANCORP  
26 and U.S. BANK NATIONAL ASSOCIATION are alter egos of each other for the following reasons:

- 27 (a) Per U.S. BANCORP's SEC 10-K filing for 2018,<sup>1</sup> U.S. BANK NATIONAL  
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<sup>1</sup> 10-K Annual Report 2/22/2019, "US Bank Investor Relations – Investor/Shareholder

ASSOCIATION is listed as a fully owned subsidiary of U.S. BANCORP; and

(b) On information and belief, U.S. BANCORP and U.S. BANK NATIONAL ASSOCIATION utilize the same standardized employment forms and issue the same employment policies.

### **PAGA REPRESENTATIVE ALLEGATIONS**

20. Defendants provide retail banking services to the general public throughout the United States, including California. Upon information and belief, Defendants operate approximately 3,018 bank branches in 28 states, including approximately 637 branch locations in California, and employ approximately 73,000 employees nationwide.

21. Upon information and belief, Defendants maintain a single, centralized Human Resources (HR) department, at their corporate headquarters in either Minneapolis, Minnesota, or Cincinnati, Ohio, which is responsible for conducting Defendants' recruiting and hiring of new employees, as well as communicating and implementing Defendants' company-wide policies to employees throughout California.

22. In particular, Plaintiffs and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee's time of hire. For example, at the time Plaintiff Tomlinson was hired, she received documents including, but not limited to, the Time of Hire pamphlet and the California Workers Comp Acknowledgement.

23. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in either Minneapolis, Minnesota, or Cincinnati, Ohio, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiffs and other non-party Aggrieved Employees. Based upon

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Information – SEC & Other Filings,” <https://ir.usbank.com/sec-filings/sec-filing/10-k/0001193125-19-047201> (last accessed March 11, 2019).

1 information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly  
2 paid employees in California, irrespective of their work locations. Upon information and belief,  
3 Defendants process payroll for departing employees in the same manner throughout the State of  
4 California, regardless of the manner in which each employee's employment ends.

5 24. Defendants continue to employ non-exempt or hourly paid employees in California.

6 25. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
7 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors  
8 knowledgeable about California labor and wage law, employment and personnel practices, and about the  
9 requirements of California law.

10 26. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and other non-party  
11 Aggrieved Employees were not paid for all hours worked because all hours worked were not recorded.

12 27. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should  
13 have known that Plaintiffs and other non-party Aggrieved Employees were entitled to receive certain  
14 wages for overtime compensation and that they were not receiving certain wages for overtime  
15 compensation.

16 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should  
17 have known that other non-party Aggrieved Employees were entitled to be paid at a regular rate of pay,  
18 and corresponding overtime rate of pay, that included as eligible income all income derived from  
19 incentive pay, nondiscretionary bonuses, and/or other forms of compensation.

20 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should  
21 have known that Plaintiffs and other non-party Aggrieved Employees were entitled to receive at least  
22 minimum wages for compensation and that they were not receiving at least minimum wages for work  
23 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiffs and other  
24 non-party Aggrieved Employees were not paid at least minimum wages for work done off-the-clock.

25 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should  
26 have known that Plaintiffs and other non-party Aggrieved Employees were entitled to meal periods in  
27 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular rates of pay  
28 when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and that

1 Plaintiffs and other non-party Aggrieved Employees were not provided with all meal periods or payment  
2 of one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,  
3 uninterrupted, thirty (30) minute meal period.

4 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should  
5 have known that Plaintiffs and other non-party Aggrieved Employees were entitled to rest periods in  
6 accordance with the Labor Code and applicable Industrial Welfare Commission (“IWC”) Wage Order or  
7 payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and  
8 permitted to take a compliant rest period. Plaintiffs are informed and believe, and thereon allege, that  
9 Defendants knew or should have known that Plaintiffs and other non-party Aggrieved Employees were  
10 not authorized and permitted to take compliant rest periods and that Defendants did not provide Plaintiffs  
11 and other non-party Aggrieved Employees with payment of one (1) additional hour of pay at their  
12 regular rates of pay when they were not authorized and permitted to take a compliant rest period.

13 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should  
14 have known that Plaintiffs and other non-party Aggrieved Employees were entitled to receive complete  
15 and accurate wage statements in accordance with California law. In violation of the California Labor  
16 Code, Plaintiffs and other non-party Aggrieved Employees were not provided complete and accurate  
17 wage statements.

18 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should  
19 have known that they had a duty to maintain accurate and complete payroll records in accordance with  
20 the Labor Code and applicable IWC Wage Order, but willfully, knowingly, and intentionally failed to do  
21 so.

22 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should  
23 have known that Plaintiffs and other non-party Aggrieved Employees were entitled to timely payment of  
24 all wages earned upon termination of employment. In violation of the California Labor Code, Plaintiffs  
25 and other non-party Aggrieved Employees did not receive payment of all wages due, including, but not  
26 limited to, overtime wages, minimum wages, and meal and rest period premiums, within permissible  
27 time periods.

28 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should

1 have known that Plaintiffs and other non-party Aggrieved Employees were entitled to timely payment of  
2 wages during their employment. In violation of the California Labor Code, Plaintiffs and other non-  
3 party Aggrieved Employees did not receive payment of all wages, including, but not limited to, overtime  
4 wages, minimum wages, and meal and rest period premiums, within permissible time periods.

5 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should  
6 have known that Plaintiff Sharkey and other non-party Aggrieved Employees were entitled to receive  
7 reimbursement for all business-related expenses and costs they incurred during the course and scope of  
8 their employment and that they did not receive reimbursement of applicable business-related expenses  
9 and costs incurred.

10 37. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
11 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiffs and  
12 other non-party Aggrieved Employees for all hours worked, and that Defendants had the financial ability  
13 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely  
14 represented to Plaintiffs and other non-party Aggrieved Employees that they were properly denied  
15 wages, all in order to increase Defendants' profits.

16 38. At all times herein set forth, PAGA provides that any provision of law under the Labor  
17 Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by  
18 the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as an  
19 alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and  
20 other current or former employees pursuant to procedures outlined in California Labor Code section  
21 2699.3.

22 39. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any person  
23 who was employed by the alleged violator and against whom one or more of the alleged violations was  
24 committed."

25 40. Plaintiffs and other current and former employees of Defendants are "aggrieved  
26 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current or former  
27 employees and one or more of the alleged violations were committed against them.

28 41. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee,

1 including Plaintiffs, may pursue a civil action arising under PAGA after the following requirements have  
2 been met:

- 3 (a) The aggrieved employee or representative shall give written notice by online  
4 filing with the LWDA and by certified mail to the employer of the specific  
5 provisions of the California Labor Code alleged to have been violated, including  
6 the facts and theories to support the alleged violation.
- 7 (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(a)  
8 and any employer response to that notice shall be accompanied by a filing fee of  
9 seventy-five dollars (\$75).
- 10 (c) The LWDA shall notify the employer and the aggrieved employee or  
11 representative by certified mail that it does not intend to investigate the alleged  
12 violation ("LWDA's Notice") within sixty (60) calendar days of the postmark  
13 date of the aggrieved employee's notice. Upon receipt of the LWDA Notice, or  
14 if no LWDA Notice is provided within sixty-five (65) calendar days of the  
15 postmark date of the aggrieved employee's notice, the aggrieved employee may  
16 commence a civil action pursuant to California Labor Code section 2699 to  
17 recover civil penalties.

18 42. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, through  
19 Plaintiffs, may pursue a civil action arising under PAGA for violations of any provision other than those  
20 listed in Section 2699.5 after the following requirements have been met:

- 21 (a) The aggrieved employee or representative shall give written notice by online  
22 filing with the LWDA and by certified mail to the employer of the specific  
23 provisions of the California Labor Code alleged to have been violated (other  
24 than those listed in Section 2699.5), including the facts and theories to support  
25 the alleged violation.
- 26 (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(c)  
27 and any employer response to that notice shall be accompanied by a filing fee of  
28 seventy-five dollars (\$75).

1 (c) The employer may cure the alleged violation within thirty-three (33) calendar  
2 days of the postmark date of the notice sent by the aggrieved employee or  
3 representative. The employer shall give written notice within that period of time  
4 by certified mail to the aggrieved employee or representative and by online  
5 filing with the LWDA if the alleged violation is cured, including a description of  
6 actions taken, and no civil action pursuant to Section 2699 may commence. If  
7 the alleged violation is not cured within the 33-day period, the aggrieved  
8 employee may commence a civil action pursuant to Section 2699.

9 43. On January 7, 2019, Plaintiff Tomlinson provided written notice by online filing to the  
10 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code  
11 alleged to have been violated, including facts and theories to support the alleged violations, in accordance  
12 with California Labor Code section 2699.3. Plaintiff Tomlinson's written notice was accompanied with  
13 the applicable filing fee of seventy-five dollars (\$75). That same day, the LWDA PAGA Administrator  
14 confirmed receipt of Plaintiff Tomlinson's written notice and assigned Plaintiff Tomlinson PAGA Case  
15 Number LWDA-CM-654016-19. A true and correct copy of Plaintiff Tomlinson's written notice to the  
16 LWDA and Defendants dated January 7, 2019, is attached hereto as "Exhibit 1."

17 44. On March 6, 2020, Plaintiff Sharkey provided written notice by online filing to the  
18 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code  
19 alleged to have been violated, including facts and theories to support the alleged violations, in accordance  
20 with California Labor Code section 2699.3. Plaintiff Sharkey's written notice was accompanied with the  
21 applicable filing fee of seventy-five dollars (\$75). That same day, the LWDA PAGA Administrator  
22 confirmed receipt of Plaintiff Sharkey's written notice and assigned Plaintiff Sharkey PAGA Case  
23 Number LWDA-CM-777018-20. A true and correct copy of Plaintiff Sharkey's written notice to the  
24 LWDA and Defendants dated March 6, 2020, is attached hereto as "Exhibit 2."

25 45. As of the filing date of this complaint, over 65 days have passed since Plaintiffs sent  
26 their notices described above to the LWDA, and the LWDA has not responded that it intends to  
27 investigate Plaintiffs' claims and Defendants have not cured the violations.

28 46. Thus, Plaintiffs have satisfied the administrative prerequisites under California Labor

1 Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of  
2 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,  
3 1194, 1197, 1198, and 2802.

4 47. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of  
5 an employer who violates, or causes to be violated, a section of this chapter or any provision regulating  
6 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil  
7 penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each  
8 pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred  
9 dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid .  
10 . . .” Labor Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition  
11 to any other civil or criminal penalty provided by law.” Plaintiffs, acting in the public interest as a  
12 private attorney general, seek assessment and collection of civil penalties under Labor Code section 558  
13 for themselves, all other non-party Aggrieved Employees, and the State of California against Defendants  
14 for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC wage order.  
15 Plaintiffs, acting in the public interest as private attorneys general, do not seek the recovery of unpaid  
16 wages under Labor Code section 558 from Defendants for violations of Labor Code sections 510,  
17 512(a), 516, 1198, and the applicable IWC wage order.

18 48. Defendants, at all times relevant to this complaint, were employers or persons acting on  
19 behalf of an employer(s) who violated Plaintiffs’ and other non-party Aggrieved Employees’ rights by  
20 violating various sections of the California Labor Code as set forth above.

21 49. As set forth below, Defendants have violated numerous provisions of both the Labor  
22 Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

23 50. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a),  
24 2699.3(c), and 2699.5, and section 558, Plaintiffs, acting in the public interest as a private attorney  
25 general, seek assessment and collection of civil penalties for themselves, all other non-party Aggrieved  
26 Employees, and the State of California against Defendants for violations of California Labor Code  
27 sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and  
28 2802.

## CLASS ACTION ALLEGATIONS

51. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every PAGA Representative Allegation set forth above in Paragraphs 20 to 37.

52. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

53. All claims alleged herein arise under California law for which Plaintiffs seeks relief authorized by California law.

54. Plaintiffs' proposed class consists of and is defined as follows:

All of Defendants' non-exempt, hourly employees in the State of California who worked for one or more of Defendants' mortgage processing centers during the period from March 19, 2018 to the present ("Class").

55. Plaintiffs' proposed subclass consists of and is defined as follows:

All of Defendants' non-exempt, hourly employees in the State of California who worked for one or more of Defendants' mortgage processing centers and who received at least one wage statement during the period from March 19, 2018 to the present ("Subclass").

56. Members of the Class and Subclass are referred to herein as "class members."

57. Plaintiffs reserve the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

58. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

- (a) Whether Defendants required Plaintiffs and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiffs and class members;
- (a) Whether Defendants failed to properly calculate the "regular rate" of pay on which Plaintiffs' and class members' overtime rate of pay was based;
- (b) Whether Defendants failed to pay Plaintiffs and class members at least

- 1 minimum wages for all hours worked;
- 2 (c) Whether Defendants failed to provide Plaintiffs and class members with meal
- 3 periods;
- 4 (d) Whether Defendants failed to pay Plaintiffs and class members meal period
- 5 premiums at the regular rate of pay;
- 6 (e) Whether Defendants failed to authorize and permit Plaintiffs and class members
- 7 to take rest periods;
- 8 (f) Whether Defendants failed to pay Plaintiffs and class members rest period
- 9 premiums at the regular rate of pay;
- 10 (g) Whether Defendants provided Plaintiffs and class members with complete and
- 11 accurate wage statements as required by California Labor Code section 226(a);
- 12 (h) Whether Defendants maintained accurate payroll records as required by
- 13 California Labor Code section 1174(d);
- 14 (i) Whether Defendants failed to pay all earned wages to Plaintiffs and class
- 15 members during the scope of their employment;
- 16 (j) Whether Defendants failed to pay all earned wages to Plaintiffs and class
- 17 members upon termination of their employment including whether Defendants
- 18 failed to pay waiting time penalties to Plaintiffs and class members based on
- 19 such failure to pay all earned wages upon termination of their employment;
- 20 (k) Whether Defendants failed to reimburse Plaintiffs and class members for
- 21 necessary and required business-related expenditures and/or losses incurred by
- 22 them in the scope of their employment;
- 23 (l) Whether Defendants engaged in unlawful and unfair business practices in
- 24 violation of California Business & Professions Code sections 17200, *et seq.*; and
- 25 (m) The appropriate amount of damages, restitution, or monetary penalties resulting
- 26 from Defendants' violations of California law.

27 59. There is a well-defined community of interest in the litigation and the class members are

28 readily ascertainable:

- 1 (a) Numerosity: The class members are so numerous that joinder of all members  
2 would be unfeasible and impractical. The membership of the entire class is  
3 unknown to Plaintiffs at this time; however, the class is estimated to be greater  
4 than one hundred (100) individuals and the identity of such membership is  
5 readily ascertainable by inspection of Defendants' employment records.
- 6 (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately protect the  
7 interests of each class member with whom he has a well-defined community of  
8 interest, and Plaintiff's claims (or defenses, if any) are typical of all class  
9 members as demonstrated herein.
- 10 (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately protect the  
11 interests of each class member with whom he has a well-defined community of  
12 interest and typicality of claims, as demonstrated herein. Plaintiffs  
13 acknowledges that he has an obligation to make known to the Court any  
14 relationship, conflicts or differences with any class member. Plaintiff's  
15 attorneys, the proposed class counsel, are versed in the rules governing class  
16 action discovery, certification, and settlement. Plaintiffs have incurred, and  
17 throughout the duration of this action, will continue to incur costs and attorneys'  
18 fees that have been, are, and will be necessarily expended for the prosecution of  
19 this action for the substantial benefit of each class member.
- 20 (d) Superiority: The nature of this action makes the use of class action adjudication  
21 superior to other methods. A class action will achieve economies of time, effort,  
22 and expense as compared with separate lawsuits, and will avoid inconsistent  
23 outcomes because the same issues can be adjudicated in the same manner and at  
24 the same time for the entire class.
- 25 (e) Public Policy Considerations: Employers in the State of California violate  
26 employment and labor laws every day. Current employees are often afraid to  
27 assert their rights out of fear of direct or indirect retaliation. Former employees  
28 are fearful of bringing actions because they believe their former employers

1 might damage their future endeavors through negative references and/or other  
2 means. Class actions provide the class members who are not named in the  
3 complaint with a type of anonymity that allows for the vindication of their rights  
4 while simultaneously protecting their privacy.

## 5 **FIRST CAUSE OF ACTION**

### 6 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

#### 7 **(Against all Defendants)**

8 60. Labor Code section 1198 makes it illegal to employ an employee under conditions of  
9 labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that  
10 “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of  
11 labor for employees. The employment of any employee . . . under conditions of labor prohibited by the  
12 order is unlawful.”

13 61. California Labor Code section 1198 and the applicable IWC Wage Order provide that it  
14 is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or  
15 two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a  
16 daily or weekly basis.

17 62. Specifically, the applicable IWC Wage Order provides that Defendants are and were  
18 required to pay Plaintiffs and other non-party Aggrieved Employees working more than eight (8) hours  
19 in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all hours  
20 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

21 63. The applicable IWC Wage Order further provides that Defendants are and were required  
22 to pay Plaintiffs and other non-party Aggrieved Employees working more than twelve (12) hours in a  
23 day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular  
24 rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including  
25 non-discretionary bonuses and incentive pay.

26 64. California Labor Code section 510 codifies the right to overtime compensation at one  
27 and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours in a day or  
28 forty (40) hours in a week or for the first eight (8) hours worked on the seventh (7th) day of work, and to

1 overtime compensation at twice the employee's regular rate of pay for hours worked in excess of twelve  
2 (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

3 65. At all relevant times, Defendants willfully failed to pay all overtime wages owed to  
4 Plaintiffs and other non-party Aggrieved Employees. At all relevant times, Plaintiffs and other non-party  
5 Aggrieved Employees were not paid overtime premiums for all of the hours they worked in excess of  
6 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a  
7 week, because all hours worked were not recorded.

8 66. First, during the relevant time period, Defendants had a company-wide policy and/or  
9 practice of strictly limiting the amount of overtime employees could accrue. Defendants' policy resulted  
10 in employees working several hours of overtime per week, but Plaintiffs and other non-party Aggrieved  
11 Employees would not be paid for those hours worked. Because the overtime that could be accrued was  
12 strictly controlled by Defendants, Plaintiffs and other non-party Aggrieved Employees would routinely  
13 have their overtime hours adjusted.

14 67. Second, Defendants discouraged and impeded Plaintiffs and other non-party Aggrieved  
15 Employees from recording hours worked that were outside of their scheduled shifts. Plaintiffs and other  
16 non-party Aggrieved Employees were forced to work off-the-clock performing tasks after their  
17 scheduled shift times, but were not provided a means by Defendants to account for this time. For  
18 example, Plaintiff Tomlinson was required to clock out at her designated shift end-time even when she  
19 was still on the phone with a client, and Plaintiff Sharkey was required to clock out at her designated shift  
20 end-time even when she had additional assignments to complete for the day, including responding to  
21 emails from Defendants' supervisors. However, Plaintiffs were not provided a mechanism to include  
22 this time worked on their time records. Thus, Defendants failed to track this time spent working after  
23 clocking out, and Plaintiffs and other non-party Aggrieved Employees received no compensation for this  
24 time. Alternatively, when Plaintiffs and other non-party Aggrieved Employees were not able to clock  
25 out at their designated shift end-times, Plaintiffs and other non-party Aggrieved Employees were subject  
26 to Defendants' supervisors falsifying their time records in order to prevent employees from accruing  
27 overtime. If an employee clocked in before his or her scheduled shift or clocked out beyond his or her  
28 scheduled shift, Defendants' supervisors would adjust employee time punch records in order to prevent

overtime from being accrued and would subject Plaintiffs and other non-party Aggrieved Employees to discipline for incurring unapproved overtime hours.

68. Third, Defendants had, and continue to have, a company-wide policy and/or practice of requiring employees to complete work-related tasks while off-the-clock, including before or after their shifts. For example, Defendants required Plaintiff Sharkey and other non-party Aggrieved Employees to complete online training modules, on a quarterly basis, but did not compensate them for their actual hours spent completing them. Defendants imposed certain deadlines on Plaintiff Sharkey and other non-party Aggrieved Employees to complete quarterly online trainings. As a result, Plaintiff Sharkey and other non-party Aggrieved Employees would work their regular eight (8) hour shifts, clock out due to Defendants' limitations on overtime accrual (*see supra*), and then continue working to complete Defendants' online training courses. For example, Plaintiff Sharkey would work an 8-hour or longer day and, while off-the-clock, spend another 1-3 hours completing Defendants' online training courses and modules. Although Defendants required that Plaintiff Sharkey and other non-party Aggrieved Employees complete these training modules, Defendants did not compensate them for this time.

69. Fourth, Defendants had, and continue to have, a company-wide policy of failing to implement any policies to provide employees with compliant meal periods and, instead, engaged in a practice of discouraging and impeding employees from taking meal periods by assigning them a heavy workload and understaffing their branch location(s). Plaintiff Tomlinson and other non-party Aggrieved Employees were expected to hit certain targets or quotas, such as contacting customers and completing mortgage applications. Additionally, Plaintiff Sharkey and other non-party Aggrieved Employees were expected to hit certain productivity targets or quotas for reviewing loans (at least two per day) and to respond within 24 hours to any loans that came back with conditions to be reviewed. However, because Defendants did not employ or staff an adequate number of employees to meet their productivity expectations, Plaintiffs and other non-party Aggrieved Employees were assigned heavy workloads, which Defendants knew or should have known could only be met by working additional hours. Thus, Plaintiffs and other non-party Aggrieved Employees missed meal periods, had meal periods cut short or interrupted, or, as mentioned above, performed work before or after their assigned shifts, in order to complete their assigned workloads.

1           70. Fifth, Defendants have, on a company-wide basis, failed to adhere to a schedule of meal  
2 periods. This company-wide practice, coupled with the heavy workload and pressure from Defendants  
3 to complete assigned tasks, impeded Plaintiffs and other non-party Aggrieved Employees from taking  
4 meal periods. As a result, Plaintiffs and other non-party Aggrieved Employees were not always  
5 provided uninterrupted 30-minute meal periods. During their employment, Plaintiffs regularly worked  
6 through meal periods in order to complete assigned tasks. On days when Plaintiffs were entitled to a  
7 meal period, Plaintiffs would clock out within the first five (5) hours of their shifts but continue  
8 performing tasks, such as processing mortgage applications, communicating with applicants and/or sales  
9 representatives, reviewing loan documentation, or responding to supervisors' questions about work  
10 assignments.

11           71. Defendants knew or should have known that, as a result of their policies and practices,  
12 Plaintiffs and other non-party Aggrieved Employees were working before and after their shifts and  
13 during meal periods, and were suffered or permitted to perform work for which they were not paid.  
14 Defendants also knew, or should have known, that they did not compensate Plaintiffs and other non-  
15 party Aggrieved Employees for this off-the-clock work and unrecorded overtime hours.

16           72. Because Plaintiffs and other non-party Aggrieved Employees worked shifts in excess of  
17 eight (8) hours a day or more and forty (40) hours a week or more, much of this off-the-clock work  
18 performed during unpaid meal periods qualified for overtime premium pay. Therefore, Plaintiffs and  
19 other non-party Aggrieved Employees were not paid overtime wages for all of the overtime hours they  
20 actually worked.

21           73. Furthermore, Defendants did not pay other non-party Aggrieved Employees the correct  
22 overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage,  
23 Defendants paid other non-party Aggrieved Employees incentive pay and/or nondiscretionary bonuses,  
24 denoted on their paystubs as "Misc Incen." However, in violation of the California Labor Code,  
25 Defendants failed to incorporate all remunerations, including incentive pay and/or nondiscretionary  
26 bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage  
27 rates. Therefore, during times when other non-party Aggrieved Employees worked overtime and  
28 received these other forms of pay, Defendants failed to pay all overtime wages by paying a lower

overtime rate than required.

74. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Plaintiffs and other non-party Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

## **SECOND CAUSE OF ACTION**

### **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid Minimum Wages**

#### **(Against all Defendants)**

75. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined by the applicable wage order as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

76. As set forth above, Defendants had a company-wide policy and/or practice of strictly limiting the amount of overtime employees could accrue, resulting in Plaintiffs and other non-party Aggrieved Employees having their hours worked routinely adjusted. Further, Defendants discouraged and impeded Plaintiffs and other non-party Aggrieved Employees from recording hours worked that were outside of their scheduled shifts, resulting in work for which they were not paid. Defendants also had a company-wide policy and/or practice of requiring Plaintiff Sharkey and other non-party Aggrieved Employees to complete mandatory online trainings on a quarterly basis, but failed to compensate them for all hours worked. Finally, Defendants have, and continue to have, a company-wide policy and/or practice of understaffing and failing to adhere to a schedule of meal periods, which impeded Plaintiffs and other non-party Aggrieved Employees from taking full, uninterrupted meal periods to which they were entitled and resulted in them working off-the-clock in order to ensure they were fulfilling the productivity quotas set by Defendants.

77. Additionally, Defendants maintained and implemented a company-wide policy of

1 requiring employees to undergo fingerprint-based background checks upon hiring. This required  
2 employees to travel to a Live Scan provider or operator on their own time and using their own personal  
3 vehicles to undergo fingerprinting. For example, other non-party Aggrieved Employees traveled to the  
4 local police department's office and spent time traveling to the office, waiting and undergoing the  
5 fingerprinting, and traveling back home. However, Defendants did not compensate other non-party  
6 Aggrieved Employees for the time they spent traveling to and from the Live Scan providers or operators  
7 or for the time they spent undergoing their fingerprinting.

8         78. Defendants did not pay at least minimum wages for all hours worked by Plaintiffs and  
9 other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not qualify for  
10 overtime premium payment, Defendants did not pay at least minimum wages for those hours worked  
11 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1198.  
12 Accordingly, Defendants failed to pay at least minimum wages to Plaintiffs and other non-party  
13 Aggrieved Employees for all of the hours they worked.

14         79. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees  
15 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198. Plaintiffs and  
16 other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to  
17 sections 2699(a), (f), and (g).

### 18                                   **THIRD CAUSE OF ACTION**

#### 19         **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period Violations** 20                                   **(Against all Defendants)**

21         80. At all relevant times herein set forth, the applicable IWC Wage Order(s) and California  
22 Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiffs' and non-party  
23 Aggrieved Employees' employment by Defendants.

24         81. At all relevant times herein set forth, California Labor Code section 512(a) provides that  
25 an employer may not require, cause, or permit an employee to work for a period of more than five (5)  
26 hours per day without providing the employee with a meal period of not less than thirty (30) minutes,  
27 except that if the total work period per day of the employee is not more than six (6) hours, the meal  
28 period may be waived by mutual consent of both the employer and the employee. Under California law,

1 first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal.  
2 4th 1004, 1041-1042 (Cal. 2012).

3 82. At all relevant times herein set forth, California Labor Code sections 226.7, 512(a), 516,  
4 and 1198 provide that no employer shall require an employee to work during any meal period mandated  
5 by an applicable order of the IWC.

6 83. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a), 1198 and  
7 the applicable IWC Wage Order also require employers to provide a second meal period of not less than  
8 thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1)  
9 additional hour of pay at the employee's regular rate, except that if the total hours worked is no more  
10 than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and  
11 the employee only if the first meal period was not waived.

12 84. At all relevant times, as stated above, Defendants had, and continue to have, a company-  
13 wide policy and/or practice of understaffing, while simultaneously assigning heavy workloads and  
14 discouraging employees from incurring overtime, which resulted in a lack of meal period coverage and  
15 prevented Plaintiffs and other non-party Aggrieved Employees from taking all timely, uninterrupted  
16 meal periods to which they were entitled. Additionally, Defendants failed to adhere to a schedule of  
17 meal periods, resulting in Plaintiffs and other non-party Aggrieved Employees having their meal periods  
18 interrupted to return to work or waiting extended periods of time before taking meal periods, due to the  
19 workload and pressure to meet deadlines without incurring overtime. These policies and practices  
20 discouraged and impeded Plaintiffs and other non-party Aggrieved Employees from taking compliant  
21 meal periods.

22 85. During this time, Plaintiffs and other non-party Aggrieved Employees missed their meal  
23 periods altogether, had their meal periods interrupted to return to work, and/or waited extended periods  
24 of time before taking meal periods. For example, once or twice per week, Plaintiff Tomlinson would  
25 clock out within the first five (5) hours of her shift but continue performing tasks throughout her entire  
26 meal period. Approximately three (3) to five (5) times per week, Plaintiff Tomlinson's meal periods  
27 were interrupted or shortened so she could complete her assigned workload. As a further example, once  
28 per week, Plaintiff Sharkey would clock out within the first five (5) hours of her shift but continue

1 performing tasks throughout her entire meal period. Approximately three (3) to four (4) times per week,  
2 Plaintiff Sharkey's meal periods were interrupted or shortened in order to respond to questions from  
3 Defendants' customers or other underwriters. Further, for the same reasons set forth above, Plaintiffs  
4 and other non-party Aggrieved Employees were not provided with timely meal periods during their  
5 employment. In addition, Defendants did not schedule second meal periods and had no policy for  
6 permitting Plaintiffs and other non-party Aggrieved Employees to take second 30-minute meal periods  
7 on days that they worked in excess of ten (10) hours in one day. Plaintiffs and other non-party  
8 Aggrieved Employees did not receive second 30-minute meal periods on days that they worked in  
9 excess of ten (10) hours in one day. For example, Plaintiff Tomlinson worked in excess of ten (10) hours  
10 on June 4, 2018 and was not provided a second 30-minute meal period. Instead, Plaintiff Tomlinson  
11 continued to work until she clocked out for the day. Plaintiffs and other non-party Aggrieved Employees  
12 did not sign valid meal period waivers on days that they were entitled to meal periods and were not  
13 relieved of all duties.

14         86. At all times herein mentioned, Defendants knew or should have known that, as a result  
15 of their policies, including understaffing, discouraging employees from accruing overtime, and failing to  
16 schedule meal periods, Plaintiffs and other non-party Aggrieved Employees have been required to  
17 perform some of their assigned duties during meal periods. As a result, Plaintiffs and other non-party  
18 Aggrieved Employees had to work through part or all of their meal periods. Defendants further knew or  
19 should have known that Defendants did not pay Plaintiffs and other non-party Aggrieved Employees  
20 meal period premium wages when meal periods were late, interrupted, or missed, because, on  
21 information and belief, Defendant adjusted employee time records to reflect compliant meal periods,  
22 even if none were taken.

23         87. Moreover, Defendants have engaged in a systematic, company-wide practice and/or  
24 policy of not paying meal period when compliant meal periods are not provided. Alternatively, to the  
25 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour of  
26 premium pay for missed meal periods, Defendants did not pay other non-party Aggrieved Employees  
27 the correct rate of pay for premium wages because Defendants systematically failed to include all forms  
28 of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration,

1 in the regular rate of pay. As a result, to the extent Defendants paid other non-party Aggrieved  
2 Employees premium pay for missed meal periods, it did so at a lower rate than required by law.

3 88. Thus, Defendants failed to provide Plaintiffs and other non-party Aggrieved Employees  
4 compliant meal periods and failed to pay the full meal period premiums due.

5 89. Defendants' conduct violates the applicable IWC Wage Order, and California Labor  
6 Code sections 226.7, 512(a), 516, and 1198. Plaintiffs and other non-party Aggrieved Employees are  
7 entitled to recover civil penalties pursuant to sections 558 and/or 2699(a), (f), and (g).

#### 8 **FOURTH CAUSE OF ACTION**

##### 9 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations**

##### 10 **(Against all Defendants)**

11 90. At all relevant times herein set forth, the applicable IWC Wage Order and California  
12 Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs' and other non-party Aggrieved  
13 Employees' employment by Defendants.

14 91. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer  
15 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the  
16 middle of each work period" and that the "rest period time shall be based on the total hours worked daily  
17 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total  
18 daily work time is less than three and one-half (3½) hours.

19 92. At all relevant times, California Labor Code section 226.7 provides that no employer  
20 shall require an employee to work during any rest period mandated by an applicable order of the  
21 California IWC. To comply with its obligation to authorize and permit rest periods under California  
22 Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any  
23 control over how employees spend their break time, and relieve their employees of all duties —  
24 including the obligation that an employee remain on call. A rest period, in short, must be a period of  
25 rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

26 93. Pursuant to the applicable IWC Wage Order and California Labor Code section  
27 226.7(b), Plaintiffs and other non-party Aggrieved Employees are entitled to recover from Defendants  
28 one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period

1 was not authorized and permitted.

2           94. During the relevant time period, Defendants regularly failed to authorize and permit  
3 Plaintiffs and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four  
4 (4) hour period worked or major fraction thereof. As with meal periods, Defendants' policies and/or  
5 practice of understaffing and assigning heavy workloads prevented Plaintiffs and other non-party  
6 Aggrieved Employees from being relieved of all duty in order to take compliant rest periods. As a result,  
7 Plaintiffs missed their rest periods, would be required to take them late, or would have their rest periods  
8 interrupted. Plaintiffs and other non-party Aggrieved Employees were prevented from being relieved of  
9 all duty in order to take compliant rest periods and instead would be required to continue working.  
10 Defendants also failed to schedule rest periods, which, coupled with Defendants' failure to provide  
11 adequate rest period coverage, further led to Plaintiffs and other non-party Aggrieved Employees not  
12 being authorized and permitted to take rest periods.

13           95. Furthermore, Defendants maintained and implemented a company-wide practice and/or  
14 policy requiring that Plaintiffs and other non-party Aggrieved Employees remain on Defendants'  
15 premises during their rest periods. Because Plaintiffs and other non-party Aggrieved Employees were  
16 restricted from leaving the Defendants' premises during rest periods, they were denied the ability to use  
17 their rest periods freely for their own purposes. Thus, Defendants effectively maintained control over  
18 Plaintiffs and other non-party Aggrieved Employees during rest periods, and, as a result of this rest  
19 period policy, Defendants did not relinquish control over Plaintiffs and other non-party Aggrieved  
20 Employees during rest periods. As a result, Plaintiffs and other non-party Aggrieved Employees were  
21 prevented from being relieved of all duty in order to take compliant rest periods and instead would be  
22 required to continue working.

23           96. Plaintiffs and other non-party Aggrieved Employees worked shifts in excess of three and  
24 one-half (3 ½) hours, in excess of six (6) hours, and/or in excess or ten (10) hours without receiving all  
25 uninterrupted 10-minute rest periods to which they were entitled. For example, due to her heavy  
26 workload, Plaintiff Tomlinson missed her first rest period one (1) to two (2) times per week and missed  
27 her second rest period three (3) to four (4) times per week. Throughout her employment, Plaintiff  
28 Sharkey also missed her rest periods due to understaffing and the heavy workload or would have her rest

1 periods interrupted by Defendants' supervisors and co-workers asking to discuss files requiring review.

2 97. Defendants have also engaged in a systematic, company-wide practice and/or policy of  
3 not paying rest period premiums owed when rest periods are not authorized and permitted.

4 Alternatively, to the extent that Defendants did pay other non-party Aggrieved Employees one (1)  
5 additional hour of premium pay for missed rest periods, Defendants did not pay other non-party  
6 Aggrieved Employees the correct rate of pay for premium wages because Defendants failed to include  
7 all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of  
8 remuneration, in the regular rate of pay. As a result, to the extent Defendants paid other non-party  
9 Aggrieved Employees premium pay for missed rest periods, it did so at a lower rate than required by  
10 law.

11 98. Based on the foregoing, Plaintiffs and other non-party Aggrieved Employees were  
12 denied rest periods and Defendants failed to pay the full rest period premiums due.

13 99. Defendants' conduct violates the applicable IWC Wage Order and California Labor  
14 Code sections 226.7, 516, and 1198. Plaintiffs and other non-party Aggrieved Employees are therefore  
15 entitled to recover civil penalties pursuant to sections 558 and/or 2699(a), (f), and (g).

## 16 **FIFTH CAUSE OF ACTION**

### 17 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 18 **Statements and Failure to Maintain Accurate Payroll Records** 19 **(Against all Defendants)**

20 100. At all relevant times herein set forth, California Labor Code section 226(a) provides that  
21 every employer shall furnish each of his or her employees an accurate and complete itemized wage  
22 statement in writing, including, but not limited to, gross wages earned; net wages earned; all applicable  
23 hourly rates in effect during the pay period, including overtime rates of pay; and the corresponding  
24 number of hours worked at each hourly rate.

25 101. At all relevant times, Defendants have knowingly and intentionally provided Plaintiffs  
26 and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate wage statements  
27 that failed to comply with Labor Code sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

28 102. Because Defendants deducted time worked from Plaintiffs' and other non-party

1 Aggrieved Employees' wage statements and employment records for meal periods that were interrupted  
2 or missed (and therefore time for which they should have been paid) and did not record the time  
3 Plaintiffs and other non-party Aggrieved Employees spent working off-the-clock, Defendants did not list  
4 the correct amount of gross wages earned by Plaintiffs and other non-party Aggrieved Employees in  
5 compliance with section 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately  
6 list the total number of hours worked by Plaintiffs and other non-party Aggrieved Employees in violation  
7 of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period  
8 and corresponding accurate number of work hours worked at each hourly rate in violation of section  
9 226(a)(9).

10 103. Additionally, because Defendants did not calculate other non-party Aggrieved  
11 Employees' regular rate of pay correctly for purposes of paying overtime, Defendants did not list the  
12 correct amount of gross wages earned by other non-party Aggrieved Employees in compliance with  
13 section 226(a)(1). For the same reason, Defendants failed to list the correct amount of net wages earned  
14 by other non-party Aggrieved Employees in violation of section 226(a)(5). Defendants also failed to  
15 correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of  
16 pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

17 104. The wage statement deficiencies also include, without limitation, failing to list the  
18 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate  
19 basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of  
20 his or her social security number or an employee identification number other than a social security  
21 number; failing to list the correct name and address of the legal entity that is the employer; failing to list  
22 the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all  
23 hours worked as a result of not recording or stating hours worked off-the-clock.

24 105. California Labor Code section 1198 provides that the maximum hours of work and the  
25 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the  
26 applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees  
27 for longer hours than those fixed by the order or under conditions of labor prohibited by the order is  
28 unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time

1 records showing when the employee begins and ends each work period and meal period. At all relevant  
2 times, Defendants failed, on a company-wide basis, to keep records of work period and meal period start  
3 and stop times for Plaintiffs and other non-party Aggrieved Employees in violation of section 1198. As  
4 stated, Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiffs' and other  
5 non-party Aggrieved Employees' time records by recording that compliant meal periods were taken  
6 regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of  
7 meal start and end times for Plaintiffs and other non-party Aggrieved Employees. Also, in light of  
8 Defendants' failure to provide Plaintiffs and other non-party Aggrieved Employees with second 30-  
9 minute meal periods to which they were entitled, Defendants kept no records of meal start and end times  
10 for second meal periods.

11 106. California Labor Code section 1174(d) provides that "[e]very person employing labor in  
12 this state shall ... [k]eep a record showing the names and addresses of all employees employed and the  
13 ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at  
14 which employees are employed, payroll records showing the hours worked daily by and the wages paid  
15 to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees  
16 employed at the respective plants or establishments..." At all relevant times, and in violation of Labor  
17 Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiffs and  
18 other non-party Aggrieved Employees showing the daily hours they worked and the wages paid thereto  
19 as a result of failing to record the off-the-clock hours that they worked.

20 107. Because Defendants' violations of 226(a) and 1174(d) were committed against Plaintiffs  
21 and other non-party Aggrieved Employees, Plaintiffs and other non-party Aggrieved Employees are  
22 entitled to recover civil penalties pursuant to sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

## 23 **SIXTH CAUSE OF ACTION**

### 24 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During Employment** 25 **(Against all Defendants)**

26 108. At all relevant times herein set forth, California Labor Code section 204 requires that all  
27 wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any  
28 calendar month, other than those wages due upon termination of an employee, are due and payable

1 between the 16th and the 26th day of the month during which the labor was performed. Labor Code  
2 section 204 further provides that all wages earned by any person in any employment between the 16th  
3 and the last day, inclusive, of any calendar month, other than those wages due upon termination of an  
4 employee, are due and payable between the 1st and the 10th day of the following month.

5 109. At all relevant times herein, California Labor Code section 204 also requires that all  
6 wages earned for labor in excess of the normal work period shall be paid no later than the payday for the  
7 next regular payroll period. Alternatively, at all relevant times herein, Labor Code section 204 provides  
8 that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly,  
9 or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close  
10 of the payroll period.

11 110. During the relevant time period, Defendants willfully failed to pay Plaintiffs and other  
12 non-party Aggrieved Employees all wages due to them within any time period specified by California  
13 Labor Code section 204 including, but not limited to, overtime wages, minimum wages, and meal and  
14 rest period premium wages.

15 111. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover  
16 civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

## 17 SEVENTH CAUSE OF ACTION

### 18 Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination 19 (Against all Defendants)

20 112. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an  
21 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and  
22 payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages  
23 shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has  
24 given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee  
25 is entitled to his or her wages at the time of quitting.

26 113. On information and belief, Defendants have a company-wide practice or policy of  
27 paying departing employees their final wages on the next regular pay cycle, instead of adhering to the  
28 time requirements set forth in Labor Code sections 201 and 202. For example, Plaintiff Tomlinson was

1 terminated on July 17, 2018. However, Plaintiff Tomlinson did not receive her final paycheck until July  
2 27, 2018. Thus, Defendants failed to pay Plaintiff Tomlinson her final wages immediately, in violation  
3 of Labor Code section 201.

4 114. Additionally, at all relevant times, Defendants willfully failed to pay Plaintiffs and other  
5 non-party Aggrieved Employees who are no longer employed by Defendants the earned and unpaid  
6 wages set forth above, including but not limited to, overtime wages, minimum wages, and meal and rest  
7 period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving  
8 Defendants' employ.

9 115. Defendants' failure to pay Plaintiffs and those other non-party Aggrieved Employees  
10 who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or  
11 within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201  
12 and 202. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover statutory  
13 penalties pursuant to Labor Code section 203 and civil penalties pursuant to Labor Code sections 256  
14 and/or 2699(a), (f), and (g).

## 15 EIGHTH CAUSE OF ACTION

### 16 Violation of California Labor Code § 2802—Unpaid Business-Related Expenses

#### 17 (Against all Defendants)

18 116. At all times herein set forth, California Labor Code section 2802 provides that an  
19 employer must reimburse employees for all necessary expenditures and losses incurred by the employee  
20 in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers  
21 from passing off their cost of doing business and operating expenses on to their employees. *Cochran v.*  
22 *Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC  
23 Wage Order 4-2001, provides that: "[w]hen the employer requires the use of tools or equipment or they  
24 are necessary to the performance of a job, such tools and equipment shall be provided and maintained by  
25 the employer, except that an employee whose wages are at least two (2) times the minimum wage may  
26 provide and maintain hand tools and equipment customarily required by the particular trade or craft."

27 117. During the relevant time period, Defendants, on a company-wide basis, required that  
28 Plaintiff Sharkey and other non-party Aggrieved Employees use their own personal cellular phones

1 and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-  
2 related cellular phone expenses. Plaintiff Sharkey and other non-party Aggrieved Employees were  
3 required to use their personal cellular phones to complete their work-related tasks, such as discussing  
4 files with loan officers. Although Defendants required Plaintiff Sharkey and other non-party Aggrieved  
5 Employees to utilize their personal cellular phones to carry out their work-related responsibilities,  
6 Defendants failed to fully reimburse them for this cost.

7 118. Additionally, Defendants had a company-wide policy of requiring other non-party  
8 Aggrieved Employees to utilize their own personal vehicles for work purposes, but failed to reimburse  
9 them for all costs of travel, including mileage. As stated, Defendants had a company-wide policy of  
10 requiring employees to travel in their own personal vehicles to obtain fingerprint-based background  
11 checks, but did not reimburse them for their travel expenses. For example, other non-party Aggrieved  
12 Employees drove their personal vehicles to obtain mandatory fingerprint-based background check from  
13 a Live Scan provider. Although Defendants required other non-party Aggrieved Employees to utilize  
14 their own vehicles to travel to and from Live Scan providers, Defendants never reimbursed them for their  
15 travel expenses.

16 119. Defendants could have provided Plaintiffs and/or other non-party Aggrieved Employees  
17 with the actual tools for use on the job, such as company phones or vehicles to be used for fulfilling  
18 work-related tasks, or, Defendants could have reimbursed employees for the costs of their cellular phone  
19 usage, travel expenses, and mileage. Instead, Defendants passed these operating costs off onto Plaintiffs  
20 and other non-party Aggrieved Employees. Thus, Defendants had, and continue to have, a company-  
21 wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation  
22 of California Labor Code section 2802.

23 120. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover  
24 civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

## 25 **NINTH CAUSE OF ACTION**

### 26 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

#### 27 **(Against all Defendants)**

28 121. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every

1 allegation set forth above.

2 122. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover civil  
3 penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5.  
4 Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d),  
5 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including  
6 Plaintiffs, to recover civil penalties for violations of those Labor Code sections not found in section  
7 2699.5, including sections 516 and 1182.12.

8 123. Defendants’ conduct, as alleged herein, violates numerous sections of the California  
9 Labor Code, including, but not limited to, the following:

- 10 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC wage  
11 order for Defendants’ failure to compensate Plaintiffs and other non-party  
12 Aggrieved Employees with all required overtime pay and failure to properly  
13 calculate the overtime rates paid to other non-party Aggrieved Employees as set  
14 forth above;
- 15 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the applicable  
16 IWC wage order for Defendants’ failure to compensate Plaintiffs and other non-  
17 party Aggrieved Employees with at least minimum wages for all hours worked  
18 as set forth above;
- 19 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the applicable IWC  
20 wage order for Defendants’ failure to provide Plaintiffs and other non-party  
21 Aggrieved Employees with meal periods, as set forth above;
- 22 (d) Violation of Labor Code sections 226.7, 512, 516, 1198, and the applicable IWC  
23 wage order for Defendants’ failure to pay Plaintiffs and class members meal  
24 period premiums at the regular rate of pay, as set forth above;
- 25 (e) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC  
26 wage order for Defendants’ failure to authorize and permit Plaintiffs and other  
27 non-party Aggrieved Employees to take rest periods, as set forth above;
- 28 (f) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC

wage order for Defendants' failure to pay Plaintiffs and class members meal period premiums at the regular rate of pay, as set forth above;

- (g) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiffs and other non-party Aggrieved Employees, as set forth above;
- (h) Violations of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as set forth above;
- (i) Violation of Labor Code section 204 for failure to pay all earned wages during employment as set forth above;
- (j) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination including whether Defendants' failure to pay waiting time penalties to Plaintiffs and class members based on such failure to pay all earned wages upon termination of their employment as set forth above; and
- (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff Sharkey and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth above.

## **TENTH CAUSE OF ACTION**

### **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

#### **Unlawful Business Practices**

#### **(Against all Defendants)**

124. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

125. Defendants are "persons" as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

126. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have suffered injury in fact and has lost money as a result of Defendants' unlawful business practices. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section

1 1021.5.

2 127. Defendants' activities, as alleged herein, are violations of California law, and constitute  
3 unlawful business acts and practices in violation of California Business & Professions Code sections  
4 17200, *et seq.*

5 128. A violation of California Business & Professions Code sections 17200, *et seq.* may be  
6 predicated on the violation of any state or federal law. In the instant case, Defendants' policies and  
7 practices have violated state law in at least the following respects:

8 (a) Requiring non-exempt, hourly paid employees, including Plaintiffs and class  
9 members, to work overtime without paying them proper compensation in violation of California Labor  
10 Code sections 510 and 1198 and the applicable IWC Order, and paying Plaintiffs and class members  
11 overtime at a lower rate than required by law by failing to properly calculate the regular rate of pay for  
12 purposes of overtime, as alleged herein;

13 (b) Failing to pay at least minimum wage to Plaintiffs and class members in  
14 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable  
15 IWC Order, as alleged herein;

16 (c) Failing to provide uninterrupted meal periods to Plaintiffs and class members in  
17 violation of California Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC Order, as  
18 alleged herein;

19 (d) Failing to authorize and permit Plaintiffs and class members to take  
20 uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, 1198, and the  
21 applicable IWC Order, as alleged herein;

22 (e) Failing to provide Plaintiffs and class members with accurate wage statements  
23 and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a),  
24 1174(d), 1198, and the applicable IWC Order, as alleged herein;

25 (f) Failing timely to pay all earned wages to Plaintiffs and class members in  
26 violation of California Labor Code section 204 and the applicable IWC Order, as alleged herein; and

27 (g) Failing to reimburse Plaintiffs and class members for all business expenses  
28 necessarily incurred in violation of California Labor Code sections 2802, as alleged herein.

129. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiffs and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

130. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiffs and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of the original complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

## ELEVENTH CAUSE OF ACTION

**Violation of California Business & Professions Code §§ 17200, et seq. –**

## Unfair Business Practices

**(Against all Defendants)**

131. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

132. Defendants are “persons” as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

133. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have suffered injury in fact and have lost money as a result of Defendants' unfair business practices. Plaintiffs seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

134. Defendants’ activities, namely Defendants’ company-wide practice and/or policy of not paying Plaintiffs and class members all meal and rest period premium wages due to them under Labor Code section 226.7, deprived Plaintiffs and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits

1 of section 226.7 were guaranteed to Plaintiffs and class members as part of their employment with  
2 Defendants, and thus Defendants' practice and/or policy of denying these statutory benefits constitutes  
3 an unfair business practice in violation of California Business & Professions Code sections 17200, *et seq.*  
4 (*Id.*)

5 135. A violation of California Business & Professions Code sections 17200, *et seq.* may be  
6 predicated on any unfair business practice. In the instant case, Defendants' policies and practices have  
7 violated the spirit of California's meal and rest period laws and constitute acts against the public policy  
8 behind these laws.

9 136. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiffs  
10 and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented  
11 by section 226.7 withheld and retained by Defendants during a period that commences four years prior to  
12 the filing of this complaint; a permanent injunction requiring Defendants to pay all statutory benefits  
13 implemented by section 226.7 due to Plaintiff and class members; an award of attorneys' fees pursuant  
14 to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

#### 15 **REQUEST FOR JURY TRIAL**

16 Plaintiffs request a trial by jury.

#### 17 **PRAYER FOR RELIEF**

18 Plaintiffs, on behalf of all others similarly situated, pray for relief and judgment against  
19 Defendants, jointly and severally, as follows:

20 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of  
21 twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiffs reserve the right to  
22 amend their prayer for relief to seek a different amount.

#### 23 **Class Certification**

- 24 2. That this case be certified as a class action;  
25 3. That Plaintiffs be appointed as the representative of the Class and Subclass;  
26 4. That counsel for Plaintiffs be appointed as class counsel.

#### 27 **As to the First Cause of Action**

- 28 5. That the Court declare, adjudge, and decree that Defendants violated California Labor

Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiffs and class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;

8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and

9. For such other and further relief as the Court may deem equitable and appropriate.

#### **As to the Second Cause of Action**

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay minimum wages to Plaintiffs and class members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

14. For liquidated damages pursuant to California Labor Code section 1194.2; and

15. For such other and further relief as the Court may deem equitable and appropriate.

#### **As to the Third Cause of Action**

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by willfully failing to provide all meal periods to Plaintiffs and class members;

17. That the Court make an award to the Plaintiffs and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

**As to the Fourth Cause of Action**

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully failing to authorize and permit Plaintiffs and class members to take all rest periods;

24. That the Court make an award to the Plaintiffs and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

**As to the Fifth Cause of Action**

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiffs and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

35. For such other and further relief as the Court may deem equitable and appropriate.

**As to the Sixth Cause of Action**

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiffs and class members overtime wages, minimum wages, sick leave pay, and/or meal and rest period premiums, during their employment;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For statutory penalties according to proof pursuant to California Labor Code section 210;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

41. For such other and further relief as the Court may deem equitable and appropriate.

**As to the Seventh Cause of Action**

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, sick leave pay, and/or meal and rest period premiums, owed at the time of termination of the employment of Plaintiffs and other terminated class members;

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

46. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

47. For such other and further relief as the Court may deem equitable and appropriate.

**As to the Eighth Cause of Action**

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and

costs incurred by Plaintiffs and class members;

49. For unpaid business-related expenses and such general and special damages as may be appropriate;

50. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

51. For all actual, consequential, and incidental losses and damages, according to proof;

52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

53. For such other and further relief as the Court may deem equitable and appropriate.

#### **As to the Ninth Cause of Action**

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiffs and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); and 2802 (by failing to reimburse business expenses);

55. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 246;

56. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 246;

57. For pre-judgment and post-judgment interest as provided by law; and

58. For such other and further relief as the Court may deem equitable and appropriate.

1 **As to the Tenth Cause of Action**

2 59. That the Court declare, adjudge and decree that Defendants' conduct of failing to  
3 provide Plaintiffs and class members all overtime wages due to them, failing to provide Plaintiffs and  
4 class members all minimum wages due to them, failing to provide Plaintiffs and class members all meal  
5 periods, failing to authorize and permit Plaintiffs and class members to take all rest periods, failing to  
6 provide Plaintiffs and class members accurate and complete wage statements, failing to maintain  
7 accurate payroll records for Plaintiffs and class members, failing timely to pay Plaintiffs and class  
8 members all earned wages during employment, and failing to reimburse Plaintiffs and class members for  
9 business-related expenses, constitutes an unlawful business practice in violation of California Business  
10 and Professions Code sections 17200, *et seq.*;

11 60. For restitution of unpaid wages to Plaintiffs and all class members and prejudgment  
12 interest from the day such amounts were due and payable;

13 61. For the appointment of a receiver to receive, manage and distribute any and all funds  
14 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result  
15 of violations of California Business & Professions Code sections 17200, *et seq.*;

16 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California  
17 Code of Civil Procedure section 1021.5; and

18 63. For such other and further relief as the Court may deem equitable and appropriate.

19 **As to the Eleventh Cause of Action**

20 64. That the Court declare, adjudge and decree that Defendants' conduct of denying  
21 Plaintiffs and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair  
22 business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

23 65. For restitution of the statutory benefits under section 226.7 unfairly withheld from  
24 Plaintiffs and class members and prejudgment interest from the day such amounts were due and payable;

25 66. For the appointment of a receiver to receive, manage and distribute any and all funds  
26 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result  
27 of violations of California Business & Professions Code sections 17200 *et seq.*;

28 67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California

Code of Civil Procedure section 1021.5;

68. For pre-judgment and post-judgment interest as provided by law; and

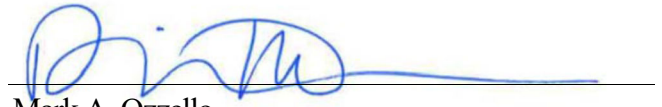
69. For such other and further relief as the Court may deem equitable and appropriate.

Dated: December 15, 2021

Respectfully submitted,

Capstone Law APC

By:



Mark A. Ozzello

Brandon K. Brouillette

Joseph Hakakian

Attorneys for Plaintiffs Marcia Tomlinson and  
Jacqueline Sharkey

# EXHIBIT 1

ANTHONY CASTILLO  
310.712.8169 Direct  
Anthony.Castillo@capstonelawyers.com

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January 7, 2019

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency  
ATTN: PAGA Administrator  
(<https://dir.tfaforms.net/198>)

Subject: *Marcia Tomlinson v. US Bancorp, et al.*

Dear PAGA Administrator:

This office represents Marcia Tomlinson in connection with her claims under the California Labor Code. Ms. Tomlinson was an employee of U.S. BANCORP and/or U.S. BANK NATIONAL ASSOCIATION. For the purpose of this letter, Ms. Tomlinson collectively refers to these entities as "US BANK."

The employers may be contacted directly at the addresses below:

U.S. BANCORP  
800 NICOLLET MALL  
MINNEAPOLIS, MN 55402

U.S. BANK NATIONAL ASSOCIATION  
425 WALNUT STREET  
CINCINNATI, OH 45202

Ms. Tomlinson intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Tomlinson seeks relief on behalf of herself, the State of California, and other persons who are or were employed by US BANK as a non-exempt, hourly-paid employee, in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

US BANK employed Ms. Tomlinson as an hourly-paid, non-exempt Mortgage Loan Processor 2 from approximately November 28, 2016, to July 17, 2018. During her employment, M. Tomlinson worked for US BANK at their branch in Westlake Village, California. She typically worked approximately eight (8) hours or more per day, five (5) days per week, and forty (40) hours or more per week. At the time Ms. Tomlinson's employment with US BANK ended, she was compensated

approximately \$24.00 per hour. Her job duties included processing mortgage applications before escrow, assessing risk of applicants based on financial history, communicating with applicants regarding necessary documentation, and coordinating information with sales representatives.

US BANK committed one or more of the following Labor Code violations against Ms. Tomlinson, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):<sup>1</sup>

### **US BANK’s Company-Wide and Uniform Payroll and HR Practices**

US BANK provides retail banking services to the general public throughout the United States, including California. US BANK operates approximately 3,124 bank branches in 28 states, including approximately 637 branch locations in California, and employs approximately 74,000 employees nationwide. U.S. BANCORP is a Delaware corporation headquartered in Minneapolis, Minnesota. U.S. BANK NATIONAL ASSOCIATION is a National-Chartered Banking Association headquartered in Cincinnati, Ohio. Upon information and belief, US BANK maintains a single, centralized Human Resources (HR) department at its corporate headquarters in either Minneapolis, Minnesota, or Cincinnati, Ohio, for all non-exempt, hourly-paid employees working for US BANK in California, including Ms. Tomlinson and other aggrieved employees. At all relevant times, US BANK issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly-paid employees in California, including Ms. Tomlinson and other aggrieved employees, regardless of their location or position.

Upon information and belief, US BANK maintains a centralized Payroll department at their corporate headquarters in either Minneapolis, Minnesota, or Cincinnati, Ohio, which processes payroll for all non-exempt, hourly-paid employees working for US BANK in California, including Ms. Tomlinson and other aggrieved employees. Further, US BANK issues the same formatted wage statements in the same manner for all non-exempt, hourly-paid employees working in California, including Ms. Tomlinson and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, US BANK utilized the same methods and formulas when calculating wages due to Ms. Tomlinson and other aggrieved employees in California.

### **Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime**

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a

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<sup>1</sup> These facts, theories, and claims are based on Ms. Tomlinson’s experience and counsel’s review of those records currently available relating to Ms. Tomlinson’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Tomlinson reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

US BANK willfully failed to pay all overtime wages owed to Ms. Tomlinson and other aggrieved employees. During the relevant time period, Ms. Tomlinson and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, US BANK had a company-wide policy and/or practice of strictly limiting the amount of overtime employees could accrue. US BANK's policy resulted in employees working several hours of overtime per week, but Ms. Tomlinson and other aggrieved employees would not be paid for those hours worked. Because the overtime that could be accrued was strictly controlled by US BANK, Ms. Tomlinson and other aggrieved employees would routinely have their overtime hours adjusted.

Second, US BANK discouraged and impeded Ms. Tomlinson and other aggrieved employees from recording hours worked that were outside of their scheduled shifts. Ms. Tomlinson and other aggrieved employees were forced to work off-the-clock performing tasks after their scheduled shift times, but were not provided a means by US BANK to account for this time. For example, Ms. Tomlinson was required to clock out at her designated shift end-time even when she was still on the phone with a client, but she was not provided a mechanism to include this time worked on her time records. Thus, US BANK failed to track this time spent working after clocking out, and Ms. Tomlinson and other aggrieved employees received no compensation for this time. Alternatively, when Ms. Tomlinson and other aggrieved employees were not able to clock out at their designated shift end-times, Ms. Tomlinson and other aggrieved employees were subject to US BANK's supervisors falsifying their time records in order to prevent employees from accruing overtime. If an employee clocked in before their scheduled shift or clocked out beyond their scheduled shift, US BANK's supervisors would adjust employee time punch records in order to prevent overtime from being accrued and would subject Ms. Tomlinson and other aggrieved employees to discipline for incurring unapproved overtime hours.

Third, US BANK had, and continues to have, a company-wide policy of failing to implement any policies to authorize and permit employees to take compliant meal periods and, instead, engaged in a practice of discouraging and impeding employees from taking meal periods by assigning them a heavy workload and understaffing their branch location(s). Ms. Tomlinson and other aggrieved employees were expected to hit certain targets or quotas for contacting customers and completing mortgage applications. However, because US BANK did not employ or staff an adequate number of employees to meet their productivity expectations, Ms. Tomlinson and other aggrieved employees were assigned heavy workloads, which US BANK knew or should have known could only be met by working additional hours. Thus, Ms. Tomlinson and other aggrieved employees missed meal periods, had meal periods cut short or interrupted, or, as mentioned above, performed work before or after their assigned shifts, in order to complete their assigned workloads.

Fourth, US BANK has, on a company-wide basis, failed to schedule meal periods. This company-wide failure to schedule meal periods coupled with the heavy workload and pressure from US BANK

to complete assigned tasks impeded Ms. Tomlinson and other aggrieved employees from taking meal periods. As a result, Ms. Tomlinson and other aggrieved employees were not always permitted and authorized to take uninterrupted 30-minute meal periods. During her employment, Ms. Tomlinson regularly worked through meal periods in order to complete assigned tasks. On days where she was entitled to a meal period, Ms. Tomlinson would clock out within the first five (5) hours of her shift but continue performing tasks, such as processing mortgage applications or communicating with applicants and/or sales representatives.

US BANK knew or should have known that, as a result of its company-wide policies and/or practices, Ms. Tomlinson and other aggrieved employees were performing some of their assigned duties during unpaid meal periods and before and after their shifts, and were suffered or permitted to perform work for which they were not paid. US BANK also knew, or should have known, that it did not compensate Ms. Tomlinson and other aggrieved employees for this off-the-clock work and unrecorded overtime hours.

Because Ms. Tomlinson and other aggrieved employees worked shifts of eight (8) hours a day or more and forty (40) hours a week or more, much of this off-the-clock work performed during unpaid meal periods and before and after shifts qualified for overtime premium pay. Therefore, Ms. Tomlinson and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, US BANK did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, US BANK paid other aggrieved employees incentive pay and/or nondiscretionary bonuses, denoted on their paystubs as "Misc Incen." However, in violation of the California Labor Code, US BANK failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, US BANK failed to pay all overtime wages by paying a lower overtime rate than required.

Ms. Tomlinson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f)-(g).

**Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages**

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 4 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

As set forth above, US BANK had a company-wide policy and/or practice of strictly limiting the amount of overtime employees could accrue, resulting in Ms. Tomlinson and other aggrieved employees having their hours worked routinely adjusted. Further, US BANK discouraged and impeded Ms. Tomlinson and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, resulting in work for which they were not paid. Finally, US BANK has, and continue to have, a company-wide policy and/or practice of understaffing and failing to

adhere to a schedule of meal periods, which impeded Ms. Tomlinson and other aggrieved employees from taking full, uninterrupted meal periods to which they were entitled and resulted in them working off-the-clock in order to ensure they were fulfilling the productivity quotas set by US BANK.

US BANK did not pay minimum wages for all hours worked by Ms. Tomlinson and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, US BANK did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, US BANK regularly failed to pay at least minimum wages to Ms. Tomlinson and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Ms. Tomlinson and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

#### **Violation of California Labor Code §§ 226.7, 512(a) and 1198 – Failure to Provide Meal Periods**

California Labor Code sections 226.7, 512(a), 1198 and the applicable IWC Wage Order require employers to provide meal and rest breaks and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

At all relevant times, as stated above, US BANK had, and continues to have, a company-wide policy and/or practice of understaffing, while simultaneously assigning heavy workloads and discouraging employees from incurring overtime, which resulted in a lack of meal break coverage and prevented Ms. Tomlinson and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, US BANK failed to adhere to a schedule of meal periods, resulting in Ms. Tomlinson and other aggrieved employees having their meal periods interrupted to return to work or waiting extended periods of time before taking meal periods due to the workload and pressure to meet deadlines without incurring overtime. These policies and practices discouraged and impeded Ms. Tomlinson and other aggrieved employees from taking compliant meal periods.

During this time, Ms. Tomlinson and other aggrieved employees received late, shortened, and/or interrupted meal breaks. Ms. Tomlinson and other aggrieved employees missed their meal periods altogether, had their meal periods interrupted to return to work, and/or waited extended periods of time before taking meal periods. For example, once or twice per week, Ms. Tomlinson would clock

out within the first five (5) hours of her shift but continue performing tasks throughout her entire meal period. Approximately three (3) to five (5) times per week, Ms. Tomlinson's meal periods were interrupted or shortened so she could complete her assigned workload. Further, for the same reasons set forth above, Ms. Tomlinson and other aggrieved employees were not provided with timely meal periods during their employment.

In addition, US BANK did not schedule second meal periods and had no policy for permitting Ms. Tomlinson and other aggrieved employees to take second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Tomlinson and other aggrieved employees did not receive second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Ms. Tomlinson worked in excess of ten (10) hours on June 4, 2018, and was not provided a second 30-minute meal period. Instead, Ms. Tomlinson continued to work until she clocked out for the day.

At all times herein mentioned, US BANK knew or should have known that, as a result of their policies, including understaffing, discouraging employees from accruing overtime, and failing to schedule meal breaks, Ms. Tomlinson and other aggrieved employees have been required to perform some of their assigned duties during meal periods. As a result, Ms. Tomlinson and other aggrieved employees had to work through part or all of their meal periods. US BANK further knew or should have known that US BANK did not pay Ms. Tomlinson and other aggrieved employees meal period premium wages when meal periods were late, interrupted, or missed, because, on information and belief, US BANK adjusted employee time records to reflect compliant meal periods, even if none were taken. Ms. Tomlinson and other aggrieved employees did not sign valid meal break waivers on days that they were entitled to meal periods and were not relieved of all duties.

US BANK also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Tomlinson and other aggrieved employees have not received premium pay for missed meal periods. Alternatively, to the extent that US BANK did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because US BANK did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, US BANK failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), and 1198. Ms. Tomlinson and other aggrieved employees are entitled to penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

#### **Violation of California Labor Code §§ 226.7 and 1198 – Failure to Provide Rest Periods**

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to provide rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, US BANK regularly failed to authorize and permit Ms. Tomlinson and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, US BANK’s policies and/or practice of understaffing and assigning heavy workloads prevented Ms. Tomlinson and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. As a result, Ms. Tomlinson missed her rest breaks, would be required to take them late, or would have her rest breaks interrupted. Ms. Tomlinson and other aggrieved employees were prevented from being relieved of all duty in order to take compliant rest periods and instead would be required to continue working.

Ms. Tomlinson and other aggrieved employees worked shifts in excess of three and one-half (3 ½) hours, in excess of six (6) hours, and/or in excess of ten (10) hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, due to her heavy workload, Ms. Tomlinson missed her first rest break one (1) to two (2) times per week and missed her second rest break three (3) to four (4) times per week.

US BANK also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not provided. Because of this practice and/or policy, Ms. Tomlinson and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that US BANK did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because US BANK did not properly calculate other aggrieved employees’ regular rates of pay by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, US BANK failed to provide all rest periods in violation of California Labor Code sections 226.7 and 1198. Ms. Tomlinson and other aggrieved employees are entitled to penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

**Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records**

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. US BANK has not provided Ms. Tomlinson and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, US BANK has knowingly and intentionally provided Ms. Tomlinson and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, US BANK issued uniform wage statements to Ms. Tomlinson and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, US BANK violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because US BANK deducted time from Ms. Tomlinson's and other aggrieved employees' records for meal periods that were interrupted or missed (and therefore time for which they should have been paid) and did not record the time spent Ms. Tomlinson and other aggrieved employees spent working off-the-clock, US BANK did not list the correct amount of gross wages and net wages earned by Ms. Tomlinson and other aggrieved employees in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, US BANK failed to accurately list the total number of the hours worked by Ms. Tomlinson and other aggrieved employees in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate in violation of section 226(a)(9).

Further, because US BANK did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime and meal and rest period premium wages, US BANK did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). US BANK also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the correct name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, US BANK failed, on a company-wide basis, to keep accurate records of meal period start and stop times for Ms. Tomlinson and other aggrieved employees in violation of section 1198. As stated, US BANK engaged in a company-wide practice and/or policy of falsifying Ms. Tomlinson's and other aggrieved employees' time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Ms. Tomlinson and other aggrieved employees. Also, in light of US BANK's failure to provide Ms. Tomlinson and other aggrieved employees with second

30-minute meal periods to which they were entitled, US BANK kept no records of meal start and end times for second meal periods.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), US BANK willfully failed to maintain accurate payroll records for Ms. Tomlinson and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

Because US BANK failed to provide the correct net and gross wages earned, total hours worked, and applicable rates of pay on wage statements, Ms. Tomlinson and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Tomlinson and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Tomlinson and other aggrieved employees are entitled to recover penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226(e), 226.3, 1174.5, and/or 2699(a), (f)-(g).

#### **Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment**

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, US BANK failed to pay Ms. Tomlinson and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Ms. Tomlinson and other aggrieved employees are entitled to recover penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

**Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination**

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

For example, Ms. Tomlinson was terminated on July 17, 2018. However, Ms. Tomlinson did not receive her final paycheck until July 27, 2018. Thus, US BANK failed to pay Ms. Tomlinson her final wages immediately, in violation of Labor Code section 201.

Additionally, US BANK willfully failed to pay Ms. Tomlinson and other aggrieved employees who are no longer employed by US BANK all their earned wages, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving US BANK's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Tomlinson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

**California Labor Code § 558(a)**

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." US BANK, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Tomlinson's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Tomlinson seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5 and 558, Ms. Tomlinson, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against US BANK for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

Therefore, on behalf of all aggrieved employees, Ms. Tomlinson seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo  
Capstone Law APC  
1875 Century Park East, Suite 1000  
Los Angeles, CA 90067  
(310) 556-4811

Best Regards,



Anthony Castillo

Copy: U.S. BANCORP (via U.S. Certified Mail); U.S. BANK NATIONAL ASSOCIATION (via U.S. Certified Mail)

# EXHIBIT 2

MAO SHIOKURA  
310.712.8030 Direct  
Mao.Shiokura@capstonelawyers.com

March 6, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency  
ATTN: PAGA Administrator  
(<https://dir.tfaforms.net/266>)

Subject: *Jacqueline Sharkey v. US Bancorp, et al.*

Dear PAGA Administrator:

This office represents Jacqueline Sharkey in connection with her claims under the California Labor Code. Ms. Sharkey was an employee of U.S. BANCORP and/or U.S. BANK NATIONAL ASSOCIATION. For the purpose of this letter, Ms. Sharkey collectively refers to these entities as "US BANK."

The employers may be contacted directly at the addresses below:

U.S. BANCORP  
800 NICOLLET MALL  
MINNEAPOLIS, MN 55402

U.S. BANK NATIONAL ASSOCIATION  
425 WALNUT STREET  
CINCINNATI, OH 45202

U.S. BANK NATIONAL ASSOCIATION  
4000 W. BROADWAY  
ROBBINSDALE, MN 55422

Ms. Sharkey intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Sharkey seeks relief on behalf of herself, the State of California, and other persons who are or were employed by US BANK in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

US BANK employed Ms. Sharkey as a non-exempt, hourly paid Underwriter from approximately March 2012 to March 2019. Ms. Sharkey worked for US BANK at its bank location at 10942 Pine Street, in Los Alamitos, California. She typically worked eight (8) hours or more per day, five (5) days per week, from 7:00 a.m. to 4:00 p.m. At the time her employment ended, Ms. Sharkey was compensated approximately \$43.00 per hour. Her job duties included reviewing documentation,

such as bank statements, title reports, tax returns, etc.; calculating income; and conferring with loan officers to approve loans for customers.

US BANK has committed one or more of the following Labor Code violations against Ms. Sharkey, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):<sup>1</sup>

### **US BANK’s Company-Wide and Uniform Payroll and HR Practices**

US BANK provides retail banking services to the general public throughout the United States, including California. US BANK operates approximately 3,124 bank branches in 28 states, including approximately 637 branch locations in California, and employs approximately 74,000 employees nationwide. U.S. BANCORP is a Delaware corporation headquartered in Minneapolis, Minnesota. U.S. BANK NATIONAL ASSOCIATION is a National-Chartered Banking Association headquartered in Cincinnati, Ohio. Upon information and belief, US BANK maintains a single, centralized Human Resources (HR) department at its corporate headquarters in either Minneapolis, Minnesota, or Cincinnati, Ohio, for all non-exempt, hourly paid employees working for US BANK in California, including Ms. Sharkey and other aggrieved employees. At all relevant times, US BANK issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Sharkey and other aggrieved employees, regardless of their location or position.

Upon information and belief, US BANK maintains a centralized Payroll department at its corporate headquarters in either Minneapolis, Minnesota, or Cincinnati, Ohio, which processes payroll for all non-exempt, hourly paid employees working for US BANK in California, including Ms. Sharkey and other aggrieved employees. Further, US BANK issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Sharkey and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, US BANK utilized the same methods and formulas when calculating wages due to Ms. Sharkey and other aggrieved employees in California.

### **Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime**

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration

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<sup>1</sup> These facts, theories, and claims are based on Ms. Sharkey’s experience and counsel’s review of those records currently available relating to Ms. Sharkey’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Sharkey reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

US BANK willfully failed to pay all overtime wages owed to Ms. Sharkey and other aggrieved employees. During the relevant time period, Ms. Sharkey and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, US BANK had a company-wide policy and/or practice of strictly limiting the amount of overtime employees could accrue. US BANK's policy resulted in employees working several hours of overtime per week, but Ms. Sharkey and other aggrieved employees would not be paid for those hours worked. Because the overtime that could be accrued was strictly controlled by US BANK, Ms. Sharkey and other aggrieved employees would routinely have their overtime hours adjusted.

Second, US BANK discouraged and impeded Ms. Sharkey and other aggrieved employees from recording hours worked that were outside of their scheduled shifts. Ms. Sharkey and other aggrieved employees were forced to work off-the-clock performing tasks before and after their scheduled shift times, but were not provided a means by US BANK to account for and record this time. For example, Ms. Sharkey was required to clock out at her designated shift end-time even when she had additional assignments to complete for the day, including responding to emails from US BANK's supervisors. However, she was not provided a mechanism to include this time worked on her time records. Thus, US BANK failed to track this time spent working after clocking out, and Ms. Sharkey and other aggrieved employees received no compensation for this time. Alternatively, when Ms. Sharkey and other aggrieved employees were not able to clock out at their designated shift end-times, on information and belief, Ms. Sharkey and other aggrieved employees were subject to US BANK's supervisors falsifying their time records in order to prevent employees from accruing overtime. If an employee clocked in before their scheduled shift or clocked out beyond their scheduled shift, US BANK's supervisors would adjust employee time punch records in order to prevent overtime from being accrued and would subject Ms. Sharkey and other aggrieved employees to discipline for incurring unapproved overtime hours.

Third, US BANK had, and continues to have, a company-wide policy and/or practice of requiring employees to complete work-related tasks while off-the-clock, including before or after their shifts. For example, US BANK required Ms. Sharkey and other aggrieved employees to complete online training modules, on a quarterly basis, but did not compensate them for their actual hours spent completing them. US BANK imposed certain deadlines on Ms. Sharkey and other aggrieved employees to complete quarterly online trainings. As a result, Ms. Sharkey and other aggrieved employees would work their regular eight (8) hour shifts, clock out due to US BANK's limitations on overtime accrual (*see supra*), and then continue working to complete US BANK's online training courses. For example, Ms. Sharkey would work an 8-hour or longer day and, while off-the-clock, spend another 1-3 hours completing US BANK's online training courses and modules. Although US BANK required that Ms. Sharkey and other aggrieved employees complete these training modules, US BANK did not compensate them for this time.

Fourth, US BANK had, and continues to have, a company-wide policy of failing to implement any policies to provide employees with compliant meal periods and, instead, engaged in a practice of discouraging and impeding employees from taking meal periods by assigning them a heavy workload

and understaffing their branch location(s). Ms. Sharkey and other aggrieved employees were expected to hit certain targets or quotas for reviewing loans (at least two per day) and to respond within 24 hours to any loans that came back with conditions to be reviewed. However, because US BANK did not employ or staff an adequate number of employees to meet their productivity expectations, Ms. Sharkey and other aggrieved employees were assigned heavy workloads, which US BANK knew or should have known could only be met by working additional hours. Thus, Ms. Sharkey and other aggrieved employees missed meal periods, had meal periods cut short or interrupted, or, as mentioned above, performed work before or after their assigned shifts, in order to complete their assigned workloads.

Fifth, US BANK has, on a company-wide basis, failed to adhere to a schedule of meal periods. This company-wide practice, coupled with the heavy workload and pressure from US BANK to complete assigned tasks, impeded Ms. Sharkey and other aggrieved employees from taking timely, compliant meal periods. As a result, Ms. Sharkey and other aggrieved employees were not always provided uninterrupted 30-minute meal periods. During her employment, Ms. Sharkey regularly worked through meal periods to complete her assigned tasks. On days where she was entitled to a meal period, Ms. Sharkey would clock out within the first five (5) hours of her shift but continue performing tasks, such as reviewing loan documentation or responding to supervisors' questions about work assignments.

US BANK knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Sharkey and other aggrieved employees were performing their assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. US BANK also knew, or should have known, that it did not compensate Ms. Sharkey and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Ms. Sharkey and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Sharkey and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. US BANK's failure to pay Ms. Sharkey and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, US BANK did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, US BANK paid other aggrieved employees incentive pay and/or nondiscretionary bonuses, denoted on their paystubs as "Misc Incen." However, in violation of the California Labor Code, US BANK failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, US BANK failed to pay all overtime wages by paying a lower overtime rate than required.

Ms. Sharkey and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

**Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages**

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 4 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining “Hours Worked”).

As set forth above, US BANK had a company-wide policy and/or practice of strictly limiting the amount of overtime employees could accrue, resulting in Ms. Sharkey and other aggrieved employees having their hours worked routinely adjusted. Further, US BANK discouraged and impeded Ms. Sharkey and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, resulting in work for which they were not paid. US BANK also had a company-wide policy and/or practice of requiring Ms. Sharkey and other aggrieved employees to complete mandatory online trainings on a quarterly basis, but failed to compensate them for all hours worked. Finally, US BANK had, and continues to have, a company-wide policy and/or practice of understaffing and failing to adhere to a schedule of meal periods, which impeded Ms. Sharkey and other aggrieved employees from taking full, uninterrupted meal periods to which they were entitled and resulted in them working off-the-clock in order to ensure they were fulfilling the productivity quotas set by US BANK.

Additionally, US BANK maintained and implemented a company-wide policy of requiring employees to undergo fingerprint-based background checks upon hiring. This required employees to travel to a Live Scan provider or operator on their own time and using their own personal vehicles to undergo fingerprinting. For example, other aggrieved employees traveled to the local police department’s office and spent time traveling to the office, waiting and undergoing the fingerprinting, and traveling back home. However, US BANK did not compensate other aggrieved employees for the time they spent traveling to and from the Live Scan providers or operators or for the time they spent undergoing their fingerprinting.

Thus, US BANK did not pay minimum wages for all hours worked by Ms. Sharkey and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, US BANK did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, US BANK regularly failed to pay at least minimum wages to Ms. Sharkey and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Ms. Sharkey and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

**Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods**

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal and rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, US BANK had, and continues to have, a company-wide policy and/or practice of understaffing, while simultaneously assigning heavy workloads and discouraging employees from incurring overtime, which resulted in a lack of meal period coverage and prevented Ms. Sharkey and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, US BANK failed to adhere to a schedule of meal periods, resulting in Ms. Sharkey and other aggrieved employees having their meal periods interrupted to return to work or waiting extended periods of time before taking meal periods, due to the workload and pressure to meet deadlines without incurring overtime. These policies and practices discouraged and impeded Ms. Sharkey and other aggrieved employees from taking compliant meal periods.

As a result of US BANK's practices and/or policies, Ms. Sharkey and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, once per week, Ms. Sharkey would clock out within the first five (5) hours of her shift but continue performing tasks throughout her entire meal period. Approximately three (3) to four (4) times per week, Ms. Sharkey's meal periods were interrupted or shortened in order to respond to questions from US BANK's customers or other underwriters.

Furthermore, US BANK did not schedule second meal periods and had no policy for providing Ms. Sharkey and other aggrieved employees with a second 30-minute meal period on days that they worked in excess of ten (10) hours in one day. As a result, Ms. Sharkey and other aggrieved employees did not receive second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Sharkey and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

US BANK knew or should have known that as a result of its policies, Ms. Sharkey and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. US BANK further knew or should have known that it did not pay Ms. Sharkey and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or

interrupted because, on information and belief, US BANK adjusted employee time records to reflect compliant meal periods, even if none were taken.

US BANK also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Sharkey and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that US BANK did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because US BANK did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, US BANK failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, 516, and 1198. Ms. Sharkey and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

#### **Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods**

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, US BANK regularly failed to authorize and permit Ms. Sharkey and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, US BANK's policies and/or practice of understaffing and assigning heavy workloads prevented Ms. Sharkey and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. As a result, Ms. Sharkey missed her rest periods or would have her rest periods interrupted. US BANK also failed to schedule rest periods, which, coupled with US BANK's failure to provide adequate rest period coverage, further led to Ms. Sharkey and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, US BANK maintained and implemented a company-wide practice and/or policy requiring that Ms. Sharkey and other aggrieved employees remain on US BANK's premises during their rest periods. Because Ms. Sharkey and other aggrieved employees were restricted from leaving the US BANK's premises during rest periods, they were denied the ability to use their rest periods

freely for their own purposes. Thus, US BANK effectively maintained control over Ms. Sharkey and other aggrieved employees during rest periods, and, as a result of this rest period policy, US BANK did not relinquish control over Ms. Sharkey and other aggrieved employees during rest periods. As a result, Ms. Sharkey and other aggrieved employees were prevented from being relieved of all duty in order to take compliant rest periods and instead would be required to continue working.

As a result of US BANK's practices and policies, Ms. Sharkey and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. Throughout her employment, Ms. Sharkey missed her rest periods due to understaffing and the heavy workload or would have her rest periods interrupted by US BANK's supervisors and co-workers asking to discuss files requiring review.

US BANK also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Ms. Sharkey and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that US BANK did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because US BANK did not properly calculate other aggrieved employees' regular rates of pay by including all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, US BANK failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Sharkey and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

**Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records**

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. US BANK has not provided Ms. Sharkey and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, US BANK has knowingly and intentionally provided Ms. Sharkey and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, US BANK issued uniform wage statements to Ms. Sharkey and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the

corresponding number of hours worked at each hourly rate. Specifically, US BANK violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because US BANK did not record the time Ms. Sharkey and other aggrieved employees spent working off-the-clock and deducted time from Ms. Sharkey's and other aggrieved employees' records for meal periods that were interrupted or missed (and therefore time for which they should have been paid), US BANK did not list the correct amount of gross wages and net wages earned by Ms. Sharkey and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, US BANK failed to accurately list the total number of the hours worked by Ms. Sharkey and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Further, because US BANK did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, US BANK did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). US BANK also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the correct name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments..." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), US BANK willfully failed to maintain accurate payroll records for Ms. Sharkey and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, as stated, US BANK engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal

periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Sharkey and other aggrieved employees in violation of section 1198. Furthermore, in light of US BANK's failure to provide Ms. Sharkey and other aggrieved employees with second 30-minute meal periods to which they were entitled, US BANK kept no records of meal start and end times for second meal periods.

Because US BANK failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Sharkey and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Sharkey and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Sharkey and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

#### **Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment**

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, US BANK failed to pay Ms. Sharkey and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Ms. Sharkey and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

#### **Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination**

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

US BANK willfully failed to pay Ms. Sharkey and other aggrieved employees who are no longer employed by US BANK all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving US BANK's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Sharkey and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

### **Violation of California Labor Code § 2802 – Unreimbursed Business Expenses**

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 4-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, US BANK, on a company-wide basis, required that Ms. Sharkey and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. Ms. Sharkey and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as discussing files with loan officers. Although US BANK required Ms. Sharkey and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, US BANK failed to fully reimburse them for this cost.

Additionally, US BANK had a company-wide policy of requiring other aggrieved employees to utilize their own personal vehicles for work purposes, but failed to reimburse them for all costs of travel, including mileage. As stated, US BANK had a company-wide policy of requiring employees to travel in their own personal vehicles to obtain fingerprint-based background checks, but did not reimburse them for their travel expenses. For example, other aggrieved employees drove their personal vehicles to obtain mandatory fingerprint-based background check from a Live Scan provider. Although US BANK required other aggrieved employees to utilize their own vehicles to travel to and from Live Scan providers, US BANK never reimbursed them for their travel expenses.

US BANK could have provided Ms. Sharkey and other aggrieved employees with the actual tools for use on the job, such as company vehicles or company phones to be used for fulfilling work-related tasks, or, US BANK could have reimbursed employees for the costs of their cellular phone usage, travel expenses, and mileage. Instead, US BANK passed these operating costs off onto Ms. Sharkey and other aggrieved employees.

Thus, US BANK had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Sharkey and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” US BANK, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Sharkey’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Sharkey seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Sharkey, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against US BANK for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Sharkey seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Mao Shiokura  
Capstone Law APC  
1875 Century Park East, Suite 1000  
Los Angeles, CA 90067  
(310) 556-4811

Best Regards,



Mao Shiokura

Copy: U.S. BANCORP (via U.S. Certified Mail); U.S. BANK NATIONAL ASSOCIATION (via U.S. Certified Mail); Joan B. Tucker Fife, WINSTON & STRAWN LLP, 101 California Street, 35th Floor, San Francisco, CA 94111 (via U.S. Certified Mail); Emilie C. Woodhead, Tristan R. Kirk, WINSTON & STRAWN LLP, 333 S. Grand Avenue, 38th Floor, Los Angeles, CA 90071-1543 (via U.S. Certified Mail)

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of  
4 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000,  
Los Angeles, California 90067. My electronic address is matthew.krout@capstonelawyers.com.

5 On **December 15, 2021**, I served the document(s) described as:

6 **FIRST AMENDED COMPLAINT**

7 on the interested parties in this action by sending [ ] the original [or] [✓] a true copy thereof  
8 [ ] to interested parties as follows [or] [✓] as stated on the attached service list:

9 JOAN B. TUCKER FIFE (SBN: 144572)  
10 jfife@winston.com  
WINSTON & STRAWN LLP  
101 California Street, 35th Floor San Francisco, CA 94111  
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11 EMILIE C. WOODHEAD (SBN: 240464)  
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333 S. Grand Avenue, 38th Floor Los Angeles, CA 90071-1543  
15 Telephone: (213) 615-1700  
Facsimile: (213) 615-1750

16 Attorneys for Defendants U.S. BANCORP and U.S. BANK N.A.

17 California Labor and Workforce Development Agency ("LWDA")  
18 Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
19 Oakland, CA 94612  
PAGAinfo@dir.ca.gov  
20 Via Upload to LWDA Website  
(https://dir.tfaforms.net/)

21 [✓] **BY ELECTRONIC FILE & SERVE:** A true and correct copy of the above-referenced  
22 document(s) was electronically served on counsel of record by means of uploading the  
document to One Legal Court Filing website portal in accordance with the Court's Order.

23 [✓] **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State  
24 of California Labor and Workforce Development Agency Online Filing Site  
25 https://dir.tfaforms.net

26 I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

27 Executed this **December 15, 2021**, at Los Angeles, California.

28 Matthew Krout  
Type or Print Name

  
Signature