

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Richard Fruin

1 Mark A. Ozzello (SBN 116595)
Mark.Ozzello@capstonelawyers.com
2 Brandon K. Brouillette (SBN 273156)
Brandon.Brouillette@capstonelawyers.com
3 Brooke W. Waldrop (SBN 314486)
Brooke.Waldrop@capstonelawyers.com
4 Capstone Law APC
1875 Century Park East, Suite 1000
5 Los Angeles, California 90067
Telephone: (310) 556-4811
6 Facsimile: (310) 943-0396

7 Attorneys for Plaintiff Jacqueline Sharkey
8
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

12 JACQUELINE SHARKEY, as an aggrieved
13 employee pursuant to the Private Attorneys
14 General Act ("PAGA"),

15 Plaintiff,

16 vs.

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

20 Defendants.
21
22
23
24
25
26
27
28

Case No.: 20STCV19049

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Jacqueline Sharkey, as an aggrieved employee and on behalf of all other
2 aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee (excluding retail banking employees) and who received at least one wage statement,
9 and against whom one or more violations of any provision in Division 2 Part 2 Chapter 1 of
10 the Labor Code or any provision regulating hours and days of work in the applicable Industrial
11 Welfare Commission (“IWC”) Wage Order were committed, as set forth in this complaint, at
12 any time between one year prior to the filing of the pre-filing written notice to the Labor and
13 Workforce Development Agency (“LWDA”) in this case on March 6, 2020, until judgment
14 (“non-party Aggrieved Employees”). Plaintiff’s share of damages, penalties, and other relief
15 sought in this action does not exceed \$75,000.

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

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is also proper in this Court, because Defendants employ persons in this
3 county, and thus a substantial portion of the transactions and occurrences related to this action
4 occurred in this county.

5 5. Further, venue is proper in this Court because Defendants are non-California
6 citizens and have their principal place of business in Minnesota or Ohio, and because they
7 have not filed a statement with the California Secretary of State designating a county in which
8 they maintain a principal place of business in accordance with California Corporations Code
9 sections 16959 and 18200. Cal. Code Civ. P. § 395.2. Thus, Defendants have no right to any
10 particular venue and Plaintiff may file this complaint in any county in California. *See Juneau*
11 *Spruce Corp. v. International Longshoremen's & Warehousemen's Union*, 37 Cal.2d 760,
12 763-764 (1951); *see also, Easton v. Sup.Ct. (Schneider Bros., Inc.)*, 12 Cal. App. 3d 243, 246-
13 247 (1970). Cal. Code Civ. P. § 395.5.

14 THE PARTIES

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

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

27 8. Defendant U.S. BANK NATIONAL ASSOCIATION was and is, upon
28 information and belief, a Nationally Chartered Banking Association doing business in

1 California, and at all times hereinafter mentioned, an employer whose employees are engaged
2 throughout this county, the State of California, or the various states of the United States of
3 America.

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

8 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
9 were the partners, agents, owners, or managers of U.S. BANCORP and/or U.S. BANK
10 NATIONAL ASSOCIATION, at all relevant times.

11 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
12 acts and omissions alleged herein was performed by, or is attributable to, U.S. BANCORP,
13 U.S. BANK NATIONAL ASSOCIATION, and/or DOES 1 through 10 (collectively
14 “Defendants” or “US BANK”), each acting as the agent, employee, alter ego, and/or joint
15 venturer of, or working in concert with, each of the other co-Defendants and was acting within
16 the course and scope of such agency, employment, joint venture, or concerted activity with
17 legal authority to act on the others’ behalf. The acts of any and all Defendants were in
18 accordance with, and represent, the official policy of Defendants.

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

23 13. Plaintiff is informed and believes, and thereon alleges, that each of said
24 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
25 omissions, occurrences, and transactions alleged herein.

26 14. Under California law, Defendants are jointly and severally liable as employers
27 for the violations alleged herein because they have each exercised sufficient control over the
28 wages, hours, working conditions, and employment status of Plaintiff and other non-party

1 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
2 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
3 of employment, determined their rate of pay, and maintained their employment records.
4 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
5 and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a
6 common-law employment relationship. As joint employers of Plaintiff and other non-party
7 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties
8 available to Plaintiff and other non-party Aggrieved Employees under the law.

9 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
10 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
11 non-party Aggrieved Employees because Defendants have:

- 12 (a) jointly exercised meaningful control over the work performed by
13 Plaintiff and other non-party Aggrieved Employees;
- 14 (b) jointly exercised meaningful control over Plaintiff’s and other non-party
15 Aggrieved Employees’ wages, hours, and working conditions, including
16 the quantity, quality standards, speed, scheduling, and operative details
17 of the tasks performed by Plaintiff and other non-party Aggrieved
18 Employees;
- 19 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
20 perform work which is an integral part of Defendants’ businesses; and
- 21 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
22 Employees as a matter of economic reality in that Plaintiff and other
23 non-party Aggrieved Employees were dependent on Defendants, who
24 shared the power to set the wages of Plaintiff and other non-party
25 Aggrieved Employees and determine their working conditions, and who
26 jointly reaped the benefits from the underpayment of their wages and
27 noncompliance with other statutory provisions governing their
28 employment.

1 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
2 there has existed a unity of interest and ownership between Defendants such that any
3 individuality and separateness between the entities has ceased.

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

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

9 19. Plaintiff further alleges, upon information and belief, that Defendants U.S.
10 BANCORP and U.S. BANK NATIONAL ASSOCIATION are alter egos of each other for the
11 following reasons:

- 12 (a) Per U.S. BANCORP's SEC 10-K filing for 2018,¹ U.S. BANK
13 NATIONAL ASSOCIATION is listed as a fully-owned subsidiary of
14 U.S. BANCORP; and
15 (b) On information and belief, U.S. BANCORP and U.S. BANK
16 NATIONAL ASSOCIATION utilize the same standardized employment
17 forms and issue the same employment policies.

18 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

27 ¹ 10-K Annual Report 2/22/2019, "US Bank Investor Relations – Investor/Shareholder
28 Information – SEC & Other Filings," <https://ir.usbank.com/sec-filings/sec-filing/10-k/0001193125-19-047201> (last accessed March 11, 2019).

1 policies to employees throughout California.

2 22. In particular, Plaintiff and other non-party Aggrieved Employees, on
3 information and belief, received the same standardized documents and/or written policies.
4 Upon information and belief, the usage of standardized documents and/or written policies,
5 including new hire documents, indicate that Defendants dictated policies at the corporate level
6 and implemented them company-wide, regardless of their employees' assigned locations or
7 positions. Upon information and belief, Defendants set forth uniform policies and procedures
8 in several documents provided at an employee's time of hire. For example, at the time
9 Plaintiff was hired, she received documents including, but not limited to, documents found on
10 Defendants' new employee orientation Web site <http://newemployee.usbank.com> and the New
11 Employee Resources Web page at www.USBankHR.com.

12 23. Upon information and belief, Defendants maintain a centralized Payroll
13 department at their corporate headquarters in either Minneapolis, Minnesota, or Cincinnati,
14 Ohio, which processes payroll for all non-exempt, hourly paid employees working for
15 Defendants at their various locations and jobsites in California, including Plaintiff and other
16 non-party Aggrieved Employees. Based upon information and belief, Defendants issue the
17 same formatted wage statements to all non-exempt, hourly paid employees in California,
18 irrespective of their work locations. Upon information and belief, Defendants process payroll
19 for departing employees in the same manner throughout the State of California, regardless of
20 the manner in which each employee's employment ends.

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

23 25. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
25 and advisors knowledgeable about California labor and wage law, employment and personnel
26 practices, and about the requirements of California law.

27 26. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
28 non-party Aggrieved Employees were not paid for all hours worked because all hours worked

1 were not recorded.

2 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
4 receive certain wages for overtime compensation and that they were not receiving certain
5 wages for overtime compensation.

6 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that other non-party Aggrieved Employees were entitled to be paid at a
8 regular rate of pay, and corresponding overtime rate of pay, that included as eligible income
9 all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of
10 compensation.

11 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
13 receive at least minimum wages for compensation and that they were not receiving at least
14 minimum wages for work that was required to be done off-the-clock. In violation of the
15 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
16 least minimum wages for work done off-the-clock.

17 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
19 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay
20 at their regular rates of pay when they were not provided with timely, uninterrupted, thirty
21 (30) minute meal periods and that Plaintiff and other non-party Aggrieved Employees were
22 not provided with all meal periods or payment of one (1) additional hour of pay at their
23 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
24 period.

25 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
27 rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment
28 of one (1) additional hour of pay at their regular rates of pay when they were not authorized

1 and permitted to take a compliant rest period. Plaintiff is informed and believes, and thereon
2 alleges, that Defendants knew or should have known that Plaintiff and other non-party
3 Aggrieved Employees were not authorized and permitted to take compliant rest periods and
4 that Defendants did not provide Plaintiff and other non-party Aggrieved Employees with
5 payment of one (1) additional hour of pay at their regular rates of pay when they were not
6 authorized and permitted to take a compliant rest period.

7 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
9 receive complete and accurate wage statements in accordance with California law. In
10 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
11 were not provided complete and accurate wage statements.

12 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that they had a duty to maintain accurate and complete payroll records in
14 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
15 and intentionally failed to do so.

16 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
18 timely payment of all wages earned upon termination of employment. In violation of the
19 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
20 payment of all wages due, including, but not limited to, overtime wages, minimum wages, and
21 meal and rest period premiums, within permissible time periods.

22 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
24 timely payment of wages during their employment. In violation of the California Labor Code,
25 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
26 including, but not limited to, overtime wages, minimum wages, and meal and rest period
27 premiums, within permissible time periods.

28 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
2 receive reimbursement for all business-related expenses and costs they incurred during the
3 course and scope of their employment and that they did not receive reimbursement of applicable
4 business-related expenses and costs incurred.

5 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
6 mentioned, Defendants knew or should have known that they had a duty to compensate
7 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
8 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
9 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
10 that they were properly denied wages, all in order to increase Defendants' profits.

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

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

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

23 41. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
24 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
25 following requirements have been met:

- 26 (a) The aggrieved employee or representative shall give written notice by
27 online filing with the LWDA and by certified mail to the employer of
28 the specific provisions of the California Labor Code alleged to have

1 been violated, including the facts and theories to support the alleged
2 violation.

3 (b) An aggrieved employee's notice filed with the LWDA pursuant to
4 2699.3(a) and any employer response to that notice shall be
5 accompanied by a filing fee of seventy-five dollars (\$75).

6 (c) The LWDA shall notify the employer and the aggrieved employee or
7 representative by certified mail that it does not intend to investigate the
8 alleged violation ("LWDA's Notice") within sixty (60) calendar days of
9 the postmark date of the aggrieved employee's notice. Upon receipt of
10 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
11 (65) calendar days of the postmark date of the aggrieved employee's
12 notice, the aggrieved employee may commence a civil action pursuant
13 to California Labor Code section 2699 to recover civil penalties.

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

18 (a) The aggrieved employee or representative shall give written notice by
19 online filing with the LWDA and by certified mail to the employer of
20 the specific provisions of the California Labor Code alleged to have
21 been violated (other than those listed in Section 2699.5), including the
22 facts and theories to support the alleged violation.

23 (b) An aggrieved employee's notice filed with the LWDA pursuant to
24 2699.3(c) and any employer response to that notice shall be
25 accompanied by a filing fee of seventy-five dollars (\$75).

26 (c) The employer may cure the alleged violation within thirty-three (33)
27 calendar days of the postmark date of the notice sent by the aggrieved
28 employee or representative. The employer shall give written notice

1 within that period of time by certified mail to the aggrieved employee or
2 representative and by online filing with the LWDA if the alleged
3 violation is cured, including a description of actions taken, and no civil
4 action pursuant to Section 2699 may commence. If the alleged violation
5 is not cured within the 33-day period, the aggrieved employee may
6 commence a civil action pursuant to Section 2699.

7 43. On March 6, 2020, Plaintiff provided written notice by online filing to the
8 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
9 Code alleged to have been violated, including facts and theories to support the alleged
10 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
11 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). That
12 same day, the LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and
13 assigned Plaintiff PAGA Case Number LWDA-CM-777018-20. A true and correct copy of
14 Plaintiff's written notice to the LWDA and Defendants dated March 6, 2020, is attached
15 hereto as "Exhibit 1."

16 44. As of the filing date of this complaint, over 65 days have passed since Plaintiff
17 sent her notice described above to the LWDA, and the LWDA has not responded that it
18 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

19 45. Thus, Plaintiff has satisfied the administrative prerequisites under California
20 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
21 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
22 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

23 46. Labor Code section 558(a) provides "[a]ny employer or other person acting on
24 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
25 provision regulating hours and days of work in any order of the Industrial Welfare
26 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
27 dollars (\$50) for each underpaid employee for each pay period for which the employee was
28 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each

1 underpaid employee for each pay period for which the employee was underpaid” Labor
2 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
3 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
4 as a private attorney general, seeks assessment and collection of civil penalties under Labor
5 Code section 558 for herself, all other non-party Aggrieved Employees, and the State of
6 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
7 and the applicable IWC wage order. Plaintiff, acting in the public interest as a private
8 attorney general, do not seek the recovery of unpaid wages under Labor Code section 558
9 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
10 applicable IWC wage order.

11 47. On April 6, 2020, the California Judicial Council approved and adopted
12 Emergency Rules 1, 2, 3, 4, 5, 6, 7, 8, 9,10, and 11 of the California Rules of Court in response t
13 the COVID-19 pandemic. Pursuant to Emergency Rule 9, the statute of limitation for civil
14 causes of action are tolled from April 6, 2020 until 90 days after the Governor declares
15 California’s state of emergency related to the COVID-19 pandemic is lifted. As of the filing of
16 this complaint, the Governor has not declared California’s state of emergency related the
17 COVID-19 pandemic lifted.

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

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

25 50. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
26 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
27 private attorney general, seeks assessment and collection of civil penalties for herself, all other
28 non-party Aggrieved Employees, and the State of California against Defendants 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, 1198, and 2802.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

51. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

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

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

- (a) Violation of Labor Code sections 510, 1198, and the applicable IWC wage order for Defendants’ failure to compensate Plaintiff and other non-party Aggrieved Employees with all required overtime pay and failure to properly calculate the overtime rates paid to other non-party Aggrieved Employees as set forth below;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the applicable IWC wage order for Defendants’ failure to compensate Plaintiff and other non-party Aggrieved Employees with at least minimum wages for all hours worked as set forth below;
- (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the applicable IWC wage order for Defendants’ failure to provide Plaintiff and other non-party Aggrieved Employees with meal periods, as set forth below;

- (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC wage order for Defendants' failure to authorize and permit Plaintiff and other non-party Aggrieved Employees to take rest periods, as set forth below;
- (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- (f) Violations of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as set forth below;
- (g) Violation of Labor Code section 204 for failure to pay all earned wages during employment as set forth below;
- (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth below; and
- (i) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

54. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

55. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the

1 number of hours worked by the person on a daily or weekly basis.

2 56. Specifically, the applicable IWC Wage Order provides that Defendants are and
3 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
4 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
5 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
6 hours in a workweek.

7 57. The applicable IWC Wage Order further provides that Defendants are and were
8 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
9 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
10 An employee's regular rate of pay includes all remuneration for employment paid to, or on
11 behalf of, the employee, including non-discretionary bonuses and incentive pay.

12 58. California Labor Code section 510 codifies the right to overtime compensation
13 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
14 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
15 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
16 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
17 in a day on the seventh (7th) day of work.

18 59. At all relevant times, Defendants willfully failed to pay all overtime wages
19 owed to Plaintiff and other non-party Aggrieved Employees. At all relevant times, Plaintiff
20 and other non-party Aggrieved Employees were not paid overtime premiums for all of the
21 hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a
22 day, and/or in excess of forty (40) hours in a week, because all hours worked were not
23 recorded.

24 60. First, during the relevant time period, Defendants had a company-wide policy
25 and/or practice of strictly limiting the amount of overtime employees could accrue.
26 Defendants' policy resulted in employees working several hours of overtime per week, but
27 Plaintiff and other non-party Aggrieved Employees would not be paid for those hours worked.
28 Because the overtime that could be accrued was strictly controlled by Defendants, Plaintiff

1 and other non-party Aggrieved Employees would routinely have their overtime hours
2 adjusted.

3 61. Second, Defendants discouraged and impeded Plaintiff and other non-party
4 Aggrieved Employees from recording hours worked that were outside of their scheduled
5 shifts. Plaintiff and other non-party Aggrieved Employees were forced to work off-the-clock
6 performing tasks after their scheduled shift times, but were not provided a means by
7 Defendants to account for this time. For example, Plaintiff was required to clock out at her
8 designated shift end-time even when she had additional assignments to complete for the day,
9 including responding to emails from Defendants' supervisors. However, Plaintiff was not
10 provided a mechanism to include this time worked on their time records. Thus, Defendants
11 failed to track this time spent working after clocking out, and Plaintiff and other non-party
12 Aggrieved Employees received no compensation for this time. Alternatively, when Plaintiff
13 and other non-party Aggrieved Employees were not able to clock out at their designated shift
14 end-times, Plaintiff and other non-party Aggrieved Employees were subject to Defendants'
15 supervisors falsifying their time records in order to prevent employees from accruing
16 overtime. If an employee clocked in before his or her scheduled shift or clocked out beyond
17 his or her scheduled shift, Defendants' supervisors would adjust employee time punch records
18 in order to prevent overtime from being accrued and would subject Plaintiff and other non-
19 party Aggrieved Employees to discipline for incurring unapproved overtime hours.

20 62. Third, Defendants had, and continue to have, a company-wide policy and/or
21 practice of requiring employees to complete work-related tasks while off-the-clock, including
22 before or after their shifts. For example, Defendants required Plaintiff and other non-party
23 Aggrieved Employees to complete online training modules, on a quarterly basis, but did not
24 compensate them for their actual hours spent completing them. Defendants imposed certain
25 deadlines on Plaintiff and other non-party Aggrieved Employees to complete quarterly online
26 trainings. As a result, Plaintiff and other non-party Aggrieved Employees would work their
27 regular eight (8) hour shifts, clock out due to Defendants' limitations on overtime accrual (*see*
28 *supra*), and then continue working to complete Defendants' online training courses. For

1 example, Plaintiff would work an 8-hour or longer day and, while off-the-clock, spend another
2 1-3 hours completing Defendants' online training courses and modules. Although Defendants
3 required that Plaintiff and other non-party Aggrieved Employees complete these training
4 modules, Defendants did not compensate them for this time.

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

18 64. Fifth, Defendants have, on a company-wide basis, failed to adhere to a schedule
19 of meal periods. This company-wide practice, coupled with the heavy workload and pressure
20 from Defendants to complete assigned tasks, impeded Plaintiff and other non-party Aggrieved
21 Employees from taking meal periods. As a result, Plaintiff and other non-party Aggrieved
22 Employees were not always provided uninterrupted 30-minute meal periods. During her
23 employment, Plaintiff regularly worked through meal periods in order to complete assigned
24 tasks. On days where she was entitled to a meal period, Plaintiff would clock out within the
25 first five (5) hours of her shift but continue performing tasks, such as reviewing loan
26 documentation, or responding to supervisors' questions about work assignments.

27 65. Defendants knew or should have known that, as a result of their policies and
28 practices, Plaintiff and other non-party Aggrieved Employees were working before and after

1 their shifts and during meal periods, and were suffered or permitted to perform work for
2 which they were not paid. Defendants also knew, or should have known, that they did not
3 compensate Plaintiff and other non-party Aggrieved Employees for this off-the-clock work
4 and unrecorded overtime hours.

5 66. Because Plaintiff and other non-party Aggrieved Employees worked shifts in
6 excess of eight (8) hours a day or more and forty (40) hours a week or more, much of this off-
7 the-clock work performed during unpaid meal periods qualified for overtime premium pay.
8 Therefore, Plaintiff and other non-party Aggrieved Employees were not paid overtime wages
9 for all of the overtime hours they actually worked.

10 67. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
11 correct overtime rates for the recorded overtime hours that they generated. In addition to an
12 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay and/or
13 nondiscretionary bonuses, denoted on their paystubs as "Misc Incen." However, in violation
14 of the California Labor Code, Defendants failed to incorporate all remunerations, including
15 incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay
16 for purposes of calculating the overtime wage rates. Therefore, during times when other non-
17 party Aggrieved Employees worked overtime and received these other forms of pay,
18 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

19 68. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
20 the balance of overtime compensation, as required by California law, violates the provisions
21 of California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
22 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
23 2699(a), (f), and (g).

24 **FAILURE TO PAY MINIMUM WAGES**

25 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

26 69. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
27 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
28 to be paid to employees, and the payment of a wage less than the minimum so fixed is

1 unlawful. Compensable work time is defined by the applicable wage order as “the time
2 during which an employee is subject to the control of an employer, and includes all the time
3 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
4 Regs. tit. 8, § 11040(2)(K) (defining “Hours Worked”).

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

18 71. Additionally, Defendants maintained and implemented a company-wide policy
19 of requiring employees to undergo fingerprint-based background checks upon hiring. This
20 required employees to travel to a Live Scan provider or operator on their own time and using
21 their own personal vehicles to undergo fingerprinting. For example, other non-party
22 Aggrieved Employees traveled to the local police department’s office and spent time traveling
23 to the office, waiting and undergoing the fingerprinting, and traveling back home. However,
24 Defendants did not compensate other non-party Aggrieved Employees for the time they spent
25 traveling to and from the Live Scan providers or operators or for the time they spent
26 undergoing their fingerprinting.

27 72. Defendants did not pay at least minimum wages for all hours worked by
28 Plaintiff and other non-party Aggrieved Employees. To the extent that these off-the-clock

1 hours did not qualify for overtime premium payment, Defendants did not pay at least
2 minimum wages for those hours worked off-the-clock in violation of California Labor Code
3 sections 1182.12, 1194, 1197, and 1198. Accordingly, Defendants failed to pay at least
4 minimum wages to Plaintiff and other non-party Aggrieved Employees for all of the hours
5 they worked.

6 73. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
7 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
8 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
9 penalties pursuant to sections 2699(a), (f), and (g).

10 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

11 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

12 74. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
13 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
14 non-party Aggrieved Employees' employment by Defendants.

15 75. At all relevant times herein set forth, California Labor Code section 512(a)
16 provides that an employer may not require, cause, or permit an employee to work for a period
17 of more than five (5) hours per day without providing the employee with a meal period of not
18 less than thirty (30) minutes, except that if the total work period per day of the employee is
19 not more than six (6) hours, the meal period may be waived by mutual consent of both the
20 employer and the employee. Under California law, first meal periods must start after no more
21 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
22 2012).

23 76. At all relevant times herein set forth, California Labor Code sections 226.7,
24 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
25 meal period mandated by an applicable order of the IWC.

26 77. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a),
27 1198 and the applicable IWC Wage Order also require employers to provide a second meal
28 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or

1 to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if
2 the total hours worked is no more than twelve (12) hours, the second meal period may be
3 waived by mutual consent of the employer and the employee only if the first meal period was
4 not waived.

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

15 79. During this time, Plaintiff and other non-party Aggrieved Employees missed
16 their meal periods altogether, had their meal periods interrupted to return to work, and/or
17 waited extended periods of time before taking meal periods. For example, once per week,
18 Plaintiff would clock out within the first five (5) hours of her shift but continue performing
19 tasks throughout her entire meal period. Approximately three (3) to four (4) times per week,
20 Plaintiff's meal periods were interrupted or shortened in order to respond to questions from
21 Defendants' customers or other underwriters. Further, for the same reasons set forth above,
22 Plaintiff and other non-party Aggrieved Employees were not provided with timely meal
23 periods during their employment.

24 80. In addition, Defendants did not schedule second meal periods and had no policy
25 for permitting Plaintiff and other non-party Aggrieved Employees to take second 30-minute
26 meal periods on days that they worked in excess of ten (10) hours in one day. Plaintiff and
27 other non-party Aggrieved Employees did not receive second 30-minute meal periods on days
28 that they worked in excess of ten (10) hours in one day. For example, other non-party

1 Aggrieved Employees worked in excess of ten (10) hours and were not provided a second 30-
2 minute meal period. Instead, other non-party Aggrieved Employees continued to work until
3 they clocked out for the day. Plaintiff and other non-party Aggrieved Employees did not sign
4 valid meal period waivers on days that they were entitled to meal periods and were not
5 relieved of all duties.

6 81. At all times herein mentioned, Defendants knew or should have known that, as
7 a result of their policies, including understaffing, discouraging employees from accruing
8 overtime, and failing to schedule meal periods, Plaintiff and other non-party Aggrieved
9 Employees have been required to perform some of their assigned duties during meal periods.
10 As a result, Plaintiff and other non-party Aggrieved Employees had to work through part or all
11 of their meal periods. Defendants further knew or should have known that Defendants did not
12 pay Plaintiff and other non-party Aggrieved Employees meal period premium wages when
13 meal periods were late, interrupted, or missed, because, on information and belief, Defendant
14 adjusted employee time records to reflect compliant meal periods, even if none were taken.

15 82. Moreover, Defendants have engaged in a systematic, company-wide practice
16 and/or policy of not paying meal period when compliant meal periods are not provided.
17 Alternatively, to the extent that Defendants did pay other non-party Aggrieved Employees one
18 (1) additional hour of premium pay for missed meal periods, Defendants did not pay other
19 non-party Aggrieved Employees the correct rate of pay for premium wages because
20 Defendants systematically failed to include all forms of compensation, such as incentive pay,
21 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. As a
22 result, to the extent Defendants paid other non-party Aggrieved Employees premium pay for
23 missed meal periods, it did so at a lower rate than required by law.

24 83. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
25 Employees compliant meal periods and failed to pay the full meal period premiums due.

26 84. Defendants' conduct violates the applicable IWC Wage Order, and California
27 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
28 Employees are entitled to recover civil penalties pursuant to sections 558 and/or 2699(a), (f),

1 and (g).

2 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

3 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

4 85. At all relevant times herein set forth, the applicable IWC Wage Order and
5 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
6 non-party Aggrieved Employees' employment by Defendants.

7 86. At all relevant times, the applicable IWC Wage Order provides that "[e]very
8 employer shall authorize and permit all employees to take rest periods, which insofar as
9 practicable shall be in the middle of each work period" and that the "rest period time shall be
10 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
11 hours or major fraction thereof" unless the total daily work time is less than three and one-half
12 (3½) hours.

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

21 88. Pursuant to the applicable IWC Wage Order and California Labor Code section
22 226.7(b), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
23 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
24 required rest period was not authorized and permitted.

25 89. During the relevant time period, Defendants regularly failed to authorize and
26 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
27 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
28 Defendants' policies and/or practice of understaffing and assigning heavy workloads

1 prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty
2 in order to take compliant rest periods. As a result, Plaintiff missed her rest periods, would be
3 required to take them late, or would have her rest periods interrupted. Plaintiff and other non-
4 party Aggrieved Employees were prevented from being relieved of all duty in order to take
5 compliant rest periods and instead would be required to continue working. Defendants also
6 failed to schedule rest periods, which, coupled with Defendants' failure to provide adequate
7 rest period coverage, further led to Plaintiff and other non-party Aggrieved Employees not
8 being authorized and permitted to take rest periods.

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

20 91. Plaintiff and other non-party Aggrieved Employees worked shifts in excess of
21 three and one-half (3 ½) hours, in excess of six (6) hours, and/or in excess or ten (10) hours
22 without receiving all uninterrupted 10-minute rest periods to which they were entitled. For
23 example, due to understaffing and her heavy workload, Plaintiff would have her rest periods
24 interrupted by Defendants' supervisors and co-workers asking to discuss files requiring
25 review.

26 92. Defendants have also engaged in a systematic, company-wide practice and/or
27 policy of not paying rest period premiums owed when rest periods are not authorized and
28 permitted. Alternatively, to the extent that Defendants did pay other non-party Aggrieved

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

7 93. Based on the foregoing, Plaintiff and other non-party Aggrieved Employees
8 were denied rest periods and Defendants failed to pay the full rest period premiums due.

9 94. Defendants' conduct violates the applicable IWC Wage Order and California
10 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
11 Employees are therefore entitled to recover civil penalties pursuant to sections 558 and/or
12 2699(a), (f), and (g).

13 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**

14 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

20 96. At all relevant times, Defendants have knowingly and intentionally provided
21 Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate
22 wage statements that failed to comply with Labor Code sections 226(a)(1), 226(a)(2),
23 226(a)(5), and 226(a)(9).

24 97. Because Defendants deducted time worked from Plaintiff's and other non-party
25 Aggrieved Employees' wage statements and employment records for meal periods that were
26 interrupted or missed (and therefore time for which they should have been paid) and did not
27 record the time Plaintiff and other non-party Aggrieved Employees spent working off-the-
28 clock, Defendants did not list the correct amount of gross wages earned by Plaintiff and other

1 non-party Aggrieved Employees in compliance with section 226(a)(1) and 226(a)(5). For the
2 same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff
3 and other non-party Aggrieved Employees in violation of section 226(a)(2), and failed to list the
4 applicable hourly rates of pay in effect during the pay period and corresponding accurate
5 number of work hours worked at each hourly rate in violation of section 226(a)(9).

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

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

22 100. California Labor Code section 1198 provides that the maximum hours of work
23 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
24 set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he
25 employment of any employees for longer hours than those fixed by the order or under
26 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC
27 Wage Order, employers are required to keep accurate time records showing when the
28 employee begins and ends each work period and meal period. At all relevant times,

Defendants failed, on a company-wide basis, to keep records of work period and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees in violation of section 1198. As stated, Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiff's and other non-party 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 Plaintiff and other non-party Aggrieved Employees. Also, in light of Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

101. 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..." At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party 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.

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

FAILURE TO PAY WAGES DURING EMPLOYMENT
VIOLATION OF LABOR CODE SECTION 204

103. At all relevant times herein set forth, California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th

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

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

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

17 106. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
18 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

19 **FAILURE TO PAY WAGES UPON TERMINATION**

20 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

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

28 108. On information and belief, Defendants have a company-wide practice or policy

1 of paying departing employees their final wages on the next regular pay cycle, instead of
2 adhering to the time requirements set forth in Labor Code sections 201 and 202. For example,
3 an other non-party Aggrieved Employee was terminated on July 17, 2018. However, this
4 other non-party Aggrieved Employee did not receive her final paycheck until July 27, 2018.
5 Thus, Defendants failed to pay final wages immediately, in violation of Labor Code section
6 201.

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

12 110. Defendants' failure to pay Plaintiff and those other non-party Aggrieved
13 Employees who are no longer employed by Defendants their wages earned and unpaid at the
14 time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ,
15 violates Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees
16 are therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
17 2699(a), (f), and (g).

18 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

19 **VIOLATION OF LABOR CODE SECTION 2802**

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

maintain hand tools and equipment customarily required by the particular trade or craft.”

112. During the relevant time period, Defendants, on a company-wide basis, required that Plaintiff and other non-party 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. Plaintiff and other non-party Aggrieved Employees were required to use their personal cellular phones to complete their work-related tasks, such as discussing files with loan officers. Although Defendants required Plaintiff and other non-party Aggrieved Employees to utilize their personal cellular phones to carry out their work-related responsibilities, Defendants failed to fully reimburse them for this cost.

113. Additionally, Defendants had a company-wide policy of requiring other non-party 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, Defendants 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 non-party Aggrieved Employees drove their personal vehicles to obtain mandatory fingerprint-based background check from a Live Scan provider. Although Defendants required other non-party Aggrieved Employees to utilize their own vehicles to travel to and from Live Scan providers, Defendants never reimbursed them for their travel expenses.

114. Defendants could have provided Plaintiff and/or other non-party Aggrieved Employees with the actual tools for use on the job, such as company phones or vehicles to be used for fulfilling work-related tasks, or, Defendants could have reimbursed employees for the costs of their cellular phone usage, travel expenses, and mileage. Instead, Defendants passed these operating costs off onto Plaintiff and other non-party Aggrieved Employees. Thus, Defendants had, and continue 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.

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

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of other non-party Aggrieved Employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different amount.

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 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 rest periods); 226(a), 1174(d) and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, 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);

3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 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, 1198, and 2802;

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

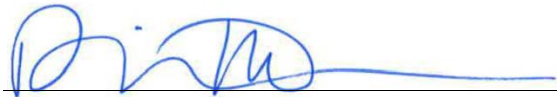
5. For pre-judgment and post-judgment interest as provided by law; and

1 6. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: May 19, 2020

Respectfully submitted,

Capstone Law APC

6
7 By: 

Mark A. Ozzello
Brandon K. Brouillette
Brooke W. Waldrop

Attorneys for Plaintiff Jacqueline Sharkey

EXHIBIT 1

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):¹

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

¹ 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)