

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

JUN 15 2020

STEPHANIE CAMERON, CLERK

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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF TULARE

15 JERIANN KERNS, as an aggrieved
16 employee pursuant to the Private Attorneys
17 General Act ("PAGA"), on behalf of the
18 State of California and other aggrieved
19 employees,

20 Plaintiff,

21 vs.

22 BANK OF THE SIERRA, a California
23 corporation; and DOES 1 through 10,
24 inclusive,

25 Defendants.

Case No.: **# 283185**

COMPLAINT – PAGA ENFORCEMENT ACTION

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

Jury Trial Demanded

BY FAX

CASE MANAGEMENT CONFERENCE

Hearing Date: 10/19/2020
Time: 8:30AM
Department: 7

1 Plaintiff Jeriann Kerns, as an aggrieved employee and on behalf of the State of
2 California and all other 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 sections 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 and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on April 9, 2020, until judgment (“non-party Aggrieved Employees”).
14 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

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

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

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

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Jeriann Kerns is a resident of Lindsay, in Tulare County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Administrative Assistant from approximately June 2018 to January 23, 2020. Plaintiff worked for Defendants at their corporate headquarters located at 86 North Main Street, Porterville, California 93257. During her employment, Plaintiff typically worked eight (8) hours or more per day, five (5) days per week, from 8:00 a.m. to 5:00 p.m. At the time her employment ended, Plaintiff earned approximately \$16.38 per hour. Her job duties included, without limitation, providing administrative support to the bank, including processing and paying bank vendor invoices; organizing human resource files; providing customer service to employees, applicants, visitors, supervisors, management, and other administrative staff; administering employee assessments for hiring purposes; performing background checks and E-Verify for new hire employment verifications; and assisting in managing the bank's automated onboarding process.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' dispute resolution policy and/or arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented new hires with a Dispute Resolution Agreement ("Arbitration Agreement") during the onboarding process, which had to be reviewed and signed immediately. In fact, upon information and belief, the Arbitration

1 Agreement was one of several documents presented to new employees for signature during the
2 orientation process, including an Annual Acknowledgement for Policies and Procedures,
3 Employee Handbook, and Agreement and Acknowledgment Regarding Receipt of
4 Defendants' Meal Periods and Rest Breaks Procedures, among other documents. Also,
5 employees did not have a meaningful opportunity to negotiate the terms of the Arbitration
6 Agreement. Rather, it was provided to Defendants' employees for them to sign on a take-it or
7 leave-it basis at the time they were hired, along with other on-boarding documents. Further,
8 Defendants did not set forth in the agreement or otherwise provide employees with the rules
9 which will govern the arbitration, instead forcing employees to seek this information out on
10 their own.

11 8. BANK OF THE SIERRA was and is, upon information and belief, a California
12 corporation, and at all times hereinafter mentioned, an employer whose employees are
13 engaged throughout this county and the State of California.

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

18 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
19 were the partners, agents, owners, or managers of BANK OF THE SIERRA, at all relevant
20 times.

21 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
22 acts and omissions alleged herein was performed by, or is attributable to, BANK OF THE
23 SIERRA and/or DOES 1 through 10 (collectively, "Defendants" or "SIERRA"), each acting
24 as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of
25 the other co-Defendants and was acting within the course and scope of such agency,
26 employment, joint venture, or concerted activity with legal authority to act on the others'
27 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
28 policy of Defendants.

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

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

8 **PAGA REPRESENTATIVE ALLEGATIONS**

9 14. Defendants own and operate approximately 41 Bank of the Sierra locations in
10 California. Upon information and belief, Defendants maintain a single, centralized Human
11 Resources (“HR”) department at their corporate headquarters in Porterville, California, which
12 is responsible for the recruiting and hiring of new employees, and communicating and
13 implementing Defendants’ company-wide policies, including timekeeping policies and meal
14 and rest period policies, to employees throughout California.

15 15. In particular, Plaintiff and other non-party Aggrieved Employees, on
16 information and belief, received the same standardized documents and/or written policies.
17 Upon information and belief, the usage of standardized documents and/or written policies,
18 including new-hire documents, indicate that Defendants dictated policies at the corporate level
19 and implemented them company-wide, regardless of their employees’ assigned locations or
20 positions. Upon information and belief, Defendants set forth uniform policies and procedures
21 in several documents provided at an employee’s time of hire.

22 16. Upon information and belief, Defendants maintain a centralized Payroll
23 department at their corporate headquarters in Porterville, California, which processes payroll
24 for all non-exempt, hourly paid employees working for Defendants at their various locations
25 and jobsites in California, including Plaintiff and other non-party Aggrieved Employees.
26 Based upon information and belief, Defendants issue the same formatted wage statements to
27 all non-exempt, hourly paid employees in California, irrespective of their work locations.
28 Upon information and belief, Defendants process payroll for departing employees in the same

manner throughout the State of California, regardless of the manner in which each employee's employment ends.

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

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

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

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

21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period.

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

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

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

16 25. 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 receive complete and accurate wage statements in accordance with California law. In
19 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
20 were not provided complete and accurate wage statements.

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

25 27. 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 timely payment of all wages earned upon termination of employment. In violation of the
28 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive

1 payment of all wages due, including, but not limited to, overtime wages, minimum wages, and
2 meal and rest period premiums, within permissible time periods.

3 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
5 timely payment of wages during their employment. In violation of the California Labor Code,
6 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
7 including, but not limited to, overtime wages, minimum wages, and meal and rest period
8 premiums, within permissible time periods.

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

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

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

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

27 33. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
28 employee, including Plaintiff, may pursue a civil action arising under PAGA after the

1 following requirements have been met:

- 2 (a) The aggrieved employee shall give written notice by online filing
3 (hereinafter "Employee's Notice") to the LWDA and by certified mail
4 to the employer of the specific provisions of the California Labor Code
5 alleged to have been violated, including the facts and theories to support
6 the alleged violations.
- 7 (b) An aggrieved employee's notice filed with the LWDA pursuant to
8 2699.3(a) and any employer response to that notice shall be
9 accompanied by a filing fee of seventy-five dollars (\$75).
- 10 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
11 employer and the aggrieved employee by certified mail that it does not
12 intend to investigate the alleged violation within sixty (60) calendar
13 days of the postmark date of the Employee's Notice. Upon receipt of
14 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
15 five (65) calendar days of the postmark date of the Employee's Notice,
16 the aggrieved employee may commence a civil action pursuant to
17 California Labor Code section 2699 to recover civil penalties in addition
18 to any other penalties to which the employee may be entitled.

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

- 23 (a) The aggrieved employee or representative shall give written notice by
24 online filing to the LWDA and by certified mail to the employer of the
25 specific provisions of the California Labor Code alleged to have been
26 violated (other than those listed in Section 2699.5), including the facts
27 and theories to support the alleged violation.
- 28 (b) An aggrieved employee's notice filed with the LWDA pursuant to

2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).

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

35. On April 9, 2020, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-782462-20. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants dated April 9, 2020, is attached hereto as "Exhibit 1."

36. As of the filing date of this complaint, over 65 days have passed since Plaintiff sent the initial LWDA Notice described above, and the LWDA has not responded that it intends to investigate Plaintiff's claims, and Defendants have not cured the violations.

37. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties 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, and 1198.

38. 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

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

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

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

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

28 //

1 **FIRST CAUSE OF ACTION**

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

3 **(Against all Defendants)**

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

6 43. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
7 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
8 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
9 226.7, 510, 512(a), 1174(d), 1194, 1197, and 1198. Labor Code section 2699.3(c) permits
10 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those
11 Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

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

- 14 (d) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
15 applicable IWC wage order for Defendants’ failure to provide Plaintiff
16 and other non-party Aggrieved Employees with meal periods, as set
17 forth below;
- 18 (e) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
19 IWC wage order for Defendants’ failure to authorize and permit
20 Plaintiff and other non-party Aggrieved Employees to take rest periods,
21 as set forth below;
- 22 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
23 wage order for Defendants’ failure to compensate Plaintiff and other
24 non-party Aggrieved Employees with all required overtime pay and
25 failure to properly calculate the overtime rates paid to Plaintiff and/or
26 other non-party Aggrieved Employees, as set forth below;
- 27 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the
28 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(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;
- (d) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as set forth below;
- (e) Violation of Labor Code section 204 for failure to pay all earned wages during employment as set forth below; and
- (f) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth below.

FAILURE TO PROVIDE AND RECORD MEAL PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198

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

46. At all relevant times herein set forth, California Labor Code section 512(a) provides that 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 a 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).

47. At all relevant times herein set forth, California Labor Code section 226.7, 512(a), 516, and 1198 provide that no employer shall require an employee to work during any

1 meal period mandated by an applicable order of the IWC.

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

9 49. First, during the relevant time period, Defendants had, and continue to have, a
10 company-wide policy and/or practice of understaffing their corporate and retail banking
11 locations, while simultaneously assigning heavy workloads and discouraging employees from
12 incurring overtime (*see infra*), which prevented Plaintiff and other non-party Aggrieved
13 Employees from taking all timely, uninterrupted meal periods to which they were entitled.
14 Additionally, Defendants failed to schedule meal periods, which resulted in Plaintiff and other
15 non-party Aggrieved Employees having to wait extended periods of time before taking meal
16 periods or missing their meal periods altogether. Together, Defendants' company-wide
17 policies and practices discouraged and impeded Plaintiff and other non-party Aggrieved
18 Employees from taking compliant meal periods.

19 50. As a further result of Defendants' practice and/or policy of understaffing, heavy
20 workloads, and failure to schedule meal periods, Plaintiff and other non-party Aggrieved
21 Employees were required to work in excess of five (5) hours before taking a meal period and,
22 at times, had their meal periods interrupted and/or had to forgo their meal periods altogether.
23 For example, approximately, 2-3 times per month, Plaintiff was required to work 6 to 6.5
24 consecutive hours before being relieved to take a meal period. Other non-party Aggrieved
25 Employees were similarly required to work in excess of five (5) hours before being permitted
26 to take a 30-minute meal period, due to Defendants' understaffing of their locations and
27 failure to schedule meal periods.

28 51. Moreover, at times, Plaintiff and other non-party Aggrieved Employees were

1 required to miss their meal periods entirely to meet Defendants' assigned deadlines and heavy
2 workloads, such as completing mandatory webinar trainings. Because Defendants engaged in
3 understaffing, but also discouraged employees from incurring any overtime (*see infra*),
4 Plaintiff and other non-party Aggrieved Employees were required to continue to perform work
5 during unpaid meal periods. For example, Defendants required that Plaintiff and other non-
6 party Aggrieved Employees attend a series of mandatory webinars and presentations to train
7 for the rollout of Defendants' new payroll system, Ultimate Software, but scheduled the
8 mandatory webinars without regard to employee meal periods. Furthermore, Plaintiff and
9 other non-party Aggrieved Employees were required to complete quizzes during and after the
10 various webinars and/or presentations, all during their unpaid meal periods. As a result,
11 Plaintiff and other non-party Aggrieved Employees were required to work through their
12 unpaid meal periods by attending the mandatory webinars and presentations.

13 52. Second, because Defendants frowned upon employees accruing meal period
14 penalties, upon information and belief, Defendants engaged in a systemic practice of altering
15 employee meal period records to reflect timely meal periods and avoid incurring meal period
16 premium obligations. For example, Plaintiff's clock-out times for meal periods were adjusted
17 to show a timely meal period was taken, even when she was unable to take a meal period
18 within the first five (5) hours of work. Similarly, Defendants routinely altered meal period
19 punch times for other non-party Aggrieved Employees in corporate and retail banking
20 locations to show timely and/or compliant meal periods when, in fact, they did not take place
21 within the first five (5) hours of the employees' shifts or had not taken place at all.
22 Defendants' management would adjust employees' time records to reflect compliant meal
23 periods, regardless of whether they had received a compliant meal period or not, in order to
24 strictly limit meal penalties that would need to be paid by Defendants.

25 53. Third, Defendants did not schedule second meal periods and had no policy for
26 providing Plaintiff and other non-party Aggrieved Employees with second 30-minute meal
27 periods on days that they worked in excess of ten (10) hours in one day. Plaintiff and other
28 non-party Aggrieved Employees worked shifts in excess of ten (10) hours without receiving

1 an uninterrupted second 30-minute meal period. Plaintiff and other non-party Aggrieved
2 Employees did not sign valid meal period waivers on days that they were entitled to meal
3 periods and were not relieved of all duties.

4 54. Defendants knew or should have known that as a result of their company-wide
5 policies and/or practices, that Plaintiff and other non-party Aggrieved Employees were not
6 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
7 knew or should have known that they did not pay Plaintiff and other non-party Aggrieved
8 Employees meal period premium wages when they were missed, late, short, and/or
9 interrupted.

10 55. Defendants also have engaged in a company-wide practice and/or policy of not
11 paying meal period premiums owed when compliant meal periods are not provided. Because
12 of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not
13 received premium pay for missed, interrupted, or late meal periods. Alternatively, to the
14 extent that Defendants did pay meal period premium wages to Plaintiff and/or other non-party
15 Aggrieved Employees incentive pay and/or nondiscretionary bonuses, such as gift cards.
16 However, Defendants did so in violation of the California Labor Code, because Defendants
17 did not properly calculate Plaintiff and/or other non-party Aggrieved Employees' regular rates
18 of pay by including renumerations, such as incentive pay and/or nondictionary bonuses, any
19 premiums paid for meal period violations were also paid at an incorrect rate and resulted in an
20 underpayment of meal period premium wages.

21 56. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
22 Employees compliant meal periods and failed to pay the full meal period premiums due.
23 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
24 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
25 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
26 (g).

27 //

28 //

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

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

58. At all relevant times, 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.

59. At all relevant times, 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. 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 v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

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

61. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party 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, Defendants' company-wide practices, including understaffing of corporate and retail banking locations while assigning heavy workloads, prevented Plaintiff and other non-party Aggrieved

1 Employees from being relieved of all duty to take compliant rest periods. As a result, Plaintiff
2 missed her rest periods or would have her rest periods interrupted. Defendants also failed to
3 schedule rest periods, which, coupled with Defendants' understaffing and heavy workload
4 demands, further led to Plaintiff and other non-party Aggrieved Employees not being
5 authorized and permitted to take rest periods.

6 62. Furthermore, Defendants maintained and implemented a company-wide on-
7 premises rest period policy, which mandated that Plaintiff and other non-party Aggrieved
8 Employees remain on Defendants' premises during their rest periods. Upon information and
9 belief, Defendants' company-wide on-premises rest period policy prevented Plaintiff and
10 other non-party Aggrieved Employees from being relieved of all duties for rest periods and
11 caused them to perform work during rest periods.

12 63. As a result of Defendants' practices and policies, Plaintiff and other non-party
13 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
14 excess of 10 hours without receiving all ten (10) minute rest periods to which they were
15 entitled. For example, Plaintiff on average missed four (4) or more rest periods per week due
16 to understaffing and the heavy workload.

17 64. Defendants also have engaged in a company-wide practice and/or policy of not
18 paying all rest period premiums owed when compliant rest periods are not authorized or
19 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
20 Employees have not received premium pay for all missed rest periods. Alternatively, to the
21 extent that Defendants did pay rest period premium wages to Plaintiff and/or other non-party
22 Aggrieved Employees, it did so at the incorrect rates. Because Defendants did not properly
23 calculate Plaintiff's and/or other non-party Aggrieved Employees' regular rates of pay by
24 including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any
25 premiums paid for rest period violations were also paid at an incorrect rate and resulted in an
26 underpayment of rest period premium wages.

27 65. Defendants' conduct violates the applicable IWC Wage Order and California
28 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved

1 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
2 558 and/or 2699(a), (f), and (g).

3 **FAILURE TO PAY OVERTIME**

4 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

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

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

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

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

24 70. California Labor Code section 510 codifies the right to overtime compensation
25 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
26 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
27 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
28 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours

1 in a day on the seventh (7th) day of work.

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

8 72. First, during the relevant time period, Defendants had, and continue to have, a
9 company-wide policy and/or practice of discouraging and impeding Plaintiff and other non-
10 party Aggrieved Employees from recording hours worked that were outside of their scheduled
11 shifts in order to limit the amount of overtime employees could accrue. Plaintiff and other
12 non-party Aggrieved Employees were forced to work off-the-clock performing tasks before
13 and after their scheduled shift times, but were not provided a means by Defendants to account
14 for this time. For example, approximately twice per month, Plaintiff would be required to
15 finalize and submit her timesheets after she had already clocked out of her shift, typically
16 taking 5-10 minutes already off-the-clock. Defendants would not permit Plaintiff and other
17 non-party Aggrieved Employees to remain clocked in to complete this and other work-related
18 tasks. At all times, Plaintiff and other non-party Aggrieved Employees remained under the
19 control of Defendants. This off-the-clock work could have been recorded by Defendants, but
20 they refused to do so to avoid payment of additional wages to Plaintiff and other non-party
21 Aggrieved Employees.

22 73. Second, during the relevant period, Defendants had a company-wide policy
23 and/or practice of improperly rounding employee clock-in and clock-out times in their
24 timekeeping system. Defendants' rounding policy resulted in the failure to compensate
25 Plaintiff and other non-party Aggrieved Employees fully for all hours worked, causing
26 Plaintiff and other non-party Aggrieved Employees to not be paid overtime wages for all of
27 the overtime hours they actually worked. Defendants' policy of rounding is unfair and has,
28 over time, resulted in the underpayment of wages to Plaintiff and other non-party Aggrieved

1 Employees. To the extent Defendants' rounding policy has taken away time worked that was
2 eligible for overtime, Plaintiff and other non-party Aggrieved Employees were denied
3 overtime pay for all hours worked.

4 74. Third, as stated, Defendants had, and continue to have, a company-wide policy
5 and/or practice of understaffing corporate and retail banking locations and failing to schedule
6 meal periods, resulting in a failure to provide Plaintiff and other non-party Aggrieved
7 Employees with compliant meal periods. Plaintiff and other non-party Aggrieved Employees
8 were required to forego meal periods and continue working in order to meet Defendants'
9 assigned deadlines. Consequently, Plaintiff and class members performed work during meal
10 periods for which they were not paid.

11 75. Fourth, as stated, Defendants required Plaintiff and other non-party Aggrieved
12 Employees to attend mandatory payroll training webinars and presentations during their
13 unpaid meal periods, approximately every three months. Furthermore, as stated, on
14 information and belief, because Defendants frowned upon employees accruing meal period
15 penalties, Defendants pressured Plaintiff and class members to clock out for meal periods
16 and/or adjusted employee time records to reflect compliant meal periods, regardless of
17 whether they had received a compliant meal period or not, in order to strictly limit meal
18 penalties that Defendants would otherwise owe. Thus, Plaintiff and other non-party
19 Aggrieved Employees missed meal periods, and/or had meal period cut short or interrupted, in
20 order to complete their assigned workloads, but Defendants did not pay Plaintiff and other
21 non-party Aggrieved Employees for the time they continued to perform tasks during meal
22 periods.

23 76. Defendants knew or should have known that, as a result of these company-wide
24 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
25 their assigned duties off-the-clock, and were suffered or permitted to perform work for which
26 they were not paid. Because Plaintiff and other non-party Aggrieved Employees worked
27 shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-
28 the-clock work qualified for overtime premium pay. Therefore, Plaintiff and other non-party

1 Aggrieved Employees were not paid overtime wages for all of the overtime hours they
2 actually worked.

3 77. Furthermore, Defendants did not pay Plaintiff and/or other non-party Aggrieved
4 Employees the correct overtime rate for the recorded overtime hours that they generated. In
5 addition to an hourly wage, Defendants paid Plaintiff and/or other non-party Aggrieved
6 Employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.
7 However, in violation of the California Labor Code, Defendants failed to incorporate all
8 compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of
9 remuneration, into the calculation of the regular rate of pay for purposes of calculating the
10 overtime wage rate. Therefore, during times when Plaintiff and/or other non-party Aggrieved
11 Employees worked overtime and received these other forms of pay, Defendants failed to pay
12 all overtime wages by paying a lower overtime rate than required.

13 78. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
14 the balance of overtime compensation as required by California law, violates the provisions of
15 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
16 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
17 2699(a), (f), and (g).

18 **FAILURE TO PAY MINIMUM WAGES**

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

20 79. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
21 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
22 to be paid to employees, and the payment of a wage less than the minimum so fixed is
23 unlawful. Compensable work time is defined by the applicable wage order as "the time
24 during which an employee is subject to the control of an employer, and includes all the time
25 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
26 Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

27 80. As set forth above, Defendants prohibited Plaintiff and other non-party
28 Aggrieved Employees from recording hours worked that were outside of their scheduled

1 shifts, resulting in them continuing to perform duties after their shift had ended. Furthermore,
2 as stated, Defendants had a company-wide policy and/or practice of rounding Plaintiff's and
3 other non-party Aggrieved Employees' hourly clock-in and clock-out times in their
4 timekeeping system, resulting in the failure to compensate them for all hours worked.

5 81. As also stated, due to Defendants' company-wide policy and/or practice of
6 understaffing while assigning heavy workloads and failing to schedule meal periods, Plaintiff
7 and other non-party Aggrieved Employees were forced to forego meal periods, have their
8 meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.
9 Further, Defendants' requirement that Plaintiff and other non-party Aggrieved Employees
10 attend mandatory payroll training webinars during their unpaid meal periods, left employees
11 without just compensation for this off-the-clock training. Moreover, as stated, in order to
12 prevent employees from accruing meal period penalties, upon information and belief,
13 Defendants' management pressured employees to clock out for meal periods and/or adjusted
14 employee time records to reflect compliant meal periods, but required them to continue
15 working, time for which they were not paid.

16 82. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
17 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
18 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
19 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
20 1194, 1197, and 1198.

21 83. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
22 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
23 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
24 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

25 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
26 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

27 84. At all relevant times herein, California Labor Code section 226(a) provides that
28 every employer shall furnish each of his or her employees an accurate and complete itemized

1 wage statement in writing, including, but not limited to, the name and address of the legal
2 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
3 applicable rates of pay.

4 85. During the relevant time period, Defendants have knowingly and intentionally
5 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
6 inaccurate wage statements. For example, Defendants issued uniform wage statements to
7 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
8 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
9 the pay period, including overtime rates of pay, and the corresponding number of hours
10 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
11 226(a)(5), and 226(a)(9).

12 86. Because Defendants did not record the time Plaintiff and other non-party
13 Aggrieved Employees spent working off-the-clock, deducted time from their records for meal
14 periods that were interrupted and/or missed (and therefore time for which they should have
15 been paid), and improperly rounded their total hours worked, Defendants did not list the
16 correct amount of gross wages and net wages earned by Plaintiff and other non-party
17 Aggrieved Employees in compliance with section 226(a)(1) and 226(a)(5). For the same
18 reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and
19 other non-party Aggrieved Employees in violation of section 226(a)(2), and failed to list the
20 applicable hourly rates of pay in effect during the pay period and corresponding accurate
21 number of work hours worked at each hourly rate in violation of section 226(a)(9).

22 87. Additionally, because Defendants did not calculate Plaintiff's and/or other non-
23 party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime
24 wages, Defendants did not list the correct amount of gross wages earned by Plaintiff and/or
25 other non-party Aggrieved Employees in compliance with section 226(a)(1) and did not list
26 the correct amount of net wages earned by Plaintiff and/or other non-party Aggrieved
27 Employees in violation of section 226(a)(5). Defendants also failed to correctly list all
28 applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay

1 and correct rates of pay for premium wages, in violation of section 226(a)(9).

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

10 89. California Labor Code section 1198 provides that the maximum hours of work
11 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
12 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
13 employment of any employees for longer hours than those fixed by the order or under
14 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
15 Wage Order, employers are required to keep accurate time records showing when the
16 employee begins and ends each work period and meal period. During the relevant time
17 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
18 and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees,
19 in violation of section 1198. As stated, Defendants engaged in a company-wide practice
20 and/or policy of falsifying Plaintiff’s and other non-party Aggrieved Employees’ time records
21 by deducting meal periods or recording that compliant meal periods were taken, regardless of
22 if or when meal periods were actually taken, and thereby failed to keep accurate records of
23 meal period start and stop times for Plaintiff and other non-party Aggrieved Employees in
24 violation of section 1198. Furthermore, in light of Defendants’ failure to provide Plaintiff and
25 other non-party Aggrieved Employees with second 30-minute meal periods to which they
26 were entitled, Defendants kept no records of meal start and end times for second meal periods.

27 90. California Labor Code section 1174(d) provides that “[e]very person employing
28 labor in this state shall ... [k]eep a record showing the names and addresses of all employees

1 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
2 plants or establishments at which employees are employed, payroll records showing the hours
3 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
4 applicable piece rate paid to, employees employed at the respective plants or
5 establishments...” At all relevant times, and in violation of Labor Code section 1174(d),
6 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
7 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
8 as a result of failing to record the off-the-clock hours that they worked and improperly
9 rounding Plaintiff’s and other non-party Aggrieved Employees’ total hours worked.

10 91. Because Defendants’ violations of 226(a) and 1174(d) were committed against
11 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved
12 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3,
13 1174.5, and/or 2699(a), (f), and (g).

14 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

15 **VIOLATION OF LABOR CODE SECTION 204**

16 92. At all relevant times herein set forth, California Labor Code section 204
17 requires that all wages earned by any person in any employment between the 1st and the 15th
18 days, inclusive, of any calendar month, other than those wages due upon termination of an
19 employee, are due and payable between the 16th and the 26th day of the month during which
20 the labor was performed. Labor Code section 204 further provides that all wages earned by
21 any person in any employment between the 16th and the last day, inclusive, of any calendar
22 month, other than those wages due upon termination of an employee, are due and payable
23 between the 1st and the 10th day of the following month.

24 93. At all relevant times herein, California Labor Code section 204 also requires
25 that all wages earned for labor in excess of the normal work period shall be paid no later than
26 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
27 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
28 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not

1 more than seven (7) calendar days following the close of the payroll period.

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

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

8 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

17 97. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
18 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
19 above, including but not limited to, overtime wages, minimum wages, and meal and rest
20 period premium wages, either at the time of discharge, or within seventy-two (72) hours of
21 their leaving Defendants' employ.

22 98. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
23 who are no longer employed by Defendants their wages earned and unpaid at the time of
24 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
25 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
26 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
27 2699(a), (f), and (g).

28 //

1 **REQUEST FOR JURY TRIAL**

2 Plaintiff requests a trial by jury.

3 **PRAYER FOR RELIEF**

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

6 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
7 (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different amount.

8 **As to the First Cause of Action**

9 2. That the Court declare, adjudge and decree that Defendants violated the
10 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
11 Employees: 226.7, 512, 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and
12 1198 (by failing to authorize and permit all rest periods); 510 and 1198 (by failing to pay all
13 overtime compensation); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum
14 wages for all hours worked); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
15 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
16 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
17 employment).

18 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
19 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
20 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, and 1198;

21 4. For attorneys' fees and costs pursuant to California Labor Code section
22 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
23 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
24 1194, 1197, and 1198;

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

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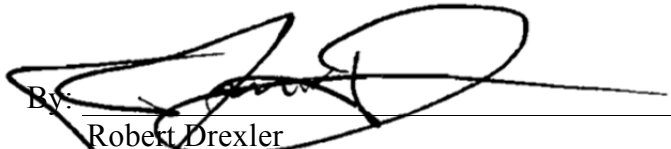
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1 6. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: June 15, 2020

Respectfully submitted,

Capstone Law APC

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7 
8 By: Robert Drexler
9 Molly DeSario
Jonathan Lee

10 Attorneys for Plaintiff Jeriann Kerns
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Exhibit 1



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Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

JAMIE R. GREENE
310.556.4165 Direct
Jamie.Green@capstonelawyers.com

April 9, 2020

VIA ONLINE SUBMISSION

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

Subject: *Jeriann Kerns v. Bank of the Sierra*

Dear PAGA Administrator:

This office represents Jeriann Kerns in connection with her claims under the California Labor Code. Ms. Kerns was an employee of BANK OF THE SIERRA ("SIERRA").

The employer may be contacted directly at the address below:

BANK OF THE SIERRA
86 N MAIN ST
PORTERVILLE CA 93257

Ms. Kerns 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. Kerns seeks relief on behalf of herself, the State of California, and other persons who are or were employed by SIERRA 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.

SIERRA employed Ms. Kerns as a non-exempt, hourly paid Administrative Assistant from approximately June 2018 to January 2020. Ms. Kerns worked for SIERRA at its corporate headquarters in Porterville, California. She typically worked eight (8) hours or more per day, five (5) days per week, from 8:00 a.m. to 5:00 p.m. At the time her employment ended, Ms. Kerns earned approximately \$16.38 per hour. Ms. Kern's job duties included, without limitation, providing administrative support to the bank, including processing and paying bank vendor invoices; organizing human resource files; providing customer service to employees, applicants, visitors, supervisors, management, and other administrative staff; administering employee assessments for hiring purposes; performing background checks and E-Verify for new hire employment verifications; and assisting in managing the bank's automated onboarding process.

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

SIERRA’s Company-Wide and Uniform Payroll and HR Practices

Founded in 1977, SIERRA provides retail banking services to the southern San Joaquin Valley in California. SIERRA operates approximately 42 branch locations covering the counties of Tulare, Kern, Fresno, Kings, Ventura, San Luis Obispo, Santa Barbara, and Los Angeles. SIERRA is a California corporation headquartered in Porterville, California. Upon information and belief, SIERRA maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Porterville, California, for all non-exempt, hourly paid employees working for SIERRA in California, including Ms. Kerns and other aggrieved employees. At all relevant times, SIERRA issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California at corporate and retail locations, including Ms. Kerns and other aggrieved employees, regardless of their location or position.

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

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 These facts, theories, and claims are based on Ms. Kerns’s experience and counsel’s review of those records currently available relating to Ms. Kerns’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. Kerns 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.

(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.

During the relevant time period, SIERRA had, and continues to have, a company-wide policy and/or practice of understaffing its corporate and retail banking locations, while simultaneously assigning heavy workloads and discouraging employees from incurring overtime, which prevented Ms. Kerns and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, SIERRA failed to schedule employee meal periods, which resulted in Ms. Kerns and other aggrieved employees having to wait extended periods of time before taking meal periods or missing their meal periods altogether. Together, SIERRA's company-wide policies and practices discouraged and impeded Ms. Kerns and other aggrieved employees from taking compliant meal periods.

As another result of SIERRA's practice and/or policy of understaffing and failing to schedule employee meal periods, Ms. Kerns and other aggrieved employees were required 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, approximately 2-3 times per month, Ms. Kerns was required to work more than five (5) hours before SIERRA permitted her to take a meal period. When this occurred, Ms. Kerns would work 6-6.5 consecutive hours before being relieved to take a meal period. Other aggrieved employees were similarly required to work in excess of five (5) hours before being permitted to take a 30-minute meal period due to SIERRA's understaffing of its locations and failure to schedule meal periods.

During her employment, at times, Ms. Kerns was also required to miss her meal period entirely to meet SIERRA's assigned deadlines. Because SIERRA engaged in understaffing but also discouraged employees from incurring any overtime, Ms. Kerns and other aggrieved employees were required to continue to perform their work during unpaid meal periods. SIERRA also required that Ms. Kerns and other aggrieved employees attend a series of mandatory webinars and presentations to train for the rollout of SIERRA's new payroll system, Ultimate Software, but scheduled the mandatory webinars without regard to employee meal periods. Ms. Kerns and other aggrieved employees were required to complete quizzes during and after the various webinars and/or presentations, all during their unpaid meal periods. As a result, Ms. Kerns and other aggrieved employees were required to attend the mandatory webinars and presentations during their unpaid meal periods.

Moreover, SIERRA engaged in a systemic practice of altering employee meal period records to reflect timely meal periods and avoid incurring meal period premium obligations. Ms. Kern's clock-out times for meal periods were adjusted to show a timely meal period was taken, when she was unable to take a meal period within the first five (5) hours of work. Similarly, SIERRA routinely altered meal period punch times for other aggrieved employees in corporate and retail banking locations to show timely and/or compliant meal periods when, in fact, they did not take place within the first five (5) hours of the employees' shifts or had not taken place at all.

Furthermore, SIERRA did not schedule second meal periods and had no policy for providing Ms. Kerns 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. Kerns 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. Kerns 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.

SIERRA knew or should have known that as a result of its policies, Ms. Kerns and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. SIERRA further knew or should have known that it did not pay Ms. Kerns and other aggrieved employees all meal period premium wages when meal periods were missed, late, short, and/or interrupted because SIERRA engaged in altering employee time records to reflect compliant meal periods, even if none were taken.

SIERRA also has engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Kerns and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that SIERRA did pay meal period premium wages to Ms. Kerns and/or other aggrieved employees, it did so at the incorrect rates. In addition to an hourly wage, SIERRA paid Ms. Kerns and/or other aggrieved employees incentive pay and/or nondiscretionary bonuses, such as gift cards. However, in violation of the California Labor Code, because SIERRA did not properly calculate Ms. Kerns's and/or 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, SIERRA failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, 516, and 1198. Ms. Kerns 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, SIERRA regularly failed to authorize and permit Ms. Kerns 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, SIERRA's policies and/or practice of understaffing of corporate and retail banking locations and assigning heavy workloads prevented Ms. Kerns and other aggrieved employees from being relieved of all duty to take compliant rest periods. As a result,

Ms. Kerns missed her rest periods or would have her rest periods interrupted. SIERRA also failed to schedule rest periods, which, coupled with SIERRA's understaffing and high work demands, further led to Ms. Kerns and other aggrieved employees not being authorized and permitted to take rest periods. On average, Ms. Kerns missed four (4) or more rest periods per week.

Furthermore, SIERRA maintained and implemented a company-wide practice and/or policy requiring that Ms. Kerns and other aggrieved employees remain on SIERRA's premises during their rest periods. Because Ms. Kerns and other aggrieved employees were discouraged from leaving the SIERRA's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, SIERRA effectively maintained control over Ms. Kerns and other aggrieved employees during rest periods, and, as a result of this rest period policy, SIERRA did not relinquish control over Ms. Kerns and other aggrieved employees during rest periods. As a result, Ms. Kerns 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 SIERRA's practices and policies, Ms. Kerns 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. Kerns missed her rest periods due to understaffing and the heavy workload.

SIERRA 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. Kerns and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that SIERRA did pay rest period premium wages to Ms. Kerns and/or other aggrieved employees, it did so at the incorrect rates. Because SIERRA did not properly calculate Ms. Kerns's and/or 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, SIERRA failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Kerns 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 §§ 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 for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

SIERRA willfully failed to pay all overtime wages owed to Ms. Kerns and other aggrieved employees. During the relevant time period, Ms. Kerns 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.

As stated, SIERRA had a company-wide policy and/or practice of discouraging employees from incurring overtime hours. SIERRA's policy and/or practice resulted in employees working off-the-clock after their scheduled shifts ended, but without pay for the additional time worked. For example, SIERRA expected that employees finalize and submit timesheets after they had already clocked out for their shifts. SIERRA would not permit Ms. Kerns and other aggrieved employees to remain clocked in to complete this and other work-related tasks.

SIERRA also had a company-wide policy and/or practice of improperly rounding employee clock-in and clock-out times in their timekeeping system during the relevant period. SIERRA's rounding policy resulted in the failure to compensate Ms. Kerns and other aggrieved employees fully for all hours worked, causing Ms. Kerns and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. Upon information and belief, SIERRA's rounding policy is, and continues to be, unfair and has, over time, resulted in the underpayment of wages to Ms. Kerns and other aggrieved employees. To the extent SIERRA's rounding policy has taken away time worked that was eligible for overtime, Ms. Kerns and other aggrieved employees were denied overtime pay for all hours worked.

In addition, SIERRA had, and continues to have, a company-wide practice and/policy of understaffing corporate and retail banking locations and failing to schedule meal periods that resulted in a failure to provide Ms. Kerns and other aggrieved employees with compliant meal periods. As stated, Ms. Kerns and other aggrieved employees were required to forego meal periods and continue working in order to meet SIERRA's assigned deadlines. Because SIERRA would still require that Ms. Kerns and other aggrieved employees record meal periods were taken, SIERRA did not compensate them for this off-the-clock work. As also stated, SIERRA required Ms. Kerns and other aggrieved employees to attend mandatory payroll training webinars and presentations during their unpaid meal periods. Thus, Ms. Kerns and other aggrieved employees missed meal periods, and/or had meal periods cut short or interrupted, in order to complete their assigned workloads.

SIERRA knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Kerns 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. SIERRA also knew, or should have known, that it did not compensate Ms. Kerns and other aggrieved employees and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Ms. Kerns and other aggrieved employees 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. Kerns and other aggrieved employees and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. SIERRA's failure to pay Ms. Kerns 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, SIERRA did not pay Ms. Kerns and/or other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, SIERRA

paid Ms. Kerns and/or other aggrieved employees incentive pay and/or nondiscretionary bonuses. However, in violation of the California Labor Code, SIERRA 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 Ms. Kerns and/or other aggrieved employees worked overtime and received these other forms of pay, SIERRA failed to pay all overtime wages by paying a lower overtime rate than required.

Ms. Kerns 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, SIERRA prohibited Ms. Kerns and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, resulting in them continuing to perform duties after their shift had ended. Furthermore, as stated, SIERRA had a company-wide policy and/or practice of rounding Ms. Kerns's and other aggrieved employees' hourly clock-in and clock-out times in their timekeeping system, resulting in the failure to compensate them for all hours worked. As also stated above, due to SIERRA's company-wide policy and/or practice of understaffing while assigning heavy workloads and failing to schedule meal periods, Ms. Kerns and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. As also stated, SIERRA required Ms. Kerns and other aggrieved employees to attend mandatory payroll training webinars and presentations during their unpaid meal periods.

Thus, SIERRA did not pay minimum wages for all hours worked by Ms. Kerns and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, SIERRA 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, SIERRA regularly failed to pay at least minimum wages to Ms. Kerns 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. Kerns 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(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. SIERRA has not provided Ms. Kerns 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, SIERRA has knowingly and intentionally provided Ms. Kerns and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SIERRA issued uniform wage statements to Ms. Kerns 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, SIERRA violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because SIERRA did not record the time Ms. Kerns and other aggrieved employees spent working off-the-clock, deducted time from their records for meal periods that were interrupted or missed (and therefore time for which they should have been paid), and improperly rounded their total hours worked, SIERRA did not list the correct amount of gross wages and net wages earned by Ms. Kerns and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, SIERRA failed to accurately list the total number of the hours worked by Ms. Kerns 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 SIERRA did not calculate Ms. Kerns's and/or other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, SIERRA did not list the correct amount of gross wages earned by Ms. Kerns and/or other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by Ms. Kerns and/or other aggrieved employees in violation of section 226(a)(5). SIERRA 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), SIERRA willfully failed to maintain accurate payroll records for Ms. Kerns 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 and improperly rounding Ms. Kerns's and other aggrieved employees' total hours 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, SIERRA 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. Kerns and other aggrieved employees in violation of section 1198. Furthermore, in light of SIERRA's failure to provide Ms. Kerns and other aggrieved employees with second 30-minute meal periods to which they were entitled, SIERRA kept no records of meal start and end times for second meal periods.

Because SIERRA failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Kerns 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. Kerns 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. Kerns 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, SIERRA failed to pay Ms. Kerns 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. Kerns 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.

SIERRA willfully failed to pay Ms. Kerns and other aggrieved employees who are no longer employed by SIERRA 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 SIERRA's employ in violation of California Labor Code sections 201, 202, and 203.

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

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (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." SIERRA, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Kerns's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Kerns 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. Kerns, 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 SIERRA 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, and 1198.

Therefore, on behalf of all aggrieved employees, Ms. Kerns 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:

Jamie R. Greene
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read 'J. Greene', with a stylized flourish at the end.

Jamie R. Greene

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