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Attorneys for Plaintiff Charles Rodriguez, on behalf
of himself and all others similarly situated

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CHARLES RODRIGUEZ, individual, on
behalf of himself and all others similarly
situated

Plaintiff,

v.

U.S. BANK NATIONAL ASSOCIATION,
dba U.S. Bank; and DOES 1 through 100,
inclusive

Defendants.

Case No. BC617356

CLASS ACTION

Assigned to: Hon. Amy D. Hogue; Dept. 7

**DECLARATION OF JASON HATCHER
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: March 9, 2022

Time: 9:30 a.m.

Dept.: 7

Action filed: April 15, 2016

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I, Jason Hatcher, declare as follows:

1. I am an attorney at The Myers Law Group, APC, 9327 Fairway View Place, Suite 100, Rancho Cucamonga, California 91730, counsel for the named Plaintiff Charles Rodriguez ("Plaintiff"), on behalf of himself and other similarly situated individuals, in the above-entitled action. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the matters set forth herein, and if called upon as a witness to testify thereto, I could and would competently do so.

2. I graduated from Southwestern Law School in 2012. I am admitted to practice before the following Courts: United States District Court – Northern, Central, Southern, and Eastern Districts of California, and all of California State Courts. During law school, I externed with the Honorable Stephen V. Wilson in the U.S. District Court in the Central District of California and for the Honorable Anthony J. Mohr in Los Angeles County Superior Court's Complex Civil Department. I have been an attorney with The Myers Law Group, A.P.C. since March 2015. Prior to that, I was an attorney at the Law Office of Joseph Antonelli from December 2012 to January 2015. I have also achieved the honor of Southern California Rising Star by Super Lawyers for the years 2017, 2018, 2019, and 2020.

3. I have helped litigate numerous successful wage and hour class actions in California. I have also been successful in supporting efforts in obtaining favorable published opinions for employees in the state of California:

a. *Vasserman v. Henry Mayo Newhall Memorial Hospital*, 65 F.Supp.3d 932 (Central District 2014); and

b. *Falk v. Children's Hospital Los Angeles*, 237 Cal.App.4th 1454 (2015).

These cases were significant decisions related to wage and hour class actions, as in *Vasserman* the Court held that no federal preemption or federal question jurisdiction exists over claims that arise under state law, rather than Collective Bargaining Agreements that govern employment of putative class members, so long as the resolution of the state law claims will not substantially depend on interpretation of those agreements (*Vasserman*); to the application of the

1 tolling doctrine as applied to subsequent class actions being filed when the previous action was
2 disposed of without a ruling on certification (*Falk*).

3 4. I have previously supported the litigation of multiple wage and hour class actions
4 that resulted in approved settlements for the class members. The following is a sample of those
5 cases:

6 **Cox Communications Cal., LLC, et al.**

7 (A) Declarant is litigating the matter of *Feltzs v. Cox Communications Cal., LLC, et*
8 *al.* where the U.S. District Court Central District of California partially certified a class action on
9 June 1, 2021. *Feltzs v. Cox Communs. Cal., LLC* (C.D. Cal. June 1, 2021, No. SACV 19-2002
10 JVS (JDEx)) 2021 U.S.Dist.LEXIS 146447.

11 **City of Oxnard**

12 (B) Declarant is litigating the matter of *Alvarez, et al. v. City of Oxnard* that has been
13 preliminarily certified as a collective action under the Fair Labor Standards Act (“FLSA”) and
14 certified as a Fed. R. Civ. Proc. Rule 23 class action. *See Alvarez v. City of Oxnard* (C.D.Cal.
15 Dec. 17, 2020, No. CV 19-8044 PSG (JCx)) 2020 U.S.Dist.LEXIS 250524; *Alvarez v. City of*
16 *Oxnard* (C.D.Cal. Dec. 17, 2020, No. CV 19-8044 PSG (JCx)) 2020 U.S.Dist.LEXIS 250522.

17 **Penn Ridge Transportation, Inc.**

18 (C) Declarant supported and helped litigate the class action matter of *Castellon v.*
19 *Penn-Ridge Transp., Inc.*, Central District Court Case No: ED CV 18-02136. On July 19, 2019,
20 the Court certified The Myers Law Group, APC—David P. Myers, Robert M. Kitson, and Jason
21 Hatcher—as adequate class counsel for settlement. *Castellon v. Penn-Ridge Transp.* (C.D. Cal.
22 July 19, 2019, No. EDCV 18-02136 AG (KKx)) 2019 U.S. Dist. LEXIS 237071. On November
23 3, 2020, the Honorable John A. Kronstadt granted final approval of the class action settlement
24 for the total amount of \$1,962,157.27 *Castellon v. Penn-Ridge Transp., Inc.* (C.D. Cal. Nov. 3,
25 2020, No. ED CV18-02136 JAK (KKx)) 2020 U.S. Dist. LEXIS 245742.

26 **Compass Group USA, Inc.**

27 (D) Declarant supported and helped litigate the class action matter of *Gonzalo*
28 *Romero, et al. v. Compass Group USA, Inc. dba Canteen Vending Services*, San Bernardino

1 Superior Court Case No. CIVDS1512026 as an attorney at The Myers Law Group, APC. On or
2 about October 3, 2017, the Honorable Thomas S. Garza granted final approval of the class action
3 settlement in the *Compass* matter for the amount of \$4,000,000.00 and confirmed “David P.
4 Myers, Robert M. Kitson and Jason Hatcher of The Myers Law Group, A.P.C. . . . as
5 Class/Collective Counsel.”

6 **Image International Manufacturing, LLC**

7 (E) Declarant supported and helped litigate the class action matter of *Lynn Hodge v.*
8 *Image International Manufacturing, LLC, et al.* (“*Image*”), U.S. District Court Central District
9 Case No. EDCV 18-925 JGB (SHKx) as an attorney at The Myers Law Group, APC. On or
10 about October 7, 2019, the Honorable Jesus G. Bernal granted final approval of the class action
11 settlement in the *Image* matter where the Court had appointed The Myers Law Group, A.P.C.,
12 David P. Myers, Robert M. Kitson and Jason Hatcher as counsel on behalf of the Settlement
13 Class for purposes of settlement only.

14 **Transtreme, LLC**

15 (F) Declarant supported and helped litigate the class action matter of *Jackie Solgan v.*
16 *Transtreme, LLC.* (“*Transtreme*”), San Bernardino Superior Court Case No. CIVDS1919244, as
17 an attorney at The Myers Law Group, APC. On or about October 5, 2020, the Honorable Janet
18 M. Frangie granted final approval of the class action settlement in the *Transtreme* matter for the
19 amount of \$1,000,000.00 and confirmed David P. Myers, Robert M. Kitson and Jason Hatcher of
20 the Myers Law Group, A.P.C. as Class Counsel.

21 **D&R Glass, Inc.**

22 (G) Declarant supported and helped litigate the class action matter of *Aaron Tellez-*
23 *Giron v. D&R Glass, Inc.* (“*D&R Glass, Inc.*”), San Bernardino Superior Court Case No.
24 CIVDS1821562, as an attorney at The Myers Law Group, APC. On or about February 2, 2021,
25 the Honorable David Cohn granted final approval of the class action settlement in the *D&R*
26 *Glass, Inc.* matter for the amount of \$675,000.00 and confirmed David P. Myers and Jason
27 Hatcher of The Myers Law Group, A.P.C. as Class Counsel.

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1 **Micro World Corp. dba Barska**

2 (H) Declarant supported and helped litigate the class action matter of *Angelo Fabela*
3 *and Jesse Ortiz v. Micro World Corp. dba Barska* (“Barska”), Los Angeles Superior Court Case
4 No. BC509643 during the time Declarant was an associate attorney at the Law Office of Joseph
5 Antonelli. In or about May 2014, the Honorable Elihu M. Berle granted final approval of the
6 class action settlement in the *Barska* matter for the amount of \$1,050,000.00 and “appoint[ed],
7 for settlement purposes only, Joseph Antonelli, Janelle Carney, and Jason Hatcher [Declarant] . .
8 . as class counsel.”

9 **Children’s Hospital Los Angeles**

10 (I) Declarant supported and helped litigate the class action matter of *Denise Mays v.*
11 *Children’s Hospital Los Angeles* (“CHLA”), Los Angeles Superior Court Case No. BC477830
12 during the time Declarant was an associate attorney at the Law Office of Joseph Antonelli. In or
13 about September 2016, the Honorable Ann I. Jones granted final approval of the class action
14 settlement in the *CHLA* matter for the amount of \$27,000,000.00.

15 **UniFirst Corporation**

16 (J) Declarant supported and helped litigate the class action matter of *Evelia*
17 *Mosqueda v. UniFirst Corporation* (“UniFirst”), United States District Court Central District of
18 California Case No. CV 14-05324-AB (VBKx), during the time Declarant was an associate
19 attorney at the Law Office of Joseph Antonelli. In or about December 2015, the Honorable
20 Andre Birotte, Jr. granted final approval of the class action settlement in the *UniFirst* matter for
21 the amount of \$2,600,000.00.

22 **Iron Mountain**

23 (K) Declarant supported and helped litigate the class action matter of *Marc Casanova,*
24 *et al. v. Iron Mountain Information Management Services, Inc., et al.* (“Iron Mountain”), Los
25 Angeles Superior Court Case No. BC543256 during the time Declarant was an associate attorney
26 at the Law Office of Joseph Antonelli. In or about January 2016, the Honorable Kenneth
27 Freeman granted final approval of the class action settlement in the *Iron Mountain* matter for the
28 amount of \$2,800,000.00.

1 **Classic Residence Management, LP dba Vi at La Jolla**

2 (L) Declarant supported and helped litigate the class action matter of *Shiela*
3 *Victoriano v. Classic Residence Management, LP dba Vi at La Jolla* (“*Vi*”), San Diego Superior
4 Court Case No. 37-2014-00028031-CU-OE-CTL during the time Declarant was an associate
5 attorney at the Law Office of Joseph Antonelli. In or about May 2016, the Honorable Richard
6 E.L. Strauss granted final approval of the class action settlement in the *Vi* matter for the amount
7 of \$3,000,000.00.

8 **Parkview Community Hospital Medical Center**

9 (M) Declarant supported and helped litigate the class action matter of *Amber Bart v.*
10 *Parkview Community Hospital Medical Center* (“*Parkview*”), Riverside Superior Court Case No.
11 RIC1406044 during the time Declarant was an associate attorney at the Law Office of Joseph
12 Antonelli. In or about September 2016, the Honorable Sharon J. Waters granted final approval of
13 the class action settlement in the *Parkview* matter for the amount of \$2,550,000.00.

14 5. Plaintiffs seeks certification of this matter as a class action for settlement purposes
15 and preliminary approval of a **non-reversionary** settlement in the gross amount of Ten Million
16 Seven Hundred Fifty Thousand Dollars and Zero Cents (\$10,750,000.00), on behalf of the
17 Settlement Class Members. The Settlement Class contains two sub-classes. The “Retail Banking
18 Settlement Class” sub-class that is defined as all individuals who were employed by and
19 performed work for U.S. Bank in any non-exempt retail banking position in California at any
20 time during the period from April 15, 2012 until April 24, 2021. And, the “Non-Retail Banking
21 Settlement Class” sub-class that is defined as all individuals who were employed by and
22 performed work for U.S. Bank in any non-retail banking non-exempt hourly position in
23 California who at any time during the period from July 2, 2017 until April 24, 2021 (a) received
24 overtime in the same workweek as “AwardPrize”, “Best in Us”, “InvestInsur”, or “BuLineCls”
25 pay, and/or (b) received sick pay in the same workweek as “AwardPrize”, “Best in Us”,
26 “InvestInsur”, or “BuLineCls” pay and whose employment ended at any time between July 2,
27 2017 and April 24, 2021. (See Joint Stipulation of Settlement and Release (“Settlement
28 Agreement” or “Settlement”) at ¶¶ 45 and 46 (**Exhibit 1**). The Class Period is a little over nine

1 years for the Retail Banking Settlement Class and a little less than four years for the Non-Retail
2 Banking Settlement Class. There are approximately 13,431 putative class members. (**Exhibit 1**
3 at ¶61).

4 6. The details of the settlement are set forth in the Settlement Agreement (**attached**
5 **as Exhibit 1**). The settlement was reached after three (3) separate private mediations, that
6 occurred after the parties had possessed sufficient information and documentation to make an
7 informed decision and conducted a comprehensive review and analysis of the facts, potential
8 damages, and legal issues raised by the action. The first private mediation involved only the
9 *Rodriguez* matter and occurred in northern California on January 9, 2019, with private mediator
10 Michael Loeb, Esq.. The second private mediation involved only the *Malik* matter. The third and
11 final private mediation was on April 28, 2021, and involved the *Rodriguez*, *Malik*, and *Yousefi*
12 matters. With the assistance of a preeminent wage and hour private mediator Michael Loeb, Esq.,
13 and the subsequent settlement negotiations through Mr. Loeb, the Plaintiffs were able to reach a
14 settlement in principle on or about May 21, 2021, after this third mediation. Notably, this
15 settlement was subsequent to Plaintiffs Rodriguez and Malik filing Motions to Certify Class
16 Actions in their respective actions pending in Los Angeles County Superior Court. The
17 settlement negotiations were at arm's length and non-collusive. In light of my experience in
18 employment law and class action litigation, it is my opinion that the settlement for each
19 participating class members is fair, reasonable, and adequate, given the inherent risk of litigation,
20 the risk relative to class certification and the costs of litigation.

21 7. Plaintiff Rodriguez and counsel conducted a comprehensive investigation, and
22 litigation, into the facts and legal issues raised herein. This includes three (3) separate days of
23 Persons Most Knowledgeable ("PMK") depositions conducted by counsel in the *Rodriguez*
24 matter, Plaintiff Rodriguez being deposed on three (3) separate days, counsel attending Plaintiff
25 Malik's deposition as well as two (2) separate days of PMK depositions conducted in the *Malik*
26 matter. Plaintiff Rodriguez served Five Sets of Special Interrogatories; Four Sets of Request for
27 Document Production; Supplemental Interrogatory and Document Requests; and a Form
28 Interrogatory Employment Set one. This written discovery produced over a thousand pages of

documents related to the policies and practices at-issue as well as payroll records and timekeeping records. Plaintiff Rodriguez engaged a *Belaire-West* style notice to obtain the contact information of approximately 6,000 putative class members and then used this information to perform survey questionnaires of putative class members' experiences related to the wage and hour claims alleged. In addition, prior to the January 2019 and April 2021 mediations, Defendant produced informal mediation based discovery related to class size and payroll data. The investigation included requesting documents relating to Defendant's compensation, meal and rest break policies, paid leave, overtime, wage statements, wage and hour training materials, timekeeping practices for non-exempt employees, payroll and timekeeping data to permit Plaintiffs to prepare a damages model.

8. Plaintiff Rodriguez, and counsel, have vigorously litigated this matter that has been pending since April 2016. In addition to the aforementioned discovery, this includes filing a successful Motion to Remand, a Notice of Related Case to the *Malik* Action, a Motion for Consolidation and Leave to File a Third Amended Complaint, Motions to Compel Discovery, and a Motion to Certify Class Action.

9. In reaching the proposed Settlement, Plaintiff's and counsel's negotiation efforts took into consideration relevant factors such as the size of the class, the information and documents obtained through informal and formal discovery, the common experience of Plaintiffs, Defendant's projected liability, the expense of continued litigation, the uncertainty inherent in litigating complex matters, such as obtaining and maintaining class certification, or possible latter decertification, Defendant's policies including its timekeeping and compensation practices, and the potential for appeals. Counsel further thoroughly reviewed and analyzed the information, documents and data obtained in connection with Plaintiff's and the putative class claims. Based on my experience handling similar such claims, I am of the opinion that the proposed settlement represents a favorable resolution for the Settlement Class as it provides for compensation to the absent class members for Defendant's alleged violations without the further expense and uncertainty of further litigation. This proposed settlement is fair and reasonable and comparable to similar class action settlements involving these types of claims. Based on Class

1 Counsel's review and analysis of the information and documentation obtained in these Actions,
2 Class Counsel anticipates that if these matters were certified as class actions, proceeded to trial,
3 and resulted in verdicts for Plaintiffs and the Class Members, Defendant's reasonable exposure
4 for the claims at-issue is approximately \$272,660,681.00. However, for the reasons described in
5 the Motion, the Court might ultimately determine the Claims are not suitable for class
6 certification or would be subject to possible decertification after initially granting class
7 certification.

8 10. The proposed settlement is fair, reasonable and adequate in light the following:
9 Plaintiffs contend that Defendant engaged in a systematic course of illegal employment and
10 payroll practices and policies, which were applied to all current and former non-exempt
11 employees of Defendant in California, and as a result of which, with respect to all Class
12 Members, subject to the sub-classes, Defendant failed to provide legally compliant duty free rest
13 periods, timely pay all wages due, including minimum wages and overtime wages at the correct
14 regular rate of pay, failed to pay all penalties and premiums due, failed to provide legally
15 compliant meal periods, failed to pay sick leave at the regular rate of pay, failed to maintain
16 required records, failed to furnish accurate itemized wage statements, and failed to pay all wages
17 due to discharged and quitting employees; Defendant denies Plaintiffs' claims and has asserted
18 various defenses thereof; participating settlement class members will receive compensation for
19 Defendant's alleged violations without further delay in exchange for a release of claims that were
20 or could have been asserted based on the facts of the operative complaints; the uncertainty of the
21 outcome, risk and expense of litigation in complex class actions; and that no amount of the Gross
22 Settlement Amount will revert back to Defendant, among other things.

23 11. Based on the settlement, all putative Class Members who do not request exclusion
24 will share proportionately in the settlement—established by the number of pay periods worked—
25 during the respective sub-class periods. Based on the Settlement's allocations in the settlement,
26 the minimum net class settlement amount is approximately \$6,689,166.67. This is an excellent
27 result. Notably, the estimated average payment for the Retail Banking Settlement Sub-Class
28 member ("RBSS"), based on Defendant's class size representations, is \$507.44 (Fund 1 -

1 \$6,020,250.00 / RBSS Size – 11,864). The estimated average payment for the Non-Retail
2 Banking Settlement Sub-Class member (“NBSS”), based on Defendant’s class size
3 representations, is \$426.88 (Fund 2 - \$668,916.67 / NBSS Size – 1,567).

4 12. Plaintiffs have alleged common questions of law and fact; that they are typical
5 claims to the class members; that they have no claims that are antagonistic to the other class
6 members; that they and Class Counsel are adequate representatives; and that the class action
7 mechanism is a superior mechanism to resolve these wage and hour claims for the Settlement
8 Class Members.

9 13. Class Counsel are experienced and qualified to evaluate the class claims and
10 viability of the defenses. This settlement is fair, adequate, and reasonable and in the best interests
11 of the Class.

12 14. I believe that the class representative enhancement awards of \$20,000 for Plaintiff
13 Rodriguez, \$20,000 for Plaintiff Malik, and \$10,000 for Plaintiff Yousefi are fair, reasonable,
14 and adequate. Plaintiffs were instrumental in providing information throughout the litigations,
15 and mediations, and were vigilant to ensure class members were fairly treated. Plaintiffs took on
16 the risk of stigma for filing class action and representative action lawsuits. Plaintiff Rodriguez
17 signed a Duties of Class and Collective Action Representative document indicating that he
18 understood the risks and obligations of acting as a Class Representative. Plaintiff Rodriguez has
19 spent significant time prosecuting this case on behalf of the Settlement Class, most notably
20 sitting for deposition on three separate days as well as reviewing documents, providing
21 documents and information to counsel, responding to written discovery and supplementing
22 written discovery responses, discussing his experience with counsel, reviewing settlement
23 documents, and providing consistent support to counsel. There are few individuals that are
24 willing to act as a Class Representative in these types of actions as a result of potential negative
25 impact in locating another job. The Class Representatives are signing a general release as part of
26 this settlement. There is no doubt that without the Class Representatives’ hard work, diligence,
27 and willingness to assume a large financial and reputational risk, there would have been no
28 recovery in this case. There was ample risk to the Class Representatives in filing the lawsuit as

1 employers often retaliate or make it very difficult for a person to obtain subsequent employment.
2 Plaintiff Rodriguez has submitted a declaration concurrently herewith. Furthermore, Plaintiffs
3 have no conflict of interest or antagonistic claims to the class members that would prevent them
4 from fairly and adequately protecting the class interests.

5 15. The settlement allocates one-third in attorneys' fees based on the common fund
6 amount of \$10,750,000.00, which amounts to \$3,583,333.33. Attorney's fees based on one-third
7 of a common fund is fair and reasonable. The California Supreme Court has approved "the
8 percentage method" in class action settlements based on one-third of the gross common fund.
9 *See Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480 (2016). Class counsel will file
10 declarations detailing their hourly rates, hours, and lodestar amounts with the final approval
11 motion. The fee request will also request any applicable multiplier to be applied as a cross-check
12 on the percentage fee in light of the significant anticipated class share awards for the individual
13 participating class members. At the time of the final approval motion, Plaintiffs' counsel will
14 provide the court with the total actual expenses incurred with this litigation for reimbursement.
15 The named plaintiffs have given written approval of the fee splitting agreement in this case
16 between The Myers Law Group, APC ("MLG"); Diversity Law Group, P.C. ("DLG"); Polaris
17 Law Group, LLP ("PLG"); and Davtyan Law Firm ("DLF") with the percentage of the fee award
18 as follows: MLG at 58.5%, DLG at 20.5%, PLG at 11%, and DLF at 10%.

19 16. David P. Myers, Esq. was admitted to practice in California in January 2000. He
20 and/or his firm have been proposed or approved class counsel in multiple class actions, including
21 the *Alvarez v. City of Oxnard* (C.D.Cal. Dec. 17, 2020, No. CV 19-8044 PSG (JCx)) 2020
22 U.S.Dist.LEXIS 250524; *Alvarez v. City of Oxnard* (C.D.Cal. Dec. 17, 2020, No. CV 19-8044
23 PSG (JCx)) 2020 U.S.Dist.LEXIS 250522; *Feltzs v. Cox Communs. Cal., LLC* (C.D. Cal. June
24 1, 2021, No. SACV 19-2002 JVS (JDEx)) 2021 U.S.Dist.LEXIS 146447; *Crawley v. Akima*
25 *Logistics Services, LLC*. (SBSC Case No. CIVBS900785); *Richard Fairfield et al. v. Coast*
26 *Leasing Corporation (dba Advantage Rent-a-Car)* (LASC Case No. BC342461); *Castro v.*
27 *Cenveo Commercial, Inc.* (LASC Case No. BC331046); *Romero, et al. v. Compass Group, USA,*
28 *Inc.* (SBSC Case No. CIVDS1512026); and *Carmen Graupner, et al. v. Lewis Limited*

1 *Consultants, LLC* (SBSC Case No. CIVBS1200311).

2 17. Further, Mr. Myers has successfully tried cases on behalf of plaintiff employees,
3 including the following:

4 **Ali Fathi v. State of California, Dept. of Transportation**

5 (A) Mr. Myers was Lead Trial Counsel in the matter of *Ali Fathi v. State of*
6 *California, Dept. of Transportation*, San Bernardino Superior Court Case No. CIVDS1208245,
7 as the partner at The Myers Law Group, A.P.C. On or about August 14, 2014, the Honorable
8 Brian S. McCarville entered Judgment on Special Verdict after the jury returned a verdict in
9 favor of the plaintiff, for claims under California's Fair Employment Housing Act, in the amount
10 of \$2,305,375. Subsequently vacated per stipulation pursuant to post-verdict settlement.

11 **Herbert Prescott v. Genco Technologies, Inc.**

12 (B) Mr. Myers was Lead Trial Counsel in the matter of *Herbert Prescott v. Genco*
13 *Technologies, Inc.*, San Bernardino Superior Court Case No. CIVDS1415395, as the partner at
14 The Myers Law Group, A.P.C. On or about November 29, 2018, the Honorable David S. Cohn
15 entered Judgment on Special Verdicts, after the jury returned a verdict in favor of the plaintiff,
16 for claims under California's Fair Employment Housing Act, in the amount of \$362,000.

17 **Todd Hawkins/Hyung Kim, et al. v. City of Los Angeles**

18 (C) Mr. Myers was Lead Trial Counsel in the consolidated matters of *Todd Hawkins*
19 *et al. v. City of Los Angeles* and *Hyung Kim v. City of Los Angeles*, Los Angeles Superior Court
20 Case No. BC541066, as the partner at The Myers Law Group, A.P.C. On or about August 12,
21 2016, the Honorable Ernest M. Hiroshige entered Judgment on Verdict for Todd Hawkins, after
22 the jury returned a verdict in favor of the plaintiff Hawkins, for claims under Labor Code 1102.5
23 and the Bane Act, in the amount of \$238,531.00. On or about August 12, 2016, the Honorable
24 Ernest M. Hiroshige entered Judgment on Verdict for Hyung Kim, after the jury returned a
25 verdict in favor of the plaintiff Kim, for claims under Labor Code 1102.5 and the Bane Act, in
26 the amount of \$188,631.00. On or about November 15, 2016, the Honorable Ernest M.
27 Hiroshige imposed civil penalties against the defendant, under the Private Attorneys General
28 Act, pursuant to Cal. Labor Code §1102.5(f), in the amount of \$20,000. On or about March 14,

2017, the Honorable Judge Ernest M. Hiroshige granted Plaintiffs Todd Hawkins and Hyung Kim's Motion for Attorney's Fees at the amount of \$1,054,286.88. The defendant City of Los Angeles appealed contending the judgments must be reversed for insufficient evidence and instructional error. In a partially published opinion, the Court of Appeal rejected the City of Los Angeles' contentions and affirmed the judgments and orders. *Hawkins v. City of Los Angeles* (2019) 40 Cal.App.5th 384, 387.

Francisco Rojas v. Koshan, Inc. dba Payless Foods

(D) Mr. Myers was Lead Trial Counsel in the matter of *Francisco Rojas v. Koshan, Inc. dba Payless Foods*, Los Angeles Superior Court Case No. BC408544, as the partner at The Myers Law Group, A.P.C. On or about August 10, 2010, the Honorable Abraham Khan entered Judgment on Special Verdict, after the jury returned a verdict in favor of the plaintiff, for claims under California's Fair Employment Housing Act, in the amount of \$93,548 with attorney's fees in the amount of \$194,962.20.

Agnes Sevilla v. Tita de Guzman, Inc., et al.

(E) Mr. Myers was Lead Trial Counsel in the matter of *Agnes Sevilla v. Tita de Guzman, Inc., et al.*, Los Angeles Superior Court Case No. BC444024, as the partner at The Myers Law Group, A.P.C. On or about December 14, 2011, the Honorable Steven J. Kleinfeld entered Judgment on Special Verdict, after the jury returned a verdict in favor of the plaintiff, for claims under California's Labor Code and Wrongful Termination in Violation of Public Policy, in the amount of \$106,949.

Donald Bruhanski v. Excel Residential Services, Inc

(F) Mr. Myers was Lead Trial Counsel in the matter of *Donald Bruhanski v. Excel Residential Services*, Los Angeles Superior Court Case No. BC220731 as partner at The Myers Law Group, A.P.C. On or about November 4, 2009, the Honorable Charles F. Palmer entered Judgment on Special Verdict and After Court Trial, after a verdict in favor of the plaintiff, for claims under the California Labor Code for overtime and waiting time penalties, in the amount of \$38,496.70 including interest.

18. Robert M. Kitson is duly admitted to the practice of law in the States of California

1 and New York. Mr. Kitson is a member in good standing of the bar of the United States Court of
2 Appeal for the Ninth Circuit, and the United States District Courts for the Southern District of
3 New York, Eastern District of New York, Eastern District of California and Central District of
4 California. Mr. Kitson is of counsel to The Myers Law Group, APC (MLG), a law firm
5 specializing in individual and class action employment cases on behalf of plaintiffs, with offices
6 in Los Angeles, Santa Barbara, and Rancho Cucamonga, California. Mr. Kitson is a 1995
7 graduate of the University at Buffalo, State University of New York School of Law. Mr. Kitson
8 has been practicing law for over 25 years, beginning as a staff attorney with the Legal Aid
9 Society, Criminal Defense Division, in New York County (Manhattan). At Legal Aid Mr. Kitson
10 was the handling attorney on over 2,000 cases. Mr. Kitson was lead counsel or second chair on
11 approximately 20 trials, including a homicide and a third strike violent felony, both of which
12 resulted in complete acquittals. In 2001, Mr. Kitson relocated to California and, in 2003, began
13 practicing civil litigation. From 2003-2004 Mr. Kitson was of counsel to Litt & Associates,
14 specifically hired due to his trial experience, to co-counsel on *McClure v. City of Long Beach*,
15 Central District of California Case No. 2:92-cv-2776-E, a nearly 7-month long trial in the United
16 States District Court for the Central District of California which resulted in what is believed to be
17 the largest individual verdict (\$22.5 million) in the history of the Fair Housing Act. The McClure
18 trial was a massive undertaking, with 22 volumes of admitted exhibits, approximately 90
19 volumes of lodged deposition transcripts, dozens of live witnesses, and multiple weeks of expert
20 testimony in areas as diverse as building code enforcement, economics, the operation of
21 Alzheimer's disease care facilities, lupus, and psychology. From 2004-2013, Mr. Kitson was a
22 partner at Litt, Estuar & Kitson (LEK), at the time one of the preeminent class action civil rights
23 firms in Los Angeles. At LEK, Mr. Kitson was lead counsel on three employment
24 class/collective actions, *Cinia Avelar v. Hilton Hotels Corp.*, Los Angeles Superior Court Case
25 No.: BC342499 (California Labor Code), *Eric Moore v. Roadway Express, Inc.*, Central District
26 of California Case No. EDCV09-1588 RBL (California Labor Code), and *Jared Tomassi v. City*
27 *of Los Angeles*, Central District of California Case No. 08-cv-1851 DSF (FLSA). In 2013, Mr.
28 Kitson became of counsel to The Myers Law Group, APC (MLG). With MLG Mr. Kitson has

1 been class counsel on *Gonzalo Romero, et al. v. Compass Group USA, Inc.*, San Bernardino Sup.
2 Ct. Case No. CIVDS1512026; *Lynn Hodge v. Image International Manufacturing, LLC*, US Dist.
3 Ct. Cent. Dist. CA Case No. 5:18-cv-00925; *Jackie Solgan v. Transstreme, LLC*, San Bernardino
4 Sup. Ct. Case No. CIVDS1919244; and *Carlos Castellon, et al. v. Penn Ridge Transportation, Inc., et al.*, US Dist. Ct. Cent. Dist. CA Case No. 5:18-cv-02136-JAK-KK.

6 19. Contemporaneously to the filing of this Motion, Class Counsel shall submit the
7 proposed settlement to the LWDA. Plaintiffs will file a copy of the submission receipt with the
8 Court on or before the date or deadline that reply to this motion is to be filed.

9 20. Attached as Exhibit 2 is a true and correct copy of the operative complaint from
10 the *Ali Malik v. U.S. Bank National Association* matter, Los Angeles County Superior Court
11 Case No.: 19STCV17516.

12 21. Attached as Exhibit 3 is a true and correct copy of the operative complaint from
13 the *Atefeh Yousefi v. U.S. Bank National Association* matter, United States District Court,
14 Southern District of California, Case No.: 3:20-cv-01770-BAS-AGS.

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

17 Dated: November 29, 2021

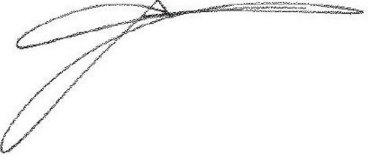
18 By: 
19 Jason Hatcher

Exhibit 1

1 *[Counsel listed on following page]*
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF LOS ANGELES**
12

13
14 CHARLES RODRIGUEZ, as an individual
and on behalf of all others similarly situated,

15 Plaintiff,
16

17 vs.

18 U.S. BANK NATIONAL ASSOCIATION,
dba U.S. Bank; and DOES 1 through 100,
19 inclusive.

20 Defendants.
21
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27
28

Case No. BC617356

**JOINT STIPULATION OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE**

RELATED CASE: 19STCV17516

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2 dmyers@myerslawgroup.com
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Attorneys for Defendant
U.S. BANK NATIONAL ASSOCIATION

1 **I. INTRODUCTION**

2 This Joint Stipulation of Class and Representative Action Settlement and Release
3 ("Settlement Agreement" or "Settlement" or "Agreement") is made and entered into by and
4 between Plaintiffs Charles Rodriguez, Ali Malik, and Atefeh Yousefi ("Plaintiffs") and Defendant
5 U.S. Bank National Association ("Defendant" or "U.S. Bank"). Plaintiffs and U.S. Bank may be
6 collectively referred to herein as the "Parties" and each may be individually referred to herein as a
7 "Party". This Agreement sets forth the Parties' class and representative action settlement to resolve
8 all of the claims that are or could have been asserted in the: (1) above-captioned action, (2) the
9 action entitled *Ali Malik v. U.S. Bank National Association*, Case No. 19STCV17516 pending in
10 the Superior Court of California for the County of Los Angeles, and (3) the action entitled *Atefeh*
11 *Yousefi v. U.S. Bank National Association*, Case No. 3:20-cv-01770-BAS-AGS pending in the
12 United States District Court for the Southern District of California (all together, the "Actions").
13 This Agreement is subject to Court approval.

14 **II. DEFINITIONS**

15 The following definitions are applicable to the Settlement Agreement. Definitions
16 contained elsewhere in the Settlement Agreement also shall be applicable.

17 1. "Actions" means *Charles Rodriguez v. U.S. Bank National Association dba U.S.*
18 *Bank*, Los Angeles County Superior Court Case No. BC617356 ("*Rodriguez*"), *Ali Malik v. U.S.*
19 *Bank National Association*, Los Angeles County Superior Court Case No. 19STCV17516
20 ("*Malik*"), and *Atefeh Yousefi v. U.S. Bank National Association*, Southern District of California
21 Case No. 3:20-cv-01770-BAS-AGS ("*Yousefi*").

22 2. "Class Counsel" means: David P. Myers, Robert M. Kitson, and Jason Hatcher of
23 The Myers Law Group, A.P.C.; Larry W. Lee, Kristen M. Agnew, and Nicholas Rosenthal of
24 Diversity Law Group, P.C.; and William L. Marder of Polaris Law Group LLP.

25 3. "Class Counsel Award" means the total amount to be paid to Class Counsel,
26 including Class Counsel Fees and Class Counsel Expenses, subject to the Court's final approval of
27 the Settlement. Any amount of the Class Counsel Award not awarded to Class Counsel shall be
28 added to the Net Class Settlement Amount.

1 4. “Class Counsel Expenses” means the amount of actual litigation expenses Class
2 Counsel incurred in connection with the Actions, including without limitation, their pre-filing
3 investigation, their filings of the Actions and all related litigation activities, the costs associated
4 with mediation and resolution of the Actions, this Settlement and filing for Court approval, and all
5 post-Settlement compliance procedures. Defendant agrees not to object to a request that the Court
6 approve Class Counsel Expenses of up to Seventy Thousand Dollars (\$70,000.00).

7 5. “Class Counsel Fees” means the amount of attorneys’ fees paid to compensate Class
8 Counsel for their services rendered, and to be rendered, to Plaintiffs and the Classes in connection
9 with the Actions. Defendant agrees not to oppose Class Counsel Fees of up to 33.33 percent (one-
10 third) of the Gross Settlement Amount (\$10,750,000.00), i.e. the sum of Three Million Five
11 Hundred Eighty Three Thousand Three Hundred Thirty Three Dollars and Thirty Three Cents
12 (\$3,583,333.33), subject to the Court’s final approval of the Settlement.

13 6. “Class List” means a list of Settlement Class Members and PAGA Group Members
14 that Defendant will compile from its records, which shall include, to the extent available in
15 Defendant’s business records: each Settlement Class Member’s and each PAGA Group Member’s
16 full name; number of Pay Periods worked; last known address and phone number; employee ID
17 number; and Social Security number. The Class List shall be formatted as a Microsoft Excel
18 spreadsheet or equivalent format and shall be provided to the Settlement Administrator after
19 Preliminary Approval of this Settlement.

20 7. “Complaint(s)” means the *Rodriguez* Complaints filed in Los Angeles County
21 Superior Court including the initial Complaint filed on April 15, 2016, the First Amended
22 Complaint filed on June 9, 2016, the Second Amended Complaint filed on April 10, 2017, and the
23 Third Amended Complaint filed on March 6, 2020 (all Case No. BC617356) and any amendments
24 thereto; the *Malik* Complaint filed in San Mateo County Superior Court on February 1, 2019 (Case
25 No. 19CIV00693) (subsequently transferred to Los Angeles County Superior Court as Case No.
26 19STCV17516 on May 15, 2019) and any amendments thereto; and the *Yousefi* Complaint filed in
27 San Diego County Superior Court on July 2, 2020 (Case No. 37-2020-00022823-CU-OE-CTL)
28 (subsequently removed to the Southern District of California on September 9, 2020 as Case No.

1 3:20-cv-01770-BAS-AGS) and any amendments thereto.

2 8. "Court" means the Superior Court of California for the County of Los Angeles.

3 9. "Defendant" and "U.S. Bank" mean U.S. Bank National Association.

4 10. "Defense Counsel" means Joan B. Tucker Fife, Emilie C. Woodhead, Jason S.
5 Campbell, and Tristan R. Kirk of Winston & Strawn LLP.

6 11. "Effective Date" means the date Defendant funds the Gross Settlement Amount
7 pursuant to Paragraph 49.

8 12. "Final Approval" means the Court order granting final approval of the Settlement
9 Agreement.

10 13. "Gross Settlement Amount" means the total amount of Ten Million Seven Hundred
11 Fifty Thousand Dollars (\$10,750,000.00) that Defendant is required to pay under this Settlement
12 Agreement for full and complete settlement of the Actions, which will satisfy: the Individual Class
13 Settlement Payments to Participating Settlement Class Members, the Individual PAGA Settlement
14 Payments to PAGA Group Members, the Representative Service Awards to Plaintiffs, the portion
15 of the PAGA Amount to be paid to the LWDA, the Settlement Administration Costs to the
16 Settlement Administrator, and the Class Counsel Award. In no event will Defendant ever be
17 required to pay more than the Gross Settlement Amount of \$10,750,000.00, except: (i) Defendant
18 shall pay the employer's share of the payroll taxes separately from and in addition to the Gross
19 Settlement Amount; and (ii) to the extent that the Net Settlement Amount increases pursuant to
20 Paragraph 61. Any interest that accrues in the escrow account created by the Settlement
21 Administrator shall also be added to the Gross Settlement Amount. No portion of the Gross
22 Settlement Amount shall revert to Defendant.

23 14. "Individual PAGA Payment" means each Representative Action Member's share of
24 the PAGA Amount calculated in accordance with the calculations described in Paragraph 64 of
25 this Settlement.

26 15. "Individual Settlement Share" means each Participating Settlement Class Member's
27 share of the Net Class Settlement Amount calculated in accordance with the calculations described
28 in Paragraph 66 of this Settlement. Payment of an Individual Settlement Share shall be referred to

1 as an “Individual Class Settlement Payment.”

2 16. “LWDA” means the California Labor and Workforce Development Agency.

3 17. “Net Class Settlement Amount” means the portion of the Gross Settlement Amount
4 remaining after deduction of the Representative Service Awards, the Settlement Administration
5 Costs, the Class Counsel Award, and the PAGA Amount. The entire Net Class Settlement Amount
6 will be distributed to Participating Settlement Class Members.

7 18. “Non-Retail Banking Class Released Claims” means any and all claims, known or
8 unknown, for and/or relating to: proper calculation of the regular rate of pay, including for
9 purposes of overtime pay and/or sick pay; the rate of payment for sick leave; underpayment of sick
10 leave; payment of wages at termination; waiting time penalties; itemized wage statements and/or
11 accuracy of wage statements; unfair competition; any unpaid wages or compensation related to any
12 or all of the foregoing; any premium payments related to any or all the foregoing; restitution for
13 any of the foregoing; any penalties, including statutory and civil penalties, related to any or all the
14 foregoing; attorneys’ fees or costs related to any or all of the foregoing; interest related to any of
15 the foregoing; and/or any other damages or amounts related to any or all of the foregoing. The
16 release includes all claims that were asserted in the complaint in *Yousefi*, that were asserted in any
17 and/or all of the letters sent to the LWDA by Yousefi, and/or that could have been asserted in
18 *Yousefi* based on the facts and/or allegations in the *Yousefi* complaint. The release includes any
19 and all claims pursuant to: California Business and Professions Code section 17200 et seq.;
20 California Labor Code sections 200-204, 218.5, 218.6, 226, 226.3, 246-248.5, 510, 1194; the
21 California IWC Wage Orders; and the Fair Labor Standards Act (“FLSA”). The release shall
22 include all the above claims through April 24, 2021.

23 19. “Non-Retail Banking Class Period” means July 2, 2017 through April 24, 2021.

24 20. “Non-Retail Banking PAGA Period” means May 19, 2019 through April 24, 2021.

25 21. “Non-Retail Banking PAGA Released Claims” means any and all claims, known
26 and unknown, for civil penalties under the California Labor Code Private Attorneys General Act of
27 2004, Labor Code §§ 2698, et seq., that were asserted in the complaint in *Yousefi*, that were
28 asserted in any and/or all of the letters sent to the LWDA by Yousefi, and/or that could have been

1 asserted in *Yousefi* based on the facts and/or allegations in the *Yousefi* complaint or LWDA letters.
2 The release includes, but is not limited to, claims for PAGA civil penalties premised on: California
3 Labor Code sections 200-204, 218.5, 218.6, 226, 226.3, 246-248.5, 510, and 1194; proper
4 calculation of the regular rate of pay, including for purposes of overtime pay and/or sick pay; the
5 rate of payment for sick leave; underpayment of sick leave; payment of wages at termination;
6 waiting time penalties; itemized wage statements and/or accuracy of wage statements; and
7 attorneys' fees or costs related to any or all of the foregoing. The release shall include all the
8 above claims through April 24, 2021.

9 22. "Notice of Settlement" means the notice (substantially in the form attached hereto
10 as Exhibit A) that the Court approves and orders to be sent to all Settlement Class Members and
11 PAGA Group Members advising them of the terms of the Settlement and their rights under the
12 Settlement Agreement.

13 23. "PAGA Amount" means an amount not to exceed \$300,000.00 attributable to
14 Plaintiff Rodriguez, Plaintiff Malik, and Plaintiff Yousefi's claims pursuant to the California
15 Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.* ("PAGA"),
16 which shall be allocated between the LWDA ("PAGA LWDA Amount") and PAGA Group
17 Members ("PAGA Group Members Amount") as described in Paragraph 50 of this Agreement.

18 24. "PAGA LWDA Amount" means 75% of the PAGA Amount allocated to the
19 LWDA.

20 25. "PAGA Group Members Amount" means 25% of the PAGA Amount allocated to
21 all PAGA Group Members.

22 26. "PAGA Group Members" means all individuals in each of the PAGA Group
23 Member Sub-Groups.

24 27. "PAGA Group Member Sub-Groups" means the following groups:

25 a. The "Retail Banking PAGA Group" means all individuals who were
26 employed by U.S. Bank in any non-exempt retail banking position in California at any time during
27 the period from April 5, 2015, until April 24, 2021.

28 b. The "Non-Retail Banking PAGA Group" means all individuals who were

1 employed by U.S. Bank in any non-retail banking non-exempt hourly position in California who at
2 any time during the period from May 19, 2019 until April 24, 2021 (a) received overtime in the
3 same workweek as “AwardPrize”, “Best in Us”, “InvestInsur”, or “BuLineCls” pay, and/or (b)
4 received sick pay in the same workweek as “AwardPrize”, “Best in Us”, “InvestInsur”, or
5 “BuLineCls” pay and whose employment ended at any time between May 19, 2019 and April 24,
6 2021.

7 28. “Participating Settlement Class Members” means all Settlement Class Members
8 who do not submit a valid letter requesting to be excluded from the Settlement, consistent with the
9 terms set forth in the Settlement Agreement.

10 29. “Parties” means Plaintiffs and Defendant, collectively.

11 30. “Pay Periods” means the number of pay periods during which a Settlement Class
12 Member and/or and Representative Group Member performed work as a Settlement Class Member
13 and/or PAGA Group Member during the Retail Banking Class Period and/or Retail Banking
14 PAGA Period or the Non-Retail Banking Class Period and/or Non-Retail Banking PAGA Period
15 as indicated in Defendant’s payroll records.

16 31. “Plaintiffs” means the named plaintiffs in the Actions: Charles Rodriguez, Ali
17 Malik, and Atefeh Yousefi.

18 32. “Preliminary Approval” means the Court order granting preliminary approval of the
19 Settlement Agreement.

20 33. “Qualified Settlement Account” means the account established by the Settlement
21 Administrator, into which the Gross Settlement Amount shall be deposited. In addition, and as an
22 amount separate from the Gross Settlement Amount, Defendant shall also transmit the employer-
23 side taxes on the wage portion of the Individual Class Settlement Payments to the Settlement
24 Administrator for deposit into the Qualified Settlement Account. The Settlement Administrator
25 shall establish an interest-bearing escrow account under this Settlement.

26 34. “Released Parties” means Defendant; its parent or subsidiary corporations; each of
27 their present, former, or future owners, officers, directors, shareholders, partners, employees,
28 insurers, successors, predecessors, contractors, assigns, and managing agents; any and all agents,

1 legal representatives and/or attorneys of all of the foregoing entities and individuals; and any
2 entities that Plaintiffs, any Settlement Class Member, and/or any PAGA Group Member may
3 assert are joint employers with U.S. Bank.

4 35. "Retail Banking Class Period" means April 15, 2012 through April 24, 2021.

5 36. "Retail Banking Class Released Claims" means any and all claims, known or
6 unknown, for and/or relating to: rest periods; meal periods; minimum wages; overtime wages; pay
7 for all hours worked, including but not limited to alleged off-the-clock work; proper calculation of
8 the regular rate of pay, including for purposes of overtime pay and/or sick pay; the rate of payment
9 for sick leave; underpayment of sick leave; timeliness of wages; payment of wages at termination;
10 waiting time penalties; vacation pay; itemized wage statements and/or accuracy of wage
11 statements; provision of and/or allowing for inspection/copying of personnel documents, signed
12 documents, payroll records, or any other records; recordkeeping; unfair competition; any unpaid
13 wages or compensation related to any or all of the foregoing; any premium payments related to
14 any or all the foregoing; restitution for any of the foregoing; any penalties, including statutory and
15 civil penalties, related to any or all the foregoing; attorneys' fees or costs related to any or all of
16 the foregoing; interest related to any of the foregoing; and/or any other damages or amounts
17 related to any or all of the foregoing. The release includes: all claims that were asserted in any
18 and/or all of the complaints in *Rodriguez, Malik, and Yousefi*; that were asserted in any and/or all
19 of the letters sent to the LWDA by Rodriguez, Malik, and Yousefi; and/or that could have been
20 asserted in *Rodriguez, Malik, and Yousefi* based on the facts and/or allegations in any complaint in
21 *Rodriguez, Malik, and Yousefi*. The release includes any and all claims pursuant to: California
22 Business and Professions Code section 17200 et seq.; California Labor Code sections 200-204,
23 218.5, 218.6, 226, 226.3, 226.7, 227.3, 246-248.5, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198,
24 and 1198.5; the California IWC Wage Orders; and the FLSA. The release shall include all the
25 above claims through April 24, 2021.

26 37. "Retail Banking PAGA Period" means April 5, 2015 through April 24, 2021.

27 38. "Retail Banking PAGA Released Claims" means any and all claims, known and
28 unknown, for civil penalties under the California Labor Code Private Attorneys General Act of

2004, Labor Code §§ 2698, *et seq.*, that were asserted in any and/or all of the complaints in *Rodriguez, Malik, and Yousefi*; that were asserted in any and/or all of the letters sent to the LWDA by Rodriguez, Malik, and Yousefi; and/or that could have been asserted in *Rodriguez, Malik, and Yousefi* based on the facts and/or allegations in any complaint and/or LWDA letter in *Rodriguez, Malik, and Yousefi*. The release includes, but is not limited to, claims for PAGA civil penalties premised on: California Labor Code sections 200-204, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 246-248.5, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, and 1198.5; rest periods; meal periods; minimum wages; overtime wages; pay for all hours worked, including but not limited to alleged off-the-clock work; proper calculation of the regular rate of pay, including for purposes of overtime pay and/or sick pay; the rate of payment for sick leave; underpayment of sick leave; timeliness of wages; payment of wages at termination; waiting time penalties; vacation pay; itemized wage statements and/or accuracy of wage statements; provision of and/or allowing for inspection/copying of personnel documents, signed documents, payroll records, or any other records; recordkeeping; and attorneys' fees or costs related to any or all of the foregoing. The release shall include all the above claims through April 24, 2021.

39. "Representative Service Award" means the amount that the Court authorizes to be paid to Plaintiffs, in addition to their Individual Class Settlement Payments and Individual PAGA Payments (if any), in recognition of their efforts and work in prosecuting the Actions on behalf of Settlement Class Members and PAGA Group Members.

40. "Response Deadline" means the deadline by which Settlement Class Members must postmark their request to be excluded from the Settlement or dispute of information in the Notice of Settlement, via mail, to the Settlement Administrator. The Response Deadline is also the deadline by which Settlement Class Members must mail any objections to Counsel for the Parties and the Settlement Administrator. The Response Deadline shall be forty-five (45) calendar days from the initial mailing of the Notice of Settlement by the Settlement Administrator, unless the 45th day falls on a Sunday or federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.

41. "Settlement" means the Parties' agreement to compromise the Actions, the material

1 terms of which are set forth in the Settlement Agreement.

2 42. "Settlement Administration Costs" means the expenses payable from the Gross
3 Settlement Amount to the Settlement Administrator for administering the Settlement, including,
4 but not limited to: printing, distributing, and tracking forms and notices for the Settlement; tax
5 calculations and reporting; establishing a Qualified Settlement Amount; calculating, administering,
6 and distributing payments from the Gross Settlement Amount pursuant to the terms of the
7 Settlement Agreement; and providing necessary reports and declarations, as requested by the
8 Parties. Any portion of the Settlement Administration Costs not approved by the Court shall be
9 added to the Net Class Settlement Amount.

10 43. "Settlement Administrator" means Simpluris, the third-party class action settlement
11 administrator mutually agreed to by the Parties to handle the administration of the Settlement,
12 subject to approval by the Court.

13 44. "Settlement Agreement" or "Agreement" means this Joint Stipulation of Class and
14 Representative Action Settlement and Release.

15 45. "Settlement Class" and "Settlement Class Member(s)" means all individuals in the
16 each of the Settlement Class Member Sub-Classes.

17 46. "Settlement Class Member Sub-Classes" means the following classes:

18 a. The "Retail Banking Settlement Class" which is defined as all individuals
19 who were employed by and performed work for U.S. Bank in any non-exempt retail banking
20 position in California at any time during the period from April 15, 2012 until April 24, 2021.

21 b. The "Non-Retail Banking Settlement Class" which is defined as all
22 individuals who were employed by and performed work for U.S. Bank in any non-retail banking
23 non-exempt hourly position in California who at any time during the period from July 2, 2017
24 until April 24, 2021 (a) received overtime in the same workweek as "AwardPrize", "Best in Us",
25 "InvestInsur", or "BuLineCls" pay, and/or (b) received sick pay in the same workweek as
26 "AwardPrize", "Best in Us", "InvestInsur", or "BuLineCls" pay and whose employment ended at
27 any time between July 2, 2017 and April 24, 2021.

28 47. "Tomlinson/Sharkey Employees" means each member of the Non-Retail Banking

1 Settlement Class who is also included in the employee group at issue in the cases of *Tomlinson v.*
2 *U.S. Bancorp et al.*, Los Angeles County Superior Court Case No. 19STCV09493 and *Sharkey v.*
3 *U.S. Bancorp et al.*, Los Angeles County Superior Court Case No. 20STCV19049 (i.e., non-
4 exempt employees in the State of California who worked for one of Defendant's Mortgage
5 Processing Centers).

6 **III. TERMS OF AGREEMENT**

7 48. Terms of Agreement Subject to Court Approval. All terms set forth in the
8 Settlement Agreement are subject to Court approval. The Parties stipulate to class certification
9 only for purposes of the Settlement. Plaintiff shall apply to the Court for approval of the
10 Settlement Agreement and for class certification solely for purposes of effectuating the Settlement.
11 Defendant shall not oppose this application. If, for any reason, the Settlement is not approved, the
12 stipulation to certification will be void. The Parties further agree that certification for purposes of
13 the Settlement is not an admission that class certification is proper under the standard applied to
14 contested certification motions and that the Settlement will not be admissible in this, or any other,
15 legal process as evidence that (i) a class should be certified, (ii) representative treatment is
16 appropriate, or (iii) Defendant is liable to Plaintiffs or any of the Settlement Class Members and/or
17 the PAGA Group Members.

18 49. Funding of the Gross Settlement Amount. The Settlement is non-reversionary.
19 Defendant shall deposit into the Qualified Settlement Account the Gross Settlement Amount and
20 employer-side taxes on the wage portion of the Individual Class Settlement Payments within ten
21 (10) calendar days after the occurrence of the latest of: (a) if no appeal of the final
22 approval/judgment is filed, 60 days after the Court enters an order granting final approval of the
23 Settlement and enters judgment, (b) if any appeal of the final approval/judgment is filed, the date
24 on which the Court of Appeal or Supreme Court renders a final judgment affirming final
25 approval/judgment or otherwise resolves any such appeal in a way that does not materially alter
26 the terms of the settlement; and (c) seven (7) days after the later of the dates on which Plaintiff
27 Malik and Plaintiff Yousefi respectively sign the Settlement Agreement if not revoked in writing
28 by any of them before the expiration of the revocation period in accordance with the Age

1 Discrimination in Employment Act. The funds in the Qualified Settlement Account shall be used
2 to pay: (1) Individual Class Settlement Payments; (2) Individual PAGA Settlement Payments; (3)
3 the LWDA's portion of the PAGA Amount; (4) the Class Counsel Award; (5) the Representative
4 Service Award payments; (6) Settlement Administration Costs; and (7) all employer's and
5 employee's withholdings and taxes associated with the wage-portion of Individual Class
6 Settlement Shares.

7 50. PAGA Amount. Subject to Court approval, \$300,000.00 from the Gross Settlement
8 Amount shall be designated for satisfaction of the Retail Banking PAGA Released Claims and the
9 Non-Retail Banking PAGA Released Claims. Pursuant to PAGA, Seventy-Five Percent (75%), or
10 \$225,000.00, of the PAGA Amount shall be paid to the LWDA and Twenty-Five Percent (25%),
11 or \$75,000.00, shall be distributed proportionally among the PAGA Group Members based on the
12 estimated number of pay periods worked by each Aggrieved Employee during the applicable
13 PAGA period. If the PAGA Amount is adjusted by the Court, it shall be adjusted by using funds
14 from the Gross Settlement Amount and in no event shall increase the Gross Settlement Amount.

15 51. Representative Service Awards. In exchange for a general release, and in
16 recognition of the Plaintiffs' efforts and work in prosecuting the Actions on behalf of Settlement
17 Class Members and PAGA Group Members, Defendant agrees not to oppose any application or
18 motion for the Representative Service Awards. Subject to the Court's final approval, the following
19 Representative Service Awards will be paid from the Gross Settlement Amount: up to Twenty
20 Thousand Dollars (\$20,000.00) for Charles Rodriguez; up to Twenty Thousand Dollars
21 (\$20,000.00) for Plaintiff Ali Malik; and up to Ten Thousand Dollars (\$10,000.00) for Plaintiff
22 Atefeh Yousefi. The Representative Service Award payments shall be in addition to the Plaintiffs'
23 Individual Class Settlement Payments and Individual PAGA Settlement Payments (if any) paid
24 pursuant to the Settlement. The Settlement Administrator shall issue an IRS Form 1099 for each of
25 the Representative Service Awards. Plaintiffs shall be solely and legally responsible to pay any
26 and all applicable taxes on the payments made pursuant to this Paragraph and shall hold Defendant
27 harmless from any claim or liability for taxes, penalties, or interest arising as a result of the
28 payments. Any reduction in the amount of the Representative Service Awards by the Court shall

1 remain in the Net Class Settlement Amount to be distributed to Participating Settlement Class
2 Members.

3 52. Settlement Administration Costs. The Settlement Administrator shall be paid for the
4 costs of administration of the Settlement and distribution of all payments from the Gross
5 Settlement Amount. The estimate of the Settlement Administration Costs is \$57,500.00. These
6 costs, which shall be paid from the Gross Settlement Amount, shall be used to administer the
7 Settlement, including, *inter alia*, preparing the required tax reporting on the Individual Settlement
8 Payments, issuing 1099 and W-2 IRS Forms, distributing the Notices of Settlement, establishing a
9 Qualified Settlement Account, calculating Individual Class Settlement Payments and Individual
10 PAGA Settlement Payments, processing exclusion requests, distributing the Net Class Settlement
11 Amount as directed by the Court and as set forth herein, preparing and mailing notices in
12 accordance with CAFA, and providing necessary reports and declarations. No fewer than ten (10)
13 calendar days before the Final Approval hearing, the Settlement Administrator shall provide the
14 Court and all counsel for the Parties with a statement detailing the Settlement Administration
15 Costs. The Parties agree to cooperate in the settlement administration process and to make all
16 reasonable efforts to control and minimize the costs and expenses incurred in the administration of
17 the Settlement. An IRS Form 1099 shall be issued to the Settlement Administrator. Any portion of
18 the Settlement Administration Costs that are not used or which are not awarded by the Court will
19 not revert to Defendant, but instead will be part of the Net Class Settlement Amount for
20 distribution to Participating Settlement Class Members. If the Settlement Administration Costs
21 exceed \$57,500.00, such cost will be deducted from the Net Class Settlement Amount.

22 53. Payment of Class Counsel Award. Defendant agrees not to oppose any application
23 or motion by Class Counsel for Class Counsel Fees not to exceed \$3,583,333.33, and Class
24 Counsel Costs not to exceed Seventy Thousand Dollars (\$70,000.00). The Class Counsel Award
25 shall be paid out of the Gross Settlement Amount. Any portion of the Class Counsel Award not
26 awarded to Class Counsel shall be returned to the Net Class Settlement Amount for distribution to
27 Participating Settlement Class Members. Class Counsel shall be solely and legally responsible to
28 pay all applicable taxes on the payment made pursuant to this Paragraph. An IRS Form 1099 shall

1 be provided to Class Counsel for the payments made pursuant to this Paragraph.

2 54. Notice Procedure. The Settlement Administrator shall be responsible for the
3 following notice procedure:

4 a. Delivery of the Class List. Within fifteen (15) calendar days after Preliminary
5 Approval, Defendant shall provide the Class List to the Settlement Administrator. The Settlement
6 Administrator shall keep the Class List confidential and shall not disclose it to anyone, except: (i) to
7 carry out reasonable efforts for administration of the settlement, as described below; (ii) if a
8 Settlement Class Member seeks information from Class Counsel regarding the Settlement, the
9 Settlement Administrator may share information with Class Counsel that is contained in the Class
10 List regarding that particular Settlement Class Member to the extent necessary to respond to the
11 question or issue, except that the Settlement Administrator will not share Social Security Numbers
12 with Class Counsel; or (iii) pursuant to Defendant's express written authorization.

13 b. Notice by First-Class U.S. Mail. Within ten (10) calendar days of receiving
14 the Class List, the Settlement Administrator shall send the Notice of Settlement to all Settlement
15 Class Members and PAGA Group Members via First Class U.S. Mail using the most current mailing
16 addresses identified. The Settlement Administrator shall conduct reasonable verification measures
17 relating to the addresses before the mailing.

18 c. Procedure for Lost and Undeliverable Notices. Any Notice of Settlement
19 returned to the Settlement Administrator as non-deliverable on or before the Response Deadline
20 shall be sent to the forwarding address affixed thereto. If no forwarding address is provided, the
21 Settlement Administrator shall promptly attempt to determine a correct address using a skip-trace, or
22 other search using the name, address and/or Social Security number of the Settlement Class Member
23 and/or PAGA Group Member involved, and shall re-mail the Notice of Settlement. If after
24 performing a skip-trace search, the Settlement Class Member's Notice of Settlement is again
25 returned to the Settlement Administrator as non-deliverable, that Settlement Class Member will be
26 deemed a Participating Settlement Class Member, and the Settlement Administrator will have no
27 further obligation to undertake efforts to obtain an alternative address. If after performing a skip-
28 trace search, a PAGA Group Member's Notice of Settlement is again returned to the Settlement

1 Administrator as non-deliverable, the Settlement Administrator will have no further obligation to
2 undertake efforts to obtain an alternative address. The Response Deadline for any Settlement Class
3 Member who is re-mailed a Notice of Settlement shall be extended fifteen (15) calendar days from
4 the original Response Deadline. If the Response Deadline for any Settlement Class Member is later
5 than the original 45 calendar day deadline, the Settlement Administrator shall include a letter with
6 the Notice of Settlement advising the Settlement Class Member of the adjustment to the Response
7 Deadline.

8 55. Disputed Information on Notice of Settlement. Each Settlement Class Member may
9 dispute the number of Pay Periods attributed to him or her in the Notice of Settlement and must
10 submit such a dispute to the Settlement Administrator on or before the Response Deadline. If a
11 Settlement Class Member disputes the number of Pay Periods listed in the Notice of Settlement,
12 the Settlement Class Member may produce evidence to the Settlement Administrator
13 demonstrating that such information is inaccurate. Absent evidence rebutting Defendant's records,
14 Defendant's records will be determinative.

15 56. Request for Exclusion Procedure. The Notice of Settlement shall give Settlement
16 Class Members instructions on how to exclude themselves, or "opt out," from the Settlement.

17 a. Settlement Class Members who wish to opt out of the Settlement shall notify
18 the Settlement Administrator in writing by mail or email that they want to exclude themselves (*i.e.*,
19 opt out) from the Settlement. The request to opt out sent to the Settlement Administrator must be
20 postmarked, or email date and timestamped, no later than the Response Deadline.

21 b. The proposed order granting Preliminary Approval of the Settlement will
22 provide, and the Notice of Settlement will instruct Settlement Class Members, that, to be valid, a
23 written request to opt out of the Settlement Agreement must include the Settlement Class Member's
24 name, address, last four digits of his/her Social Security Number, and signature and state the
25 following: I wish to opt-out of the settlement of the lawsuit titled *Rodriguez v. U.S. Bank National*
26 *Association*; or *Malik v. U.S. Bank National Association*; or *Yousefi v. U.S. Bank National*
27 *Association* (or words to a similar effect).

28 c. A Settlement Class Member who properly and timely submits a request to opt

1 out of the Settlement Agreement will not become a Participating Settlement Class Member, will not
2 be allowed to object to this Settlement Agreement, and will not be bound by the Settlement
3 Agreement except as otherwise provided in Paragraph 59.

4 d. Counsel for the Parties shall not encourage or discourage any Settlement Class
5 Member from participating in, objecting to, or opting out of the Settlement.

6 e. If ten percent (10%) or more of the Settlement Class Members opt out, then
7 Defendant shall have the right, in its sole discretion, to void and revoke the Settlement Agreement
8 and its stipulation to class certification. After the Settlement Administrator sends its report of the
9 final number of Settlement Class Members who have opted out, Defendant shall have ten (10)
10 calendar days from the receipt of the Settlement Administrator's report to notify Class Counsel in
11 writing of its intent to revoke the Settlement Agreement and the conditional class certification. In the
12 event that Defendant exercises its option to revoke the Settlement Agreement, Defendant agrees to
13 pay the Settlement Administration Costs incurred by the Settlement Administrator up to the date of
14 Defendant's notice to revoke.

15 57. Objections. Any Settlement Class Member who has not timely and properly opted
16 out (i.e., any Participating Settlement Class Member) may object to the proposed Settlement in
17 writing. To object, a Participating Settlement Class Member may mail or email his/her written
18 objection by the Response Deadline. A Participating Settlement Class may also appear at the Final
19 Approval hearing to have their objections heard by the Court. All written objections must include:
20 (a) the objector's full name, current address, and telephone number; (b) at least one case name and
21 number (*Rodriguez v. U.S. Bank National Association*, Case No. BC617356; *Malik v. U.S. Bank*
22 *National Association*, Case No. 19STCV17516; or *Yousefi v. U.S. Bank National Association*,
23 Case No. 3:20-cv-01770-BAS-AGS); (c) the basis of the objection, including the reasons why the
24 objector believes that the Court should find that the Settlement is not in the best interests of the
25 Settlement Class and why the Settlement should not be approved; and (d) any and all supporting
26 papers (including, without limitation, all briefs, written evidence, and declarations) for which the
27 objection is based. The written objection must be mailed to the Settlement Administrator, who will
28 forward the objection to the Parties for submission to the Court, and be postmarked, or email date

1 and timestamped, on or before the Response Deadline. The postmark date of the mailing, or email
2 date and timestamp, shall be deemed the exclusive means for determining whether a written
3 objection is timely. Alternatively, even if written objections are not made, Settlement Class
4 Members may still appear at the Final Approval hearing to orally object. Settlement Class
5 Members who fail to make objections in the manner specified above specified in this Paragraph
6 shall be deemed to have waived any objections and shall be foreclosed from making any
7 objections (whether by appeal or otherwise) to the Settlement. Settlement Class Members shall be
8 permitted to withdraw their objections in writing by submitting a withdrawal statement to the
9 Settlement Administrator, orally at the Final Approval hearing, or as otherwise ordered by the
10 Court.

11 58. The Settlement Terms Bind All Settlement Class Members Who Do Not Opt-Out.

12 Any Settlement Class Member who does not affirmatively opt-out of the Settlement Agreement by
13 submitting a timely and valid exclusion from the Settlement, consistent with the terms of the
14 Settlement Agreement, shall be bound by all of its terms, including those pertaining to the Retail
15 Banking Class Released Claims, the Non-Retail Banking Class Released Claims, the Retail
16 Banking PAGA Released Claims, and the Non-Retail Banking PAGA Released Claims as well as
17 any judgment that may be entered by the Court after it grants Final Approval of the Settlement.

18 59. No PAGA Opt-Out. No PAGA Group Member may opt out of or be excluded from
19 participating in the settlement of the Retail Banking PAGA Released Claims or the Non-Retail
20 Banking PAGA Released Claims. All PAGA Group Members shall: (a) be bound by the judgment
21 entered herein and will have released the Retail Banking PAGA Released Claims or Non-Retail
22 Banking PAGA Released Claims (as applicable) if/when the Court grants final approval of this
23 settlement; and (b) be mailed his/her respective portion of the PAGA Amount. If the Court grants
24 final approval of the Settlement, the occurrence of the Effective Date shall forever bar Plaintiffs,
25 the LWDA, and any other representative, proxy, or agent thereof, including but not limited to any
26 and all PAGA Group Members from pursuing any action pursuant to PAGA against the Released
27 Parties for the Retail Banking PAGA Released Claims or the Non-Retail Banking PAGA Released
28 Claims.

1 60. Certification Reports Regarding Requests for Exclusion and Disputes. The
2 Settlement Administrator shall provide Class Counsel and Defense Counsel a weekly report which
3 certifies: (a) the number of Settlement Class Members who have submitted a letter requesting
4 exclusion from the Settlement, including a statement as to whether the letter is valid or defective;
5 (b) whether any Settlement Class Member has submitted a challenge to any information contained
6 in their Notice of Settlement; and (c) the number of returned, undeliverable and/or re-mailed
7 Notices of Settlement. Additionally, the Settlement Administrator will provide to counsel for both
8 Parties any updated reports regarding the administration of the Settlement Agreement as needed or
9 requested.

10 61. Effect of Increase of Participating Settlement Class Members on Settlement
11 Amount. If the number of total unique Participating Settlement Class Members exceeds 14,774
12 (which is 10% more than 13,431 individuals), then the Net Settlement Amount shall increase by
13 the same percentage that the number of total unique Participating Settlement Class Members
14 exceeds 14,774. For example, if the number of Participating Settlement Class Members exceeds
15 14,774 by 2%, then the Net Settlement Amount will increase by 2%.

16 62. Individual Settlement Share Calculations. The Settlement Administrator shall
17 determine the amounts of all Individual Settlement Shares. The Net Class Settlement Amount
18 (“NCSA”) will be split into two (2) funds: *Fund 1* for the Retail Banking Settlement Class; and
19 *Fund 2* for the Non-Retail Banking Settlement Class. Fund 1 represents 90.00% of the NCSA and
20 Fund 2 represents 10.00% of the NCSA.

21 a. Retail Banking Settlement Class. Each Participating Retail Banking
22 Settlement Class Member’s Individual Class Settlement Share shall be calculated by (a) dividing
23 Fund 1 by the total number of Pay Periods worked by all Retail Banking Settlement Class Members
24 during the Retail Banking Class Period and (b) multiplying the result by the number of Pay Periods
25 the Participating Retail Banking Settlement Class Member worked during the Retail Banking Class
26 Period.

27 b. Non-Retail Banking Settlement Class. Each Participating Non-Retail Banking
28 Settlement Class Member’s Individual Class Settlement Share shall be calculated by (a) dividing

1 Fund 2 by the total number of Pay Periods worked by all Non-Retail Banking Settlement Class
2 Members during the Non-Retail Banking Class Period and (b) multiplying the result by the number
3 of Pay Periods the Participating Non-Retail Banking Settlement Class Member worked during the
4 Non-Retail Banking Class Period.

5 c. The Notice of Settlement shall state the recipient's estimated Individual Class
6 Settlement Share.

7 63. Tax Allocation of Individual Class Settlement Shares. The Individual Class
8 Settlement Shares shall be allocated Twenty-Five percent (25%) as W-2 wages and Seventy-Five
9 percent (75%) as 1099 payments for penalties and interest. The Individual Class Settlement Shares
10 will be paid to Participating Settlement Class Member subject to reduction for all employees'
11 share of typical withholdings and taxes associated with the wage-portion of the Individual Class
12 Settlement Shares.

13 64. Individual PAGA Payment Calculations. The Settlement Administrator shall
14 determine the amounts of all Individual PAGA Payments. The PAGA Group Members Amount
15 ("PGMA") will be split into two (2) funds: *Fund A* for the Retail Banking PAGA Group and *Fund*
16 *B* for the Non-Retail Banking PAGA Group. Fund A represents 90.00% of the PGMA and Fund B
17 represents 10.00% of the PGMA.

18 a. Retail Banking PAGA Group. Each Retail Banking PAGA Group Member's
19 Individual PAGA Payment shall be calculated by (a) dividing Fund A by the total number of Pay
20 Periods worked by all Retail Banking PAGA Group Members during the Retail Banking PAGA
21 Period and (b) multiplying the result by the number of Pay Periods the Retail Banking PAGA
22 Group Member worked during the Retail Banking PAGA Period.

23 b. Non-Retail Banking PAGA Group. Each Non-Retail Banking PAGA Group
24 Member's Individual PAGA Payment shall be calculated by (a) dividing Fund B by the total
25 number of Pay Periods worked by all Non-Retail Banking PAGA Group Members during the Non-
26 Retail Banking PAGA Period and (b) multiplying the result by the number of Pay Periods the
27 Non-Retail Banking PAGA Group Member worked during the Non-Retail Banking PAGA Period.

28 c. The Notice of Settlement shall state the recipient's estimated Individual

1 PAGA Payment.

2 65. Tax Allocation of PAGA Payments. The Individual PAGA Payments made to
3 PAGA Group Members shall be allocated 100 percent (100%) as 1099 payments for penalties.

4 66. Payment of Settlement Amounts. The Settlement Administrator shall have the
5 authority and obligation to make all payments, credits, and disbursements, calculated in
6 accordance with the methodology set out in the Settlement Agreement and orders of the Court.

7 a. The Settlement Administrator's duties include, and are not limited to,
8 reporting payments under the Settlement to all required taxing and other authorities, taking and
9 transmitting the appropriate employee's and employer's share of withholdings and taxes with
10 respect to the wage-portion of the Individual Settlement Share, and issuing IRS Forms W-2 and
11 1099. No person shall have any claim against Defendant, Defense Counsel, Plaintiffs, Settlement
12 Class Members, PAGA Group Members, Class Counsel, or the Settlement Administrator based on
13 distributions and payments made in accordance with the Settlement Agreement.

14 b. With respect to Participating Settlement Class Members and PAGA Group
15 Members whose Notice of Settlement are undeliverable, settlement checks shall be sent to the last
16 address obtained by the Settlement Administrator with respect to the Participating Settlement
17 Class Member and/or PAGA Group Member.

18 67. Distribution Timing. Within ten (10) calendar days after Defendant deposits the
19 Gross Settlement Amount into the Qualified Settlement Account, the Settlement Administrator
20 shall distribute the Gross Settlement Amount and associated tax payments, including Individual
21 Class Settlement Payments to Participating Settlement Class Members, Individual PAGA
22 Settlement Payments to PAGA Group Members, the portion of the PAGA Amount to be paid to
23 the LWDA, the Representative Service Awards to Plaintiffs, and the Class Counsel Award to
24 Class Counsel. The Settlement Administrator shall also issue a payment to itself for the services
25 performed in connection with the Settlement.

26 68. Non-Negotiated Settlement Checks. Any checks issued by the Settlement
27 Administrator to Participating Settlement Class Members and PAGA Group Members shall be
28 negotiable for one hundred and eighty (180) calendar days. Those funds represented by settlement

1 checks returned as undeliverable, and the funds which correspond with the settlement checks that
2 are not negotiated within one hundred and eighty (180) calendar days after issuance shall be
3 tendered, will be submitted by the Settlement Administrator to the State of California's State
4 Controller's Unclaimed Property Fund in the Class Member's name.

5 69. Settlement Administrator's Final Report(s). Not less than ten (10) calendar days
6 after the Response Deadline, the Settlement Administrator shall provide Class Counsel and
7 Defense Counsel a report showing: (i) the number of Notices of Settlement mailed; (ii) the number
8 of returned and undelivered Notices of Settlement; (iii) the number of re-mailed Notices of
9 Settlement; (iv) the number of total undeliverable Notices of Settlement after re-mailing; (iv) the
10 number of address traces performed for undeliverable Notices of Settlement after re-mailing;
11 (v) the number of Notices of Settlement undeliverable from traced addresses; (vi) the final number
12 of Settlement Class Members who have submitted objections; (vii) the final number of Settlement
13 Class Members who disputed their number of Pay Periods listed in the Notice of Settlement; and
14 (viii) the final number of Settlement Class Members who have submitted valid letters requesting
15 exclusion from the Settlement. Upon completion of administration of the Settlement, the
16 Settlement Administrator shall provide written certification/declaration of such completion to
17 counsel for all Parties and the Court, if requested by the Parties.

18 70. Amended Complaint. In connection with this Settlement, Plaintiffs shall file a
19 Fourth Amended Complaint in *Rodriguez* in the form attached hereto as Exhibit B. The Fourth
20 Amended Complaint: (a) adds Malik and Yousefi as named Plaintiffs in *Rodriguez*; and (b)
21 includes all the factual allegations and claims currently alleged in the Complaints in the Actions
22 solely for the purpose of facilitating the settlement of the Actions. The Parties agree that
23 Defendant shall maintain any and all affirmative defenses but shall not be required to file an
24 Answer or other responsive pleading to the Fourth Amended Complaint and that such agreement
25 precludes Plaintiffs from any right to: (a) obtain a default judgment against Defendant on the basis
26 that Defendant did not respond to the Fourth Amended Complaint; (b) argue that Defendant
27 waived any right to a demurrer or other challenge to the pleadings; and (c) argue that Defendant
28 waived any affirmative defense. If the Settlement does not obtain Preliminary and Final Approval,

1 Plaintiffs will withdraw the Fourth Amended Complaint and it will be void *ab initio*.

2 71. Amended LWDA Letter. In connection with this Settlement, and solely for the
3 purpose of facilitating the settlement of the Actions, Plaintiffs shall send an amended letter to the
4 LWDA that covers the Non-Retail Banking PAGA Released Claims and the Retail Banking PAGA
5 Released Claims, including the factual allegations to support those claims (the “Amended LWDA
6 Letter”). If the Settlement does not obtain Preliminary and Final Approval, Plaintiffs will
7 withdraw the Amended LWDA Letter and it will be void *ab initio*.

8 72. Stay and Ultimate Dismissal of *Malik* and *Yousefi*. The Parties agree that the
9 *Rodriguez, Malik, and Yousefi* actions shall be stayed, for all purposes other than approval of a
10 class action settlement (this shall include a stay to the time limit imposed by Cal. Code of Civ.
11 Proc. section 583.310) pending the approval process. On or before the date the motion for
12 Preliminary Approval is filed, the Parties shall submit a joint stipulation or joint motion (as
13 appropriate) in both *Malik* and *Yousefi* to obtain these stays. Once the Effective Date has occurred,
14 the Parties will request a dismissal with prejudice of the *Malik* and *Yousefi* actions.

15 73. Release of Claims By Participating Settlement Class Members. Upon the date
16 Defendant transfers the Gross Settlement Amount to the Settlement Administrator, and except as
17 to such rights or claims as may be created by the Settlement Agreement, each and every
18 Participating Settlement Class Member, on behalf of themselves and their heirs and assigns, shall
19 release the Released Parties as follows:

20 a. All Retail Banking Settlement Class Members who do not submit a valid
21 letter requesting to be excluded from the Settlement (consistent with the terms set forth in the
22 Settlement Agreement) shall release the Released Parties from the Retail Banking Class Released
23 Claims.

24 b. All Non-Retail Banking Settlement Class Members who do not submit a
25 valid letter requesting to be excluded from the Settlement (consistent with the terms set forth in the
26 Settlement Agreement) shall release the Released Parties from the Non-Retail Banking Class
27 Released Claims.

28 c. Notwithstanding Paragraph 73.b above, all *Tomlinson/Sharkey* Employees

1 shall release the Non-Retail Banking Class Released Claims as to the Released Parties, except that,
2 during the period from March 19, 2018 to April 24, 2021, under this Settlement they shall be
3 deemed to release only any and all claims, known or unknown, for and/or relating to: the proper
4 calculation of the regular rate of pay for purposes of sick pay; the rate of payment for sick leave;
5 and underpayment of sick leave. The *Tomlinson/Sharkey* Employees shall be deemed to release all
6 the Non-Retail Banking Class Released Claims against the Released Parties through March 18,
7 2018.

8 74. Release of Claims By PAGA Group Members. Upon the date Defendant transfers
9 the Gross Settlement Amount to the Settlement Administrator, and except as to such rights or
10 claims as may be created by the Settlement Agreement, each and every PAGA Group Member, on
11 behalf of themselves and their heirs and assigns, shall release the Released Parties as follows:

12 a. All Retail Banking PAGA Group Class Members shall release the Released
13 Parties from the Retail Banking PAGA Released Claims.

14 b. All Non-Retail Banking PAGA Group Class Members shall release the
15 Released Parties from the Non-Retail Banking PAGA Released Claims.

16 c. Notwithstanding Paragraph 74.b above, all *Tomlinson/Sharkey* Employees
17 shall release only claims for civil penalties under the California Labor Code Private Attorneys
18 General Act of 2004, Labor Code §§ 2698, *et seq.* premised on: the proper calculation of the
19 regular rate of pay for purposes of sick pay; the rate of payment for sick leave; and underpayment
20 of sick leave against the Released Parties.

21 75. General Release by Plaintiffs Only. Upon the date Defendant transfers the Gross
22 Settlement Amount to the Settlement Administrator, Plaintiffs shall release the Released Parties
23 from the Retail Banking Class Released Claims and the Retail Banking PAGA Released Claims
24 and, in addition, Plaintiffs make the additional following General Release in favor of the Released
25 Parties:

26 a. Plaintiffs individually hereby unconditionally waive and forever release the
27 Released Parties from any and all demands, damages, debts, liabilities, actions, causes of action and
28 claims of every kind and nature whatsoever, whether now known or unknown, suspected or

1 unsuspected, contingent or non-contingent, whether or not concealed or hidden, arising or accruing
2 at any time prior to the Effective Date, which now exist, or heretofore have existed, upon any theory
3 of law or equity, including, without limitation, all claims under the Fair Employment and Housing
4 Act, Americans with Disabilities Act, Age Discrimination in Employment Act, and Title VII of the
5 Civil Rights Act of 1964. Plaintiffs are deemed by operation of the order granting Final Approval to
6 have agreed not to sue or otherwise make a claim against any of the Released Parties for any claim.

7 b. Plaintiffs acknowledge that they have each had the opportunity to review, and
8 have reviewed, California Civil Code section 1542, which provides:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
10 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
11 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
12 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
13 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
14 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

13 Being fully informed of this provision of the Civil Code and understanding its provisions, Plaintiffs
14 agree to waive any rights under that section (or any statute or common law principle of similar
15 effect), and acknowledge that the Settlement Agreement and the release contained herein extends to
16 all claims that they have or might have against the Released Parties, including those which are
17 presently unknown to them.

18 76. Plaintiffs' Release of Age Discrimination in Employment Act Claims. Plaintiff
19 Malik and Plaintiff Yousefi understand and acknowledge that:

20 a. They are each voluntarily waiving any and all rights and claims they have
21 against the Released Parties arising pursuant to the Age Discrimination in Employment Act, 29
22 U.S.C. §§ 623, et seq. ("ADEA") as of the date they sign the Settlement Agreement;

23 b. They are waiving these substantive rights or claims pursuant to the
24 Settlement Agreement in exchange for consideration, the value of which exceeds the payment or
25 remuneration to which they were already entitled;

26 c. They have been advised in writing to consult with an attorney of their
27 choosing concerning the Settlement Agreement prior to executing it. They further acknowledge
28

1 that they sought such advice, that their counsel advised them to sign the Settlement Agreement,
2 and that their execution of the Settlement Agreement is voluntary and without coercion;

3 d. They have been given at least twenty-one (21) days to consider the terms of
4 the Settlement Agreement, and in the event they decide to sign the Settlement Agreement in fewer
5 than twenty-one (21) days, they have done so with the express understanding that they had been
6 given and declined the opportunity to consider it for a full twenty-one (21) days;

7 e. They may revoke their waiver of claims arising pursuant to the ADEA at any
8 time during the seven (7) days following the date they sign the Settlement Agreement. Plaintiffs
9 understand and agree that should they revoke their waiver of claims arising pursuant to the ADEA
10 at any time during the seven (7) days following the date they sign the Settlement Agreement, they
11 will receive ten percent (10%) of their respective Court-approved Representative Service Award
12 and such amount will be the consideration for the general release of all their rights and claims
13 addressed in the Settlement Agreement except any claims they may have pursuant to the ADEA.
14 Plaintiffs further understand and agree that should they not revoke their waiver of claims arising
15 pursuant to the ADEA during the seven (7) days following the date they sign the Settlement
16 Agreement, they will receive one hundred percent (100%) of their respective Representative
17 Service Award and such amount will be consideration for the general release of all rights and
18 claims addressed in the Settlement Agreement, including any claims they may have pursuant to the
19 ADEA;

20 f. Any revocation must be in writing and delivered by hand or certified mail to
21 Joan B. Tucker Fife, Winston & Strawn LLP, 101 California Street, 35th Floor, San Francisco,
22 California 94111; and

23 g. Any changes to the Settlement Agreement, whether material or immaterial,
24 do not restart the twenty-one-day (21-day) consideration period.

25 77. Final Approval Hearing and Entry of Judgment. Upon expiration of the deadlines to
26 postmark a letter requesting exclusion from the Settlement, or objections to the Settlement
27 Agreement, and with the Court's permission, a Final Approval hearing shall be conducted to
28 finally determine the fairness of the Settlement, along with the amounts properly payable for

1 (a) Individual Class Settlement Payments, (b) the Class Counsel Award, (c) the Representative
2 Service Award Payments, (c) Individual PAGA Settlement Payments, (d) payment to the LWDA,
3 and (e) all Settlement Administration Costs. Plaintiffs' Counsel will be responsible for drafting the
4 attorneys' fees and costs application to be heard at the Final Approval hearing.

5 78. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by the
6 Court or after the Final Approval hearing, the Parties shall present a proposed judgment to the
7 Court for its approval. After entry of the judgment, the Court shall have continuing jurisdiction
8 under Code of Civil Procedure section 664.6 solely for purposes of addressing: (a) the
9 interpretation and enforcement of the terms of the Settlement, (b) Settlement administration
10 matters, and (c) such post-judgment matters as may be appropriate under court rules or as set forth
11 in this Agreement.

12 79. No Solicitation of Settlement Objections or Exclusions. The Parties agree to use
13 their best efforts to carry out the terms of the Settlement Agreement. At no time shall any of the
14 Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit
15 either a letter requesting exclusion from the Settlement or written objections to the Settlement
16 Agreement or to appeal from the Court's final judgment.

17 80. Nullification of Settlement Agreement. The Settlement Agreement shall be null and
18 void and any order or judgment entered by the Court in furtherance of the Settlement shall be
19 treated as void from the beginning if: (i) Defendant exercises its option to rescind the Settlement
20 Agreement under the terms and conditions as set forth in Paragraph 56(e); (ii) the Court does not
21 finally approve the Settlement as provided herein; (iii) the Court does not enter a final judgment as
22 provided herein; or (iv) the Settlement does not become final for any other reason. In such a case,
23 the Parties shall be returned to their respective statuses as of the date and time immediately prior to
24 the execution of the Settlement Agreement and the Parties shall proceed in all respects as if the
25 Settlement Agreement had not been executed. In the event an appeal is filed from the Court's final
26 judgment, or any other appellate review is sought prior to the Effective Date, administration of the
27 Settlement shall be stayed pending final resolution of the appeal or other appellate review (unless
28 otherwise agreed to by the Parties).

1 **IV. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY APPROVAL AND**
2 **BETWEEN PRELIMINARY AND FINAL APPROVAL**

3 81. Promptly after execution of the Settlement Agreement, Plaintiff shall move the
4 Court for Preliminary Approval of the Settlement and obtain entry of an order accomplishing the
5 following:

- 6 a. Preliminarily approving the Settlement;
- 7 b. Approving as to form and content the proposed Notice of Settlement;
- 8 c. Directing the mailing of the Notice of Settlement;
- 9 d. Preliminarily appointing Plaintiffs and Class Counsel as representatives of the
10 Settlement Class Members and PAGA Group Members;
- 11 e. Preliminarily approving the application for the Class Counsel Award;
- 12 f. Preliminarily setting the Representative Service Awards;
- 13 g. Preliminarily approving settlement administration services to be provided by
14 the Settlement Administrator and Settlement Administration Costs;
- 15 h. Preliminarily approving the PAGA Amount; and
- 16 i. Scheduling the Final Approval hearing, which is a fairness hearing on the
17 question of whether the proposed Settlement Agreement should be finally approved as fair,
18 reasonable, and adequate.

19 82. The Parties shall submit the Settlement Agreement in support of Plaintiff's
20 unopposed motion for Preliminary Approval of the Settlement. Plaintiff shall provide Defendant
21 no fewer than three (3) business days to review the motion for Preliminary Approval, and shall not
22 file the motion for Preliminary Approval or any other documents until Defendant has approved
23 their contents.

24 83. Class Counsel will file a motion for Final Approval of the Settlement and
25 supporting documents with the Court at least sixteen (16) court days before the Final Approval
26 hearing or such other date as the Court directs. Supporting documents include: (a) a declaration by
27 the Settlement Administrator of due diligence and proof of mailing of the Notice of Settlement,
28 and of the delivery results of the Settlement Administrator's mailings including tracing and re-

1 mailing efforts; (b) a proposed order granting Final Approval; and (c) a proposed final judgment.
2 Class Counsel will send Defense Counsel the motion for Final Approval of the Settlement for
3 review, comments, and changes no less than five (5) business days prior to filing the motion.
4 Defendant shall have three (3) business days in which to provide its comments. The Parties will
5 meet and confer and agree upon the proposed order granting Final Approval and the proposed final
6 judgment. Defendant will not oppose Final Approval of the Settlement.

7 84. Class Counsel will submit a proposed order and judgment for Final Approval. The
8 proposed order and judgment shall include the following findings and orders:

- 9 a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable,
10 and adequate, and directing that its terms and provisions be carried out;
11 b. Approving the payment of the Representative Service Awards to Plaintiffs;
12 c. Approving Class Counsel's application for the Class Counsel Award;
13 d. Approving the PAGA Amount; and
14 e. Providing that the Court will retain jurisdiction to oversee administration and
15 enforcement of the terms of the Settlement and the Court's orders.

16 **V. DUTIES OF THE PARTIES AFTER FINAL COURT APPROVAL**

17 85. Following entry of the Court's Final Approval order and judgment, the Parties will
18 each act to assure its timely execution and the fulfillment of all its provisions, including but not
19 limited to the following:

- 20 a. Should an appeal be taken from the Final Approval of the Settlement, all
21 Parties will support the Final Approval order on appeal.
22 b. Class Counsel and Defense Counsel will reasonably assist the Settlement
23 Administrator as needed or requested in the process of identifying and locating Participating
24 Settlement Class Members and/or PAGA Group Members;
25 c. Class Counsel will ensure that the Settlement Administrator will certify to the
26 Court completion of all payments required to be made by the Settlement Agreement.
27 d. Once the Effective Date has occurred, the Parties will request a dismissal with
28 prejudice of the *Malik* and *Yousefi* actions.

1 **VI. OTHER PROVISIONS**

2 86. No Admission. Nothing contained herein, nor the consummation of the Settlement
3 Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or
4 wrongdoing on the part of Defendant or any of the other Released Parties. The Parties have entered
5 into the Settlement Agreement with the intention of avoiding further disputes and litigation with
6 their attendant inconvenience and expenses. The Settlement Agreement is a settlement document
7 and, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408
8 and/or any other similar law, shall be inadmissible in evidence in any proceeding, except an action
9 or proceeding to approve the Settlement, and/or interpret or enforce the Settlement.

10 87. Notices. Unless otherwise specifically provided herein, all notices, demands or
11 other communications given hereunder shall be in writing and shall be deemed to have been duly
12 given as of the third business day after mailing by United States registered or certified mail, return
13 receipt requested, addressed as follows:

<u>To Plaintiff's Counsel:</u>	<u>To Defendant's Counsel:</u>
THE MYERS LAW GROUP, A.P.C. David P. Myers Robert M. Kitson Jason Hatcher 9327 Fairway View Place, Suite 100 Rancho Cucamonga, CA 91730	WINSTON & STRAWN LLP Joan B. Tucker Fife 101 California Street, 35th Floor San Francisco, CA 94111
DIVERSITY LAW GROUP, P.C. Larry W. Lee Kristen M. Agnew Nicholas Rosenthal 515 S. Figueroa Street, Suite 1250 Los Angeles, California 90071	WINSTON & STRAWN LLP Emilie C. Woodhead Jason S. Campbell Tristan R. Kirk 333 S. Grand Ave., 38th Floor Los Angeles, California 90071
POLARIS LAW GROUP LLP William L. Marder 501 San Benito Street, Suite 200 Hollister, California 95023	

26
27 88. Tax Liability. The Parties make no representations as to the tax treatment or legal
28 effect of the payments called for hereunder, and Settlement Class Members are not relying on any

1 statement or representation by the Parties in this regard. Settlement Class Members and PAGA
2 Group Members understand and agree that each will be solely responsible for the payment of any
3 taxes and penalties assessed on the payments which are issued to them, as described herein, and
4 will defend, indemnify, and hold the Parties free and harmless from and against any claims
5 resulting from treatment of such payments as non-taxable damages.

6 89. Return of Defendant's Confidential Records. Plaintiffs and Class Counsel agree to
7 return or destroy all confidential documents produced by Defendant in the Actions (whether
8 produced in electronic or paper form) within ten (10) days of Defendant's request. Should Class
9 Counsel elect to destroy those documents, they shall certify under penalty of perjury that such
10 documents have been destroyed. To the extent any information is provided during the Settlement
11 process concerning Settlement Class Members, it shall be designated Confidential and shall not be
12 used except as provided herein.

13 90. Exhibits and Headings. The terms of this Agreement include the terms set forth in
14 any attached exhibits, which are incorporated by this reference as though fully set forth herein.
15 Any exhibits are an integral part of the Settlement. The descriptive headings of any paragraphs or
16 sections of the Settlement Agreement are inserted for convenience of reference only and do not
17 constitute a part of the Settlement Agreement.

18 91. Amendment or Modification. Unless otherwise provided herein, the Settlement
19 Agreement may be amended or modified only by a written instrument signed by counsel for all
20 Parties or their successors-in-interest.

21 92. Entire Agreement. The Settlement Agreement, any supplemental written agreement
22 subsequently incorporated, and any attached Exhibits constitute the entire Settlement Agreement
23 among these Parties, and no oral or written representations, warranties or inducements have been
24 made to any Party concerning the Settlement Agreement or its Exhibits other than the
25 representations, warranties and covenants contained and memorialized in such documents.

26 93. Authorization to Enter Into Settlement Agreement. The signatories hereto represent
27 that they are fully authorized to enter into the Settlement Agreement and bind the Parties hereto to
28 the terms and conditions hereof.

1 94. Mutual Full Cooperation. The Parties and their counsel will cooperate with each
2 other and use their best efforts to effect the implementation of the Settlement. Any disputes arising
3 out of or relating to this Settlement Agreement will be submitted to mediator Michael J. Loeb for
4 resolution. The Parties will split the costs of the mediator for any such time incurred by the
5 mediator in reaching such resolution, and all Parties will bear their own attorneys' fees and other
6 costs incurred.

7 95. Binding on Successors and Assigns. The Settlement Agreement shall be binding
8 upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors,
9 administrators, and successors. The Parties hereto represent, covenant, and warrant that they have
10 not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
11 encumber to any person or entity any portion of any liability, claim, demand, action, cause of
12 action or rights herein released and discharged except as set forth herein.

13 96. Participating Settlement Class Member and PAGA Group Member Signatories. It is
14 agreed that because the Participating Settlement Class Members and PAGA Group Members are
15 numerous, it is impossible or impractical to have each Participating Settlement Class Member and
16 PAGA Group Member execute the Settlement Agreement. The Notice of Settlement will advise all
17 Settlement Class Members and PAGA Group Members of the binding nature of the release and,
18 upon Final Approval, such shall have the same force and effect as if the Settlement Agreement
19 were executed by each Participating Settlement Class Member and PAGA Group Member.

20 97. California Law Governs. All terms of the Settlement Agreement and the exhibits
21 hereto shall be governed by and interpreted according to the laws of the State of California.

22 98. Counterparts. The Settlement Agreement may be executed in one or more
23 counterparts. All executed counterparts and each of them, including electronic, pdf, DocuSign, and
24 scanned copies of the signature page, shall be deemed to be one and the same instrument provided
25 that counsel for the Parties to the Settlement Agreement shall exchange among themselves original
26 signed counterparts.

27 99. Plaintiffs' Waiver of Right to be Excluded. Plaintiffs agree that by signing the
28 Settlement Agreement, they are bound by the terms herein stated and further agree not to request

1 to be excluded from the Settlement Class.

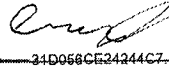
2 100. Confidentiality Preceding Preliminary Approval. Plaintiffs and Class Counsel agree
3 that the terms of the Settlement (including, but not limited to, the Gross Settlement Amount), the
4 negotiations leading to the Settlement, and all documents related to the Settlement shall not be
5 discussed with, publicized, or promoted to the public, except as necessary to seek approval of the
6 Settlement Agreement and/or effectuate or enforce the terms of the Settlement Agreement.

7 Notwithstanding the foregoing, Plaintiffs and Class Counsel may tell the public in general only
8 that certain claims “have been resolved by the Parties.” Plaintiffs and Class Counsel will not
9 publish or publicize the Settlement Amount and will not issue any press releases except that
10 Plaintiffs and Class Counsel may disclose in legal proceedings a summary of the terms of the
11 Settlement. For the limited purpose of allowing Class Counsel to prove adequacy as class counsel
12 in other actions, Class Counsel is allowed to disclose the names of the Parties in the actions and
13 the venues/case numbers of these actions (but not any other details regarding the Settlement) for
14 such limited purposes.

15 SIGNATURES ON THE FOLLOWING PAGE
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1 Dated: October 25, 2021, 2021

DocuSigned by:



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Plaintiff Charles Rodriguez

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3 Dated: _____, 2021

Plaintiff Ali Malik

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5 Dated: _____, 2021

Plaintiff Atefeh Yousefi

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8 Dated: 10/25, 2021

U.S. Bank National Association



By: Jeffery Brockmann

Its: VP and Assistant General Counsel

12 APPROVED AS TO FORM:

13
14 Dated: November 5, 2021

THE MYERS LAW GROUP, A.P.C.


By: David P. Myers

Robert M. Kitson

Jason Hatcher

Attorneys for Plaintiff Rodriguez, the Class, and
Aggrieved Employees

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19 Dated: _____, 2021

DIVERSITY LAW GROUP, P.C.

By: Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiffs Malik and Yousefi, the
Class, and Aggrieved Employees

20
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23
24 Dated: _____, 2021

POLARIS LAW GROUP LLP

By: William L. Marder

Attorneys for Plaintiff Malik, the Class, and
Aggrieved Employees

1 Dated: _____, 2021

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3 Dated: 10/26, 2021

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APPROVED AS TO FORM:

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Dated: 10/26, 2021

Plaintiff Charles Rodriguez

DocuSigned by:

Ali Malik

Plaintiff Ali Malik

Plaintiff Atefeh Yousefi

U.S. Bank National Association

By: Jeffery Brockmann
Its: VP and Assistant General Counsel

THE MYERS LAW GROUP, A.P.C.

By: David P. Myers
Robert M. Kitson
Jason Hatcher
Attorneys for Plaintiff Rodriguez, the Class, and
Aggrieved Employees

DIVERSITY LAW GROUP, P.C.

By: Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Attorneys for Plaintiffs Malik and Yousefi, the
Class, and Aggrieved Employees

POLARIS LAW GROUP LLP

By: William L. Marder
Attorneys for Plaintiff Malik, the Class, and
Aggrieved Employees

1 Dated: _____, 2021

Plaintiff Charles Rodriguez

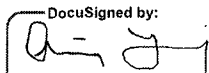
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3 Dated: _____, 2021

Plaintiff Ali Malik

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5 Dated: 11/5/2021, 2021

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Plaintiff Atefeh Yousefi

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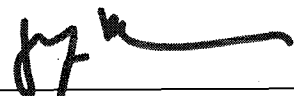
8 Dated: 10/25, 2021

U.S. Bank National Association

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By: Jeffery Brockmann
Its: VP and Assistant General Counsel

12

13 APPROVED AS TO FORM:

13

14 Dated: _____, 2021

THE MYERS LAW GROUP, A.P.C.

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16

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18

By: David P. Myers
Robert M. Kitson
Jason Hatcher
Attorneys for Plaintiff Rodriguez, the Class, and
Aggrieved Employees

19

20 Dated: _____, 2021

DIVERSITY LAW GROUP, P.C.

21

22

23

24

By: Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Attorneys for Plaintiffs Malik and Yousefi, the
Class, and Aggrieved Employees

25 Dated: _____, 2021

POLARIS LAW GROUP LLP

26

27

28

By: William L. Marder
Attorneys for Plaintiff Malik, the Class, and
Aggrieved Employees

1 Dated: October 25, 2021

WINSTON & STRAWN LLP

2
3 By: Joan B. Tucker Fife
4 Emilie C. Woodhead
5 Jason S. Campbell
6 Tristan R. Kirk
7 Attorneys for Defendant
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Exhibit A

NOTICE OF CLASS ACTION SETTLEMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES
Charles Rodriguez, Ali Malik, Atefeh Yousefi v. U.S. Bank National Association
Case No. BC617356

A court authorized this notice. This is not a solicitation from a lawyer.

This is not a lawsuit against you. You are not being sued. However, your legal rights are affected by whether you act or do not act.

TO: CLASS MEMBERS:

- **All individuals** who were employed by and performed work for U.S. Bank in any non-exempt retail banking position in California at any time during the period from April 15, 2012 until April 24, 2021.

And/Or

- **All individuals** who were employed by and performed work for U.S. Bank in any non-retail banking non-exempt hourly position in California who at any time during the period from July 2, 2017 until April 24, 2021 (a) received overtime in the same workweek as “AwardPrize”, “Best in Us”, “InvestInsur”, or “BuLineCls” pay, and/or (b) received sick pay in the same workweek as “AwardPrize”, “Best in Us”, “InvestInsur”, or “BuLineCls” pay and whose employment ended at any time between July 2, 2017 and April 24, 2021.

PAGA GROUP MEMBERS:

- **All individuals** who were employed by U.S. Bank in any non-exempt retail banking position in California at any time during the period from April 5, 2015, until April 24, 2021.

And/Or

- **All individuals** who were employed by U.S. Bank in any non-retail banking non-exempt hourly position in California who at any time during the period from May 19, 2019 until April 24, 2021 (a) received overtime in the same workweek as “AwardPrize”, “Best in Us”, “InvestInsur”, or “BuLineCls” pay, and/or (b) received sick pay in the same workweek as “AwardPrize”, “Best in Us”, “InvestInsur”, or “BuLineCls” pay and whose employment ended at any time between May 19, 2019 and April 24, 2021.

Based on information in U.S. Bank’s records, you may be a Class Member and/or a PAGA Group Member whose legal rights will be affected by this Settlement.

YOU MAY BE ENTITLED TO MONEY UNDER THIS PROPOSED CLASS ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY. IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

INFORMATION CONTAINED IN THIS NOTICE:

1. What Is This Case About?	Page 2
2. Why Have I Received This Notice?	Page 3
3. Am I a Class Member?	Page 3
4. How Does This Class Action Settlement Work?.....	Page 3
5. Who Are the Attorneys Representing the Parties?	Page 4
6. What Are My Options?	Page 5
7. How Do I Opt Out or Exclude Myself From This Settlement?	Page 5
8. How Do I Object to the Settlement?	Page 6
9. How Does This Settlement Affect My Rights?	Page 7
10. How Much Can I Expect to Receive From This Settlement?.....	Page 8
11. PAGA Action Settlement	Page 10
12. How Will the Attorneys for the Settlement Class and the Class Representative Be Paid?	Page 12
13. Notice of Final Approval Hearing in this Case	Page 12

U.S. Bank National Association (“U.S. Bank”) will not retaliate against you regarding this Settlement, whether you do nothing, ask to be excluded, or file an objection.

1. What Is This Case About?

This Settlement involves claims from three separate lawsuits brought against Defendant U.S. Bank National Association for alleged violations of wage and hour laws. The first case is pending in Los Angeles County Superior Court and is called *Charles Rodriguez v. U.S. Bank National Association dba U.S. Bank*, Case No. BC617356 (“*Rodriguez*”). The second case is pending in Los Angeles County Superior Court and is called *Ali Malik v. U.S. Bank National Association*, Case No. 19STCV17516 (“*Malik*”). The third case is pending in the Southern District of California and is called *Atefeh Yousefi v. U.S. Bank National Association*, Case No. 3:20-cv-01770-BAS-AGS (“*Yousefi*”) (together, Plaintiff Rodriguez, Plaintiff Malik, and Plaintiff Yousefi shall be referred to as “Plaintiffs”). Each case has been consolidated into the *Rodriguez* case for purposes of settlement.

Together in the consolidated case (the “Action”), Plaintiffs allege that U.S. Bank failed to provide legally compliant rest periods, legally compliant meal periods, failed to pay premium pay for these alleged rest and meal period violations (including but not limited to at the regular rate of pay), failed to pay for all hours worked (including but not limited to alleged off-the-clock work), failed to pay all earned minimum wages and overtime/double time wages, failed to pay overtime/double time wages at the correct regular rate of pay, failed to pay all sick leave, failed to pay sick leave at the correct regular rate of pay and/or at an otherwise proper rate, failed to provide accurate wage statements, failed to pay all earned wages at termination and failed to pay waiting time penalties based thereon, forfeited vacation pay, failed to keep accurate employment records pursuant to California Labor Code and Wage Order requirements, and failed to allow timely inspection/copying of personnel records. The Action also alleges that U.S. Bank violated California’s Unfair Competition Law (Bus. & Prof. Code § 17200, *et seq.*) and is liable for civil penalties under the Private Attorneys General Act (Lab. Code § 2698, *et seq.*) (“PAGA”) for these claims. Plaintiffs assert these claims on behalf of themselves and all other hourly retail banking employees in California for U.S. Bank during the Retail Banking Class Period and all other hourly non-retail banking employees in California who received Incentive Compensation in the same workweek as overtime and/or sick pay for the Non-Retail Banking Class Period, against U.S. Bank.

U.S. Bank denies all liability for these claims and contends that its employment practices have always complied with applicable laws. U.S. Bank has asserted factual and legal defenses to Plaintiffs' claims. Nonetheless, without admitting any liability and in the interest of resolving this dispute, Plaintiffs and U.S. Bank agreed to the settlement described below after investigating the claims and participating in mediation before an experienced mediator.

2. *Why Have I Received This Notice?*

U.S. Bank's records indicate that you were employed by, and performed work for, U.S. Bank as: (i) an hourly retail banking employee in California from April 15, 2012 to April 24, 2021 (Retail Banking Class Period); **and/or** (ii) as an hourly non-retail banking employee in California from July 2, 2017 to April 24, 2021 (Non-Retail Banking Class Period) who was paid overtime and/or sick pay in the same workweek as Incentive Compensation (that is "AwardPrize", "Best in US", "InvestInsur", or "BuLineCls").

The Court has made no ruling on the merits of Plaintiffs' claims or U.S. Bank's defenses. However, the Court has preliminarily approved the proposed settlement at a Preliminary Approval Hearing that was held on [DATE]. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

The Court will hold a Final Approval Hearing concerning the settlement on [DATE], at [TIME]. The hearing will occur in Department 7 of the Los Angeles County Superior Court located at 312 North Spring Street, Los Angeles, CA 90012. This date and time may be subject to change without notice to you. You may verify the hearing date on the court's website, <http://www.lacourt.org>. Additional details about the hearing are below.

3. *Am I a Class Member?*

You are a Class Member if you worked as: (a) an hourly retail bank employee for U.S. Bank National Association in the State of California at any time during the Retail Banking Class Period; OR (b) an hourly non-retail bank employee for U.S. Bank National Association in the State of California and were paid overtime and/or sick pay in the same workweek as incentive compensation (that is "AwardPrize", "Best in US", "InvestInsur"; "BuLineCls") at any time during and received the Non-Retail Banking Class Period.

4. *How Does This Class Action Settlement Work?*

In this Action, Plaintiffs sued on behalf of themselves and all other U.S. Bank current and former hourly retail banking for the Retail Banking Class Period and non-retail banking employees the Non-Retail Banking Class Period, as detailed above, in the state of California. For purposes of this settlement, Plaintiffs and these defined employees comprise a "Settlement Class" and are "Settlement Class Members". The settlement of this Action resolves the wage and hour claims of all Settlement Class Members, except for those who exclude themselves from the Settlement Class by requesting to be excluded in the manner set forth below.

The Court did not decide in favor of Plaintiffs or U.S. Bank. Instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong.

By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial. Plaintiffs and their attorneys believe the settlement is fair and reasonable. U.S. Bank expressly denies the allegations of wrongdoing and violations of law alleged and further denies any liability whatsoever to Plaintiffs or to the Class. U.S. Bank is settling the lawsuit as a compromise of these claims.

The Court file has the settlement documents, which explain the settlement in greater detail. The Court must review the terms of the settlement and determine if it is fair and reasonable to the Class.

5. Who Are the Attorneys Representing the Parties?

Attorneys for Plaintiffs and the Settlement Class	Attorneys for Defendant U.S. Bank National Association
THE MYERS LAW GROUP, A.P.C. David P. Myers Robert M. Kitson Jason Hatcher 9327 Fairway View Place, Suite 100 Rancho Cucamonga, CA 91730 909-919-2027 DIVERSITY LAW GROUP, P.C. Larry W. Lee Kristen M. Agnew Nicholas Rosenthal 515 S. Figueroa Street, Suite 1250 Los Angeles, California 90071 213-488-6555 POLARIS LAW GROUP LLP William L. Marder 501 San Benito Street, Suite 200 Hollister, California 95023 888-796-4010	WINSTON & STRAWN LLP Joan B. Tucker Fife 101 California Street, 35th Floor San Francisco, CA 94111 WINSTON & STRAWN LLP Emilie C. Woodhead Jason S. Campbell Tristan R. Kirk 333 S. Grand Ave., 38th Floor Los Angeles, California 90071

The Court has decided that The Myers Law Group, A.P.C.; Diversity Law Group, P.C.; and Polaris Law Group LLP are qualified to represent you and all other Settlement Class Members simultaneously, and that Plaintiffs will serve as the Settlement Class Representatives.

You do not need to hire your own attorney because Class Counsel is working on your behalf. However, if you want your own attorney, you may hire one at your own expense.

6. What Are My Options?

The purpose of this Notice is to inform you of the proposed settlement and of your options. Each option has its own consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: U.S. Bank will not retaliate against you in any way for either participating or not participating in this Settlement.

- **DO NOTHING:** If you do nothing and the Court grants final approval of the settlement, you become part of this lawsuit for all claims asserted in this case and will automatically receive a payment from the settlement. You will be bound by the final judgment and you will give up your right to pursue the Released Claims (defined below) against U.S. Bank National Association or any of the Released Parties (defined below).
- **OPT OUT:** If you do not want to participate as a Settlement Class Member, you may “opt out”, which will remove you from the Settlement Class and this Action. If the Court grants final approval of the settlement, you will not receive any money and you will not give up the right to sue U.S. Bank or any of the Released Parties for the Released Claims. You must timely send a written opt-out request (details below) to the Settlement Administrator if you choose to opt out. Even if you opt out, you will still be a PAGA Group Member and will still receive a PAGA settlement payment and release your PAGA claims as described below.
- **OBJECT:** You may file a legal objection to the proposed settlement with the Settlement Administrator, which will be provided to the Court. If the Court overrules your objection, you will be part of the settlement and will receive a payment from the settlement. If you would like to object, you must not opt out of this case.

The procedures for opting out and objecting are set forth below in the sections entitled, “How Do I Opt Out or Exclude Myself from this Settlement?” and “How Do I Object to the Settlement?”

7. *How Do I Opt Out or Exclude Myself from the Class Settlement?*

If you do not want to take part in the settlement of the class action claims, you must either email or sign and mail a written request for exclusion to the Settlement Administrator. The written request must: (a) state your name, address, and the last four digits of your social security or tax identification number; (b) state “I wish to opt-out of the settlement of the lawsuit titled *Rodriguez v. U.S. Bank National Association*; or *Malik v. U.S. Bank National Association*; or *Yousefi v. U.S. Bank National Association*” (or words to a similar effect). .”; (c) be addressed to the Settlement Administrator at [**Address for Settlement Administrator including email address and phone number **]; (d) be signed (including electronic signature) by you or your lawful representative; and (e) be postmarked on or before [45 days after notice packet mailed out].

If you submit a valid and timely request to opt out of the settlement of the class action claims in compliance with the procedure above, you will no longer be a member of the Settlement Class, and you will not receive a settlement payment for the class portion of the settlement (although, as described below, you will not be opting out of the PAGA portion of the settlement). By opting out of the Settlement Class, you will retain whatever rights or claims you may have against U.S. Bank for the Released Claims as defined in Section No. 9 below, and any monies to which you would

have been entitled under the settlement will be proportionately distributed to the rest of the participating Settlement Class Members, i.e., those who have not excluded themselves from the settlement.

If the Court approves the settlement and enters final judgment, the final judgment will bind all Settlement Class Members to releasing the Retail Banking Released Claims and/or the Non-Retail Banking Released Claims (as applicable) who do not request exclusion from the settlement.

8. *How Do I Object to the Settlement?*

If you are a Class Member who does not opt out of the settlement, you may object to the settlement in writing, personally or through an attorney, by mailing or emailing your written objection to the Settlement Administrator at [**Address for Settlement Administrator including email address **] postmarked on or before [45 days after notice packet mailed out].

If you choose to object in writing, your written objection must reference at least one case name and number (*Rodriguez v. U.S. Bank National Association*, Case No. BC617356; *Malik v. U.S. Bank National Association*, Case No. 19STCV17516; or *Yousefi v. U.S. Bank National Association*, Case No. 3:20-cv-01770-BAS-AGS). Your written objection must also (a) state your full name, address, and telephone number; (b) describe the basis of the objection, including the reasons why you believe that the Court should find that the Settlement is not in the best interests of the Settlement Class and why the Settlement should not be approved; and (c) include any and all supporting papers (including, without limitation, all briefs, written evidence, and declarations) for which your objection is based.

Alternatively, even if you do not submit a written objection, you may still appear in person at the Final Approval Hearing and make an oral objection at that time.

If you do make an objection, you will be permitted to withdraw your objection in writing by submitting a withdrawal statement to the Settlement Administrator, orally at the Final Approval hearing, or as otherwise ordered by the Court.

If you do not make an objection either in writing or in person at the Final Approval Hearing, you will be deemed to have waived any objections you may have and you will be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. You will then receive a settlement payment and be bound by the terms of the settlement.

If the Court rejects your objection, you will receive a settlement payment and will be bound by the terms of the settlement.

9. *How Does the Class Settlement Affect My Rights? What Are the Class Action Released Claims?*

If the proposed settlement is approved by the Court, a final judgment will be entered by the Court. All Settlement Class Members who do not submit a timely and valid request to be excluded from

the settlement will be bound by the Court's final judgment and will release U.S. Bank National Association, and its parent or subsidiary corporations; each of their present, former, or future owners, officers, directors, shareholders, partners, employees, insurers, successors, predecessors, contractors, assigns, and managing agents; any and all agents, legal representatives and/or attorneys of all of the foregoing entities and individuals; and any entities that may be asserted as joint employers with U.S. Bank from the respective released claims ("Released Parties").

The Retail Banking Released Claims are as follows: any and all claims, known or unknown, for and/or relating to: rest periods; meal periods; minimum wages; overtime wages; pay for all hours worked, including but not limited to alleged off-the-clock work; proper calculation of the regular rate of pay, including for purposes of overtime pay and/or sick pay; the rate of payment for sick leave; underpayment of sick leave; timeliness of wages; payment of wages at termination; waiting time penalties; vacation pay; itemized wage statements and/or accuracy of wage statements; provision of and/or allowing for inspection/copying of personnel documents, signed documents, payroll records, or any other records; recordkeeping; unfair competition; any unpaid wages or compensation related to any or all of the foregoing; any premium payments related to any or all the foregoing; restitution for any of the foregoing; any penalties, including statutory and civil penalties, related to any or all the foregoing; attorneys' fees or costs related to any or all of the foregoing; interest related to any of the foregoing; and/or any other damages or amounts related to any or all of the foregoing. The release includes: all claims that were asserted in any and/or all of the complaints in *Rodriguez, Malik, and Yousefi*; that were asserted in any and/or all of the letters sent to the LWDA by Rodriguez, Malik, and Yousefi; and/or that could have been asserted in *Rodriguez, Malik, and Yousefi* based on the facts and/or allegations in any complaint in *Rodriguez, Malik, and Yousefi*. The release includes any and all claims pursuant to: California Business and Professions Code section 17200 et seq.; California Labor Code sections 200-204, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 246-248.5, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198; the California IWC Wage Orders; and the Fair Labor Standards Act ("FLSA"). The release shall include all the above claims through April 24, 2021.

The Non-Retail Banking Released Claims are as follows: any and all claims, known or unknown, for and/or relating to: proper calculation of the regular rate of pay, including for purposes of overtime pay and/or sick pay; the rate of payment for sick leave; underpayment of sick leave; payment of wages at termination; waiting time penalties; itemized wage statements and/or accuracy of wage statements; unfair competition; any unpaid wages or compensation related to any or all of the foregoing; any premium payments related to any or all the foregoing; restitution for any of the foregoing; any penalties, including statutory and civil penalties, related to any or all the foregoing; attorneys' fees or costs related to any or all of the foregoing; interest related to any of the foregoing; and/or any other damages or amounts related to any or all of the foregoing. The release includes all claims that were asserted in the complaint in *Yousefi*, that were asserted in any and/or all of the letters sent to the LWDA by Yousefi, and/or that could have been asserted in *Yousefi* based on the facts and/or allegations in the *Yousefi* complaint. The release includes any and all claims pursuant to: California Business and Professions Code section 17200 et seq.; California Labor Code sections 200-204, 218.5, 218.6, 226, 226.3, 246-248.5, 510, 1194; the California IWC Wage Orders; and the FLSA. The release shall include all the above claims through April 24, 2021.

Notwithstanding the foregoing Non-Retail Banking Released Claims, all *Tomlinson/Sharkey* Employees shall release the Non-Retail Banking Class Released Claims as to the Released Parties, except that, during the period from March 19, 2018 to April 24, 2021, under this Settlement they shall be deemed to release only any and all claims, known or unknown, for and/or relating to: the proper calculation of the regular rate of pay for purposes of sick pay; the rate of payment for sick leave; and underpayment of sick leave. The *Tomlinson/Sharkey* Employees shall be deemed to release all the Non-Retail Banking Class Released Claims against the Released Parties through March 18, 2018.

“*Tomlinson/Sharkey* Employees” means each member of the Non-Retail Banking Settlement Class who is also included in the employee group at issue in the cases of *Tomlinson v. U.S. Bancorp et al.*, Los Angeles County Superior Court Case No. 19STCV09493 and *Sharkey v. U.S. Bancorp et al.*, Los Angeles County Superior Court Case No. 20STCV19049 (i.e., non-exempt employees in the State of California who worked for one of Defendant’s Mortgage Processing Centers).

10. How Much Can I Expect To Receive From This Settlement?

U.S. Bank will pay, subject to Court approval, a Gross Settlement Amount of \$10,750,000.00 to cover: (1) the Representative Service Awards to Plaintiffs in the amounts of up to \$20,000.00 for Class Representative Rodriguez, \$20,000.00 for Class Representative Malik, and \$10,000.00 for Class Representative Yousefi for the prosecution of the Action and a general release of all claims; (2) Administrative Costs to the Settlement Administrator, Simpluris, up to \$57,500.00; (3) Class Counsel Fees in an amount up to \$3,583,333.33 (one-third of the Gross Settlement Amount) for the services of Class Counsel on behalf of the Settlement Class; (4) Class Counsel Expenses not to exceed \$70,000.00 for Class Counsel’s litigation costs; and (6) a PAGA Payment of \$300,000.00 (75% (\$225,000.00) will be paid to the California Labor and Workforce Development Agency (“LWDA”), and the remaining 25% (\$75,000) will be distributed to the Non-Retail Banking PAGA and Retail Banking PAGA aggrieved employees (“PAGA Group Members Amount”).

After deducting the above-referenced items, the remaining sum estimated at **\$6,689,166.67** (“Net Settlement Amount” or “NSA”), shall be distributed to all Settlement Class Members who have not opted out of the settlement. The amount allocated for each individual participating Settlement Class Member will be determined by status as a Retail Banking Settlement Class Member and Non-Retail Banking Settlement Class Member. The Net Settlement Amount will be split into two (2) funds: *Fund 1* for the Retail Banking Settlement Class; and *Fund 2* for the Non-Retail Banking Settlement Class. *Fund 1* represents 90.00% of the NSA and *Fund 2* represents 10.00% of the NSA.

Retail Banking Settlement Class Members’ individual settlement shares will be calculated by (a) dividing Fund 1 by the total number of Pay Periods worked by all Retail Banking Settlement Class Members during the Retail Banking Class Period and (b) multiplying the result by the number of Pay Periods the Participating Retail Banking Settlement Class Member worked during the Retail Banking Class Period.

Non-Retail Banking Settlement Class Members’ individual settlement shares will be calculated by (a) dividing Fund 2 by the total number of Pay Periods worked by all Non-Retail Banking

Upon the Court granting approval of the PAGA Settlement, the PAGA Group Members and the LWD, or any other representative, proxy, or agent thereof, are barred from pursuing any action

No PAGA Group Member may opt out of or be excluded from participating in the PAGA Settlement in this action. All PAGA Group Members shall be bound by the judgment entered herein and will have released the Retail Banking PAGA Released Claims (defined below) or Non-Retail Banking PAGA Released Claims (defined below) (as applicable) upon the Court granting final approval of this settlement.

11. PAGA Action Settlement

If you believe the amount of compensation that you received during the relevant class period is wrong, or the calculation of your share of the Settlement Payment is wrong, you must submit an explanation in writing describing why you believe the information is wrong, along with any supporting information and/or documentation. Your written dispute must be postmarked no later than forty-five (45) calendar days after [DATE] [45 days after notice packet mailed out].

It is strongly recommended that, upon receipt of your Settlement Payment check, you immediately cash it or cash it no later than 180 days after it is issued to you. If any checks remain uncashed or not deposited by the expiration of the 180-day void date, the Settlement Administrator will pay the funds represented by such unredeemed checks to the California State Controller's Office, Unclaimed Property Division to be held in your name under California's escheatment laws.

Depending on rulings from the Court that might affect the Gross Settlement Amount, as well as the number of Settlement Class Members who may opt out of the settlement, the actual amount you will receive if the Court grants Final Approval of the settlement may vary from the above estimated amount.

Neither Plaintiffs or U.S. Bank nor the attorneys for either Plaintiffs or U.S. Bank are making any representations as to the tax treatment or legal effect of any settlement payment you receive, and you should not rely on any statement or representation regarding tax treatment made in this regard. You understand and agree that you will be solely responsible for the payment of any taxes and penalties assessed on any settlement payment that is issued to you.

Based upon U.S. Bank's records, your estimated settlement payment is \$ [insert specific amount for individual putative class member], less applicable taxes. Of each Individual Settlement Share, 25% will be allocated as wages, and 75% shall be allocated as interest and penalties. Applicable payroll taxes will be withheld from the wage portion of your Individual Settlement Share only. Exclusive of the Gross Settlement Amount, U.S. Bank is responsible for payment of U.S. Bank's share of any employer payroll taxes to be paid in connection with the settlement.

U.S. Bank's records indicate you worked [] Pay Periods as a Retail Banking Settlement Class Member during the relevant class period and [] Pay Periods as a Non-Retail Banking Settlement Class Member during the relevant class period.

Settlement Class Members during the Non-Retail Banking Class Period and (b) multiplying the result by the number of Pay Periods the Participating Non-Retail Banking Settlement Class Member worked during the Non-Retail Banking Class Period.

pursuant to PAGA against the Released Parties for the Retail Banking PAGA Released Claims or the Non-Retail Banking PAGA Released Claims.

The Retail Banking PAGA Representative Action Class constitutes all individuals who were employed by U.S. Bank in any non-exempt retail banking position in California at any time during the period from April 5, 2015 until April 24, 2021 (“Retail Banking PAGA Period”).

The Non-Retail Banking PAGA Representative Action Class constitutes all individuals who were employed by U.S. Bank in any non-retail banking non-exempt hourly position in California who at any time during the period from May 19, 2019 until April 24, 2021 (a) received overtime in the same workweek as “AwardPrize”, “Best in Us”, “InvestInsur”, or “BuLineCls” pay, and/or (b) received sick pay in the same workweek as “AwardPrize”, “Best in Us”, “InvestInsur”, or “BuLineCls” pay and whose employment ended at any time between May 19, 2019 and April 24, 2021 (“Non-Retail Banking PAGA Period”).

The Retail Banking PAGA Released Claims are any and all claims, known and unknown, for civil penalties under the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, that were asserted in any and/or all of the complaints in *Rodriguez, Malik, and Yousefi*; that were asserted in any and/or all of the letters sent to the LWDA by Rodriguez, Malik, and Yousefi; and/or that could have been asserted in *Rodriguez, Malik, and Yousefi* based on the facts and/or allegations in any complaint and/or LWDA letter in *Rodriguez, Malik, and Yousefi*. The release includes, but is not limited to, claims for PAGA civil penalties premised on: California Labor Code sections 200-204, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 246-248.5, 510, 512, 1194, 1194.2, 1197, 1197.1, and 1198; rest periods; meal periods; minimum wages; overtime wages; pay for all hours worked, including but not limited to alleged off-the-clock work; proper calculation of the regular rate of pay, including for purposes of overtime pay and/or sick pay; the rate of payment for sick leave; underpayment of sick leave; timeliness of wages; payment of wages at termination; waiting time penalties; vacation pay; itemized wage statements and/or accuracy of wage statements; provision of and/or allowing for inspection/copying of personnel documents, signed documents, payroll records, or any other records; recordkeeping; and attorneys’ fees or costs related to any or all of the foregoing. The release shall include all the above claims through April 24, 2021.

The Non-Retail Banking PAGA Released Claims are any and all claims, known and unknown, for civil penalties under the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, that were asserted in the complaint in *Yousefi*, that were asserted in any and/or all of the letters sent to the LWDA by Yousefi, and/or that could have been asserted in *Yousefi* based on the facts and/or allegations in the *Yousefi* complaint or LWDA letters. The release includes, but is not limited to, claims for PAGA civil penalties premised on: California Labor Code sections 200-204, 218.5, 218.6, 226, 226.3, 246-248.5, 510, and 1194; proper calculation of the regular rate of pay, including for purposes of overtime pay and/or sick pay; the rate of payment for sick leave; underpayment of sick leave; payment of wages at termination; waiting time penalties; itemized wage statements and/or accuracy of wage statements; and attorneys’ fees or costs related to any or all of the foregoing. The release shall include all the above claims through April 24, 2021.

The PAGA Group Members Amount will be split into two (2) funds: *Fund A* for the Retail Banking PAGA Group; and *Fund B* for the Non-Retail Banking PAGA Group. Fund A represents 90.00%

of the PAGA Group Members Amount and Fund B represents 10.00% of the PAGA Group Members Amount.

Retail Banking PAGA Group. Each Retail Banking PAGA Group Member's Individual PAGA Payment shall be calculated by (a) dividing Fund A by the total number of Pay Periods worked by all Retail Banking PAGA Group Members during the Retail Banking PAGA Period and (b) multiplying the result by the number of Pay Periods the Retail Banking PAGA Group Member worked during the Retail Banking PAGA Period.

Non-Retail Banking PAGA Group. Each Non-Retail Banking PAGA Group Member's Individual PAGA Payment shall be calculated by (a) dividing Fund B by the total number of Pay Periods worked by all Non-Retail Banking PAGA Group Members during the Non-Retail Banking PAGA Period and (b) multiplying the result by the number of Pay Periods the Non-Retail Banking PAGA Group Member worked during the Non-Retail Banking PAGA Period.

U.S. Bank's records indicate you worked [REDACTED] Pay Periods as a Retail Banking PAGA Group Member during the relevant PAGA period and [REDACTED] Pay Periods as a Non-Retail Banking PAGA Group Member during the relevant PAGA period.

Based upon U.S. Bank's records, your estimated PAGA settlement payment is \$[REDACTED] [insert specific amount for individual putative class member]. 100% of each PAGA settlement payment shall be allocated as penalties only and no taxes will be withheld from this amount.

Neither Plaintiffs, U.S. Bank, nor the attorneys for either Plaintiffs or U.S. Bank are making any representations as to the tax treatment or legal effect of any PAGA payment you receive, and you should not rely on any statement or representation regarding tax treatment made in this regard. You understand and agree that you will be solely responsible for the payment of any taxes and penalties assessed on any PAGA payment that is issued to you.

It is strongly recommended that, upon receipt of your Settlement Payment check, you immediately cash it or cash it no later than 180 days after it is issued to you. If any checks remain uncashed or not deposited by the expiration of the 180-day void date, the Settlement Administrator will pay the funds represented by such unredeemed checks to the California State Controller's Office, Unclaimed Property Division to be held in your name under California's escheatment laws.

If you believe the amount of compensation that you received during the relevant PAGA period is wrong, or the calculation of your share of the PAGA Group Members Amount is wrong, you must submit an explanation in writing describing why you believe the information is wrong, along with any supporting information and/or documentation. Your written dispute must be postmarked no later than forty-five (45) calendar days after [DATE] [45 days after notice packet mailed out].

12. How Will the Attorneys for the Settlement Class and the Plaintiff Be Paid?

The attorneys for Plaintiffs and the Settlement Class will be paid from the Gross Settlement Amount. Subject to Court approval, the attorneys for Plaintiff and the Settlement Class shall be paid an amount not to exceed one-third of the Gross Settlement Amount (\$3,583,333.33) and litigation costs not to exceed \$70,000.00.

The Plaintiffs will also be paid, subject to Court approval, in amounts not to exceed \$20,000.00 for Class Representative Rodriguez, \$20,000.00 for Class Representative Malik, and \$10,000.00 for Class Representative Yousefi as service payments for the initiation of and prosecution of this case and a general release of all claims.

13. Notice of Final Approval Hearing in this Case

The Court has preliminarily decided to allow Plaintiffs to represent the Settlement Class Members and has given preliminary approval to a proposed settlement. A final hearing to consider the fairness of the proposed settlement is scheduled for [DATE], at [TIME] at the following location:

Los Angeles County Superior Court, Spring Street Courthouse
Department 7
312 North Spring Street
Los Angeles, CA 90012

You may but are not required to attend the final hearing. The hearing may be continued or adjourned without further notice to the Settlement Class Members.

Due to the COVID-19 pandemic the Court may not be open to the public for the final approval hearing. If you wish to appear remotely to object, you should go to www.lacourt.org/lacc to sign up to make a remote appearance via telephone or videoconference.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact any of the attorneys listed above, counsel of your choice, or Simpluris (the Settlement Administrator) by mail, facsimile or at the telephone number listed below, toll free. If you move after receipt of this Notice but before receipt of your settlement payment, please provide the Settlement Administrator with your new address.

Simpluris
[ADDRESS]
[PHONE]
[FAX]

This Notice is only a summary of the Action and the settlement. For a more detailed statement of the matters involved in the Action and the settlement, you may refer to the pleadings, the Joint Stipulation of Settlement and Release, and other papers filed in this Action, which may be inspected at the Court located at 312 North Spring Street, Los Angeles, CA 90012 during regular business hours of each court day.

PLEASE DO NOT CONTACT THE COURT, THE CLERK OF THE COURT, OR THE JUDGE WITH QUESTIONS.

Exhibit B

David P. Myers (SBN 206137)
Robert Kitson (SBN 214091)
Jason Hatcher (SBN 285481)
THE MYERS LAW GROUP, A.P.C.
9327 Fairway View Place, Suite 100
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Telephone: (909) 919-2027
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Attorneys for Plaintiff Charles Rodriguez
and all others similarly situated.
(Additional counsel listed on Page 2).

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

CHARLES RODRIGUEZ, ALI MALIK, and
ATEFEH YOUSEFI, on behalf of themselves
and all others similarly situated

PLAINTIFFS,

v.

US BANK NATIONAL ASSOCIATION,
dba US BANK; and DOES 1 through 100,
inclusive

DEFENDANTS.

Case No. BC617356

**FOURTH AMENDED CLASS ACTION
COMPLAINT**

1. **Failure to Pay Minimum Wages**
2. **Failure to Pay All Overtime Wages**
3. **Failure to Provide Meal Periods**
4. **Failure to Provide Rest Periods**
5. **Vacation Time and Pay**
6. **Failure to Pay All Wages Due at Separation**
7. **Failure to Furnish Accurate Wage Statements**
8. **Record Keeping Violations**
9. **Unfair Competition**
10. **Declaratory Relief**
11. **Private Attorneys General Act - Retail PAGA Group**
12. **Private Attorneys General Act – Non-Retail PAGA Group**

DEMAND FOR JURY TRIAL

1 Larry W. Lee (State Bar No. 228175)
2 Kristen M. Agnew (State Bar No. 247656)
3 Nicholas Rosenthal (State Bar No. 268297)
4 **DIVERSITY LAW GROUP, P.C.**
5 515 Figueroa Street, Suite 1250
6 Los Angeles, CA 90071
7 (213) 488-6555
8 (213) 634-6554 facsimile

9 Attorneys for Plaintiff Atefeh Yousefi and Ali Malik

10 William L. Marder, Esq. (CBN 170131)
11 **Polaris Law Group LLP**
12 501 San Benito Street, Suite 200
13 Hollister, CA 95023
14 Tel: (831) 531-4214
15 Fax: (831) 634-0333

16 Attorneys for Plaintiff Ali Malik

1 Plaintiffs CHARLES RODRIGUEZ, ALI MALIK, and ATEFEH YOUSEFI, on behalf
2 of themselves, and all others similarly situated, and the general public (hereinafter referred to as
3 “Plaintiffs”), hereby file this proposed class action Complaint against Defendant US BANK
4 NATIONAL ASSOCIATION, dba US BANK and DOES 1 to 100 (hereinafter collectively
5 referred to as “Defendants”). Plaintiffs are informed and believe, and on the basis of that
6 information and belief, allege as follows:

7 I. INTRODUCTION

8 1. This is a civil class action and PAGA representative action brought by Plaintiffs
9 on behalf of the PAGA Groups and Classes defined in Paragraph 25.

10 2. Plaintiffs (on behalf of themselves, the PAGA Groups and Classes, and the
11 general public) seek all available relief, including damages, restitution, and disgorgement of all
12 revenues, earnings, profits, compensation and benefits earned or received by Defendants.
13 Plaintiffs further seeks injunctive relief and declaratory relief, as a result of Defendants unlawful
14 and unfair business practices, and Defendant’s violations of the California Labor Code. The acts
15 complained of herein have occurred and will occur, at least in part, within the time period from
16 four (4) years preceding the filing of this Complaint.

17 3. This civil action seeks recovery of damages, including but not limited to unpaid
18 wages and applicable statutory damages, statutory penalties, and other penalties for Defendant’s
19 violations of provisions of the California Labor Code (“Labor Code”), including but not limited
20 to §§200-204, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 246-248.5, 510, 512, 1194, 1194.2, 1197,
21 1197.1, 1198, 1198.5 and applicable Wage Orders issued by the California Industrial Welfare
22 Commission (hereinafter, the “IWC Wage Orders”). Plaintiffs, for themselves, and on behalf of
23 the general public and all others similarly situated, further seeks restitution, and declaratory relief
24 for Defendants’ violations of California Business and Professions Code (“B&PC”) §17200, *et*
25 *seq.*, including full restitution of all compensation retained by Defendants, as a result of its
26 unlawful, fraudulent, and unfair business practices. Further, Plaintiffs seek injunctive relief
under B&PC §17200, *et seq.*

27 II. JURISDICTION AND VENUE

28 4. Jurisdiction is proper in this Court because it is a civil action where the amount

1 in controversy, exclusive of interests and costs, exceeds the jurisdictional minimum of the Court.
2 The acts and omissions complained of in this action took place in the State of California, and all
3 Defendants have subjected themselves to the State of California.

4 5. The Los Angeles Superior Court is the proper venue for this action pursuant to
5 CCP §395(a) and §395.5 as, at all relevant times, Defendants conducted business and engaged in
6 acts and omissions which are subject matter of this Complaint in the County of Los Angeles.
7 Defendants maintain a business location in Torrance, California as well as business locations
8 throughout the state of California.

9 **III. PARTIES**

10 6. Plaintiff CHARLES RODRIGUEZ (hereafter “Plaintiff RODRIGUEZ”) is now
11 and/or at all times mentioned in this Complaint was a resident of the State of California. Plaintiff
12 RODRIGUEZ worked for Defendant in California from 2013 to 2015 as a non-exempt hourly
13 retail banking employee with the title of Assistant Manager. During his employment Plaintiff
14 RODRIGUEZ was not paid minimum or overtime wages, pursuant to the Labor Code, for hours
15 suffered and/or permitted to work off-the-clock for Defendants. Plaintiff RODRIGUEZ was not
16 provided legally compliant meal periods or an additional hour of premium pay for each day
17 Defendant failed to provide a legally compliant meal period. Plaintiff RODRIGUEZ was not
18 provided legally compliant rest periods or an additional hour of pay in the form of rest period
19 premium pay for each day Defendant failed to provide a legally compliant rest period. Plaintiff
20 RODRIGUEZ was required to forfeit vacation pay. Plaintiff RODRIGUEZ was not provided
21 accurate wage statements. Plaintiff RODRIGUEZ was not provided timely inspection of his
22 employment records. Plaintiff RODRIGUEZ was not provided all earned wages at the time of
23 separation.

24 7. In or around June of 2016, Defendants hired Plaintiff ALI MALIK (hereinafter
25 “Plaintiff MALIK”) to work as a personal banker in Burlingame, California. Plaintiff MALIK’s
26 employment with Defendants ended on or about September 16, 2018. At all times during
27 Plaintiff MALIK’s employment with Defendants, he worked as an hourly non-exempt employee.
28

1 8. Plaintiff ATEFEH YOUSEFI (hereinafter “Plaintiff YOUSEFI”) was employed
2 by Defendants as a personal banker from approximately September 2000, until on or about July
3 2019. Plaintiff was a non-exempt, hourly employee.

4 9. Plaintiffs seek to recover, for themselves, and the entirety of the class, the full
5 amount of all unpaid minimum and overtime wages owed to the class pursuant to Labor Code
6 §§510 and 1194.

7 10. Plaintiffs seek for themselves, and the entirety of the class, damages in the form
8 of premium pay and unpaid penalties, compensation for all unpaid meal periods, pursuant to
9 Labor Code §§512, 226.7 and the applicable Industrial Welfare Commission (“IWC”) Wage
10 Order.

11 11. Plaintiffs seek for themselves, and the entirety of the class, damages in the form
12 of premium pay for each day Defendant failed to provide a legally compliant rest period,
13 pursuant to Labor Code §226.7 and the applicable Industrial Welfare Commission (“IWC”)
14 Wage Order.

15 12. Plaintiffs seek for themselves, and the class members who no longer work for
16 Defendants, damages, penalties and restitution, in the form of all unpaid wages and waiting time
17 penalties owed pursuant to Labor Code §203.

18 13. Plaintiffs seek for themselves, and the entirety of the class, or such sub-class for
19 which such relief may be appropriate, all forfeited vacation pay pursuant to Labor Code §227.3.

20 14. Plaintiffs seek for themselves, and the entirety of the class, all statutory penalties
21 pursuant to Labor Code §226.

22 15. Plaintiff RODRIGUEZ claims that he, and the members of the class, were denied
23 the opportunity to inspect and copy their employment records, upon request to Defendants, in
24 violation of Labor Code §§226(b)-(c), 1174, 1198.5, and Wage Order 4-2001(7)(A) and (D).

25 16. Defendant is a national banking association organized and existing under the
26 National Bank Act. Defendant’s Articles of Association designate Cincinnati, Ohio as the place
27 of Defendant's main office. Defendant maintains a corporate headquarters in Minneapolis,
28 Minnesota. Defendant, at all material times herein, was and is doing business as “US Bank” in
the State of California.

1 17. Plaintiffs, and, by extension, the proposed Plaintiffs class do not know the true
2 names and capacities of Defendants sued herein as “DOES 1-100, inclusive,” and therefore sues
3 these Defendants by such fictitious names. Defendants, including each fictitiously named DOE
4 Defendant, owned, controlled, or managed the business for which Plaintiffs worked, and/or
5 directly or indirectly exercised operational control over the wages, hours, and working
6 conditions of Plaintiffs and the class members.

7 18. Defendants, including DOES 1-100, held ownership, officer, director and/or
8 executive positions with Defendant, and acted on behalf of the remaining Defendants, which
9 included decision-making responsibility for, and establishment of, illegal wage and hour
10 practices, payroll practices, and other policies for Defendants which have damaged Plaintiffs and
11 the class members.

12 19. Defendants and DOES 1-100, are “employers” as a matter of law and are
13 personally liable on the causes of action alleged herein. Plaintiffs will seek leave of the court to
14 amend this complaint to allege such names and capacities as soon as they are ascertained.

15 20. Plaintiffs are informed and believe and thereon allege that all Defendants,
16 including the fictitious DOE Defendants, were at all relevant times acting as actual agents,
17 conspirators, ostensible agents, partners and/or joint ventures of all other Defendants. The
18 actions of Defendants, their officers, managers, supervisors, agents, and other employees of
19 Defendants against Plaintiffs and all others similarly situated were ratified by Defendants.

20 21. Defendants personally profited by keeping wages that were owed to Plaintiffs
21 and the Class under California’s wage and hour laws, and Defendants obtained an unfair
22 competitive advantage over law-abiding businesses by not paying Plaintiffs and the Class
23 according to the legal minimum standards.

24 22. All allegations in this complaint, except as to the facts relating to Plaintiffs that
25 are based upon their knowledge, are based upon information and belief, and are likely to have
26 evidentiary support after a reasonable opportunity for further investigation and/or discovery.
27 Whenever allegations in this complaint are contrary or inconsistent, such allegations are made in
28 the alternative.

1 **IV. COMMON FACTUAL AND CLASS/REPRESENTATIVE ACTION**
2 **ALLEGATIONS**

3 23. Plaintiffs bring this action on their own behalf and on behalf of the proposed
4 Class, pursuant to California Code of Civil Procedure §382.

5 24. Further, this action is brought for the benefit of the public, who are entitled to
6 restitution of those funds improperly withheld by Defendants.

7 25. Plaintiffs bring this lawsuit on behalf of themselves and the following groups:

8 A. The “Retail Banking PAGA Group means all individuals who were
9 employed by U.S. Bank in any non-exempt retail banking position in
10 California at any time during the period from April 5, 2015, until April 24,
11 2021.

12 B. The “Non-Retail Banking PAGA Group” means all individuals who were
13 employed by U.S. Bank in any non-retail banking non-exempt hourly
14 position in California who at any time during the period from May 19, 2019
15 until April 24, 2021 (a) received overtime in the same workweek as
16 “AwardPrize”, “Best in Us”, “InvestInsur”, or “BuLineCls” pay, and/or (b)
17 received sick pay in the same workweek as “AwardPrize”, “Best in Us”,
18 “InvestInsur”, or “BuLineCls” pay and whose employment ended at any time
19 between May 19, 2019 and April 24, 2021.

20 C. The “Retail Banking Class” which is defined as all individuals who were
21 employed by and performed work for U.S. Bank in any non-exempt retail
22 banking position in California at any time during the period from April 15,
23 2012 until April 24, 2021 (the “Class Period”).

24 D. The “Non-Retail Banking Class” which is defined as all individuals who
25 were employed by and performed work for U.S. Bank in any non-retail
26 banking non-exempt hourly position in California who at any time during the
27 period from July 2, 2017 until April 24, 2021 (a) received overtime in the
28 same workweek as “AwardPrize”, “Best in Us”, “InvestInsur”, or
 “BuLineCls” pay, and/or (b) received sick pay in the same workweek as

1 “AwardPrize”, “Best in Us”, “InvestInsur”, or “BuLineCls” pay and whose
2 employment ended at any time between July 2, 2017 and April 24, 2021.¹

3 26. Plaintiffs and Class members seek, without limitation, damages, unpaid wages,
4 restitution, injunctive relief, declaratory relief, penalties, liquidated damages, interest, costs, and
5 attorneys’ fees to remedy Defendants’ violations of wage and hour laws and unfair business
6 practices.

7 27. Throughout the Class Period, Plaintiffs and all PAGA Group Members/Class
8 members were and are employees of Defendants, entitled to all of the protections afforded to
9 employees under the Labor Code and applicable IWC Wage Orders.

10 **Factual Allegations**

11 28. Defendants’ primary business is providing banking services, with locations
12 throughout the state of California. This work was performed in part by Plaintiff and the Class
13 members.

14 29. Defendants designed and engineered schedules, timekeeping procedures, and
15 practices that resulted in Plaintiffs, and all members of the proposed Plaintiff class, working
16 more than eight (8) hours of work in one day or work occurring off-the-clock. Defendants
17 further engineered a handwritten timekeeping system that would avoid the payment of minimum
18 wage for all hours worked, daily and weekly overtime compensation for overtime hours worked.
19 Non-exempt employees were discouraged from and instructed to record meal periods and rest
20 periods even though no such meal and rest period were taken.

21 30. As a pattern and practice, Defendants suffered and permitted employees to work
22 in excess of eight hours in a workday and/or over forty hours in a workweek without proper
23 overtime pay. During workweeks when Plaintiffs and Class Members worked overtime and

24 ¹ “Tomlinson/Sharkey Employees” means each member of the Non-Retail Banking Settlement
25 Class who is also included in the employee group at issue in the cases of *Tomlinson v. U.S.*
26 *Bancorp et al.*, Los Angeles County Superior Court Case No. 19STCV09493 and *Sharkey v.*
27 *U.S. Bancorp et al.*, Los Angeles County Superior Court Case No. 20STCV19049 (i.e., non-
28 exempt employees in the State of California who worked for one of Defendant’s Mortgage
Processing Centers). For the period of March 19, 2018 to April 24, 2021, the
Tomlinson/Sharkey Employees claims are limited to claims for proper calculation of the regular
rate of pay for purposes of sick pay; the rate of payment for sick leave; and underpayment of
sick leave.

1 earned non-discretionary remuneration in the same workweek, Defendants failed to properly
2 calculate the regular rate of pay for purposes of paying overtime. In particular, Defendants failed
3 to factor any non-discretionary remuneration earned into the calculation of the regular rate of pay
4 for purposes of paying overtime wages. As a result of such policy and practice, Defendants
5 underpaid overtime wages to Plaintiffs and the Class and thus owe additional overtime wages.

6 31. Despite knowing that its non-exempt employees were working regular and/or
7 overtime hours, Defendants refused to pay minimum wage and overtime premiums for all such
8 hours worked.

9 32. Throughout the Class Period, Defendants knowingly and willfully engaged and
10 continue to engage in an unlawful scheme to avoid complying with California wage and hour
11 laws and other state employee rights and benefits. While employed by Defendants as California
12 hourly non-exempt employees, Plaintiffs and the Class members routinely worked in excess of
13 eight (8) hours per day and/or forty (40) hours per week.

14 33. Throughout the relevant time period, Plaintiffs and Class members were assigned
15 and suffered and permitted to work without pay for tasks performed for the benefit of
16 Defendants' business and were not and/or are not fully compensated for this work.

17 34. During the relevant time period, Defendants failed to pay Plaintiffs and Class
18 members for all hours worked. Thus, Defendants did not pay Plaintiffs and the Class members'
19 minimum wages and/or overtime wages in accordance with the law.

20 35. Throughout the Class Period, Defendants failed to authorize and permit rest
21 periods and meal breaks. Plaintiffs and Class members were assigned to and required to work
22 shifts lasting over four (4) hours, and were not provided nor allowed to take a paid ten minute
23 uninterrupted rest break during each four (4) hour work period, or major fraction thereof, at the
24 direction of Defendants and/or with Defendants knowledge and acquiescence. Plaintiffs and
25 Class members were assigned to and required to work shifts lasting over five (5) hours, and were
26 not provided nor allowed to take a thirty (30) minute uninterrupted off-duty meal break within
the first five (5) hours of work.

27 36. Throughout the Class Period, Defendants failed to allow for inspection and/or
28 copying employment records, including but not limited to personnel files, signed documents,

1 payroll records, etc. to Plaintiffs and the Class members who requested access and/or a copy of
2 these records from Defendants. Defendants failed to maintain such documents in the state of
3 California.

4 37. Throughout the Class Period, Defendants willfully failed, and continue to
5 willfully to failed to provide accurate wage statements, including by failing to provide the hours
6 actually worked, gross wages earned, net wages earned, and the applicable hourly rates at the
7 corresponding hours worked. Additionally, Defendants listed the employer as “US Bank
8 National Assoc”, which does not exist in the State of California Secretary of State’s records.

9 38. Throughout the Class Period, Defendants willfully required Plaintiffs and the
10 class members to take forced vacations at the end of the year in order to avoid having to pay the
11 employees these earned wages at a later date.

12 39. Throughout the Class Period, Defendants failed to pay Plaintiffs and all other
13 class members who are no longer employed by Defendants all earned wages due upon
14 separation.

15 40. Throughout the Class Period, Defendants failed to pay Plaintiffs and all other
16 class members sick pay at the regular rate of pay.

17 41. The underpayment of wages to the Plaintiffs and the Class is a consequence of
18 Defendants’ unlawful policies and practices which were centrally devised, implemented,
19 communicated, and applied to Plaintiffs and all Class members.

20 42. Because of Defendants’ unlawful conduct, Plaintiffs and Class members have
21 been and continue to be systematically deprived of earned wages to which they are entitled by
22 law and equity, and deprived of other benefits provided by the Labor Code and applicable IWC
23 Wage Orders, to the detriment of themselves, their families, and the public at large.

24 **Class Action Allegations**

25 43. This action has been brought and may be properly maintained as a class action
26 pursuant to the provisions of the Code of Civil Procedure §382 and other applicable law.

27 44. **Numerosity:** Plaintiffs are informed and believe and on that basis allege that the
28 proposed Classes consist of approximately 13,431 people who are currently and formerly
employed by Defendants as hourly non-exempt retail and non-retail banking employees in the

1 state of California during the relevant time period(s). It is possible to ascertain the number of
2 former and current employees who are members of the proposed class, but they are so numerous
3 that joinder is impracticable. The proposed Class includes future employees (persons who are
4 hired by defendant within the class period, but who are not now class members as current or
5 former employees) whose joinder is currently impossible. The precise number of Class members
6 and their addresses can be determined by Defendants business records and will become known to
7 Plaintiffs through discovery. Class members may be notified of the pendency of this action by
8 mail, e-mail, the internet, or published and posted notice.

9 45. **Typicality:** Plaintiffs' claims are typical of the claims of members of the
10 proposed classes. Defendants employed Plaintiffs during the statutory period, and Plaintiffs have
11 been subjected to Defendants' unlawful employment practices, as alleged in this Complaint.

12 46. **Adequacy of Class Representative:** Plaintiffs will fairly and adequately protect
13 the interests of the classes. Plaintiffs' interests do not conflict with Class members' interests, and
14 Plaintiffs have retained competent and experienced counsel. The interests of Class members will
15 be fairly and adequately protected by Plaintiffs and their counsel.

16 47. **Common Questions of Law and Fact:** Common questions of law and fact exist
17 as to all Class members and predominate over any questions affecting solely individual members
18 of the proposed Class, including but not limited to:

- 19 A. Whether Defendants violated the applicable Labor Code provisions including
20 §§510 and 1194 by requiring overtime work from the members of the
21 proposed Plaintiff class and not paying for said work according to the
22 overtime laws of the State of California without exemption;
- 23 B. Whether Defendants failed to pay the appropriate straight time and premium
24 overtime compensation to the members of the proposed Plaintiff class;
- 25 C. Whether Defendants improperly retained, appropriated or deprived Plaintiffs
26 and members of the proposed Plaintiff class of the use of monies or sums to
27 which they were legally entitled;
- 28 D. Whether Defendants engaged in unlawful, unfair, and/or fraudulent business
 practices;

- 1 E. Whether Defendants, and each of them, was/were participants in the alleged
2 unlawful conduct;
- 3 F. Whether Defendants conduct was willful or reckless;
- 4 G. The effect upon and the extent of injuries suffered by Plaintiffs and all others
5 similarly situated and the appropriate amount of compensation;
- 6 H. The appropriate amount of monetary penalties allowed by Labor Code
7 §§201, *et seq.*
- 8 I. Whether Defendants failed to pay minimum wages and/or overtime
9 compensation to the proposed Plaintiff class members despite the hours
10 Defendants suffered and permitted members of the proposed Plaintiff class to
11 actually work, in violation of the Labor Code and the IWC Wage Order(s);
- 12 J. Whether Defendants failed to pay employees overtime wages at the correct
13 hourly rate of pay, including the rate of pay that included all non-
14 discretionary remuneration, in violation of Labor Code §§ 201-203, 510, and
15 1194;
- 16 K. Whether Defendants failed to and continue to fail to provide meal and/or rest
17 breaks in violation of Section 11 and 12 of the applicable Wage Order(s) and
18 Labor Code §§512 and 226.7;
- 19 L. Whether Defendants failed and continue to fail to pay meal break violation
20 and/or rest break violation premium penalties at the regular hourly rate of
21 pay, in violation of Section 11 and 12 of the applicable Wage Order(s) and
22 Labor Code §§512 and 226.7;
- 23 M. Whether Defendants unlawfully required the forfeiture of earned vacation
24 pay.
- 25 N. Whether Defendants knowingly and intentionally failed to maintain records
26 for Plaintiffs and members of Plaintiffs' class as required by Labor Code
27 §1174 and §7 of the applicable Wage Order;
- 28 O. Whether Defendants willfully violated provisions of the California Labor
Code;

- 1 P. Whether Defendants fail to provide regular legally compliant meal periods;
2 Q. Whether Defendants fail to authorize and permit legally compliant rest period
3 breaks;
4 R. Whether Defendants' pay practices are an unlawful and/or unfair business
5 practice in violation of the Business and Professions Code §17200, *et seq.*;
6 S. Whether Defendants failed to pay and continues to fail to pay at least
7 minimum wage for time that the class members are suffered and/or permitted
8 to work;
9 T. Whether Defendants failed to provide accurate wage statements in violation
10 of Labor Code §226(a);
11 U. Whether Defendants' wage statements failed to identify the proper employer
12 in violation of Labor Code §226(a);
13 V. Whether Defendants failed to pay sick pay at the correct regular rate of pay
14 that included all non-discretionary remuneration, in violation of Labor Code
15 §246;

16 48. **Superiority and Substantial Benefit:** A class action is the superior method for
17 the fair and efficient adjudication of this controversy. Defendants implemented an illegal scheme
18 that is generally applicable to the members of the proposed plaintiff classes. Damages suffered
19 by each Class member may be relatively small given the burden and expense of individual
20 prosecution of the complex and expensive litigation necessitated by Defendants' conduct.
21 Further, it would be virtually impossible for the Class members to redress the wrongs done to
22 them on an individual basis. Even if Class members could afford such individual litigation, the
23 court system could not. By contrast, the class action device presents far fewer management
24 difficulties, and provides the benefits of a single adjudication, economies of scale, and
comprehensive supervision by a single court.

25 49. Plaintiffs know of no difficulty that will be encountered in the management of
26 this litigation that would preclude its maintenance as a class action. Plaintiffs are informed and
27 believe, and on that basis allege, that the amount of money due each Class member as economic
28 damages is ascertainable from Defendants' records, or may readily be determined by other

1 means.

2 50. The Classes should also be certified because:

3 A. The prosecution of separate actions by individual Class members would
4 create a risk of inconsistent or varying adjudications with respect to individual Class members,
5 which would establish incompatible standards of conduct for Defendants;

6 B. The prosecution of separate actions by individual Class members creates
7 the risk of adjudication with respect to them, which would, as a practical matter, be dispositive of
8 the interests of the other Class members not parties to the adjudications, or would substantially
9 impair or impede their ability to protect their interests; and

10 C. Defendants have acted or have refused to act on grounds generally
11 applicable to the class and/or the general public, thereby making final and injunctive relief, as
12 well as declaratory relief, with respect to the Class as a whole, appropriate.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY MINIMUM WAGES**

15 **Violation of Labor Code §§510, 1194, 1194.2, & 1197; IWC Wage Order No. 4-2001**

16 (Against all Defendants on Behalf of Plaintiffs and the Class)

17 51. Plaintiffs re-allege and incorporates by reference, as though fully set forth herein,
18 paragraphs 1 through 50 of this Complaint.

19 52. Labor Code §1197 provides: “The minimum wage for employees fixed by the
20 commission is the minimum wage to be paid to employees, and the payment of a less wage than
21 the minimum so fixed is unlawful.”

22 53. Labor Code §1194 provides: “Notwithstanding any agreement to work for a
23 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
24 compensation applicable to the employee is entitled to recover in a civil action the unpaid
25 balance of the full amount of this minimum wage or overtime compensation, including interest
26 thereon, reasonable attorney's fees, and costs of suit.”

27 54. Labor Code §1194.2 provides: In any action under Section 98, 1193.6, 1194, or
28 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by
an order of the commission or by statute, an employee shall be entitled to recover liquidated

1 damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

2 55. Pursuant to IWC Wage Order No. 4-2001 (“WO 4-01”), “Hours worked” “means
3 the time during which an employee is subject to the control of an employer, and includes all the
4 time the employee is suffered or permitted to work, whether or not required to do so.”

5 56. Pursuant to §4 of IWC Wage Order No. 4-2001, and the IWC California
6 Minimum Wage Order (MW-2014), Plaintiffs and Class members were entitled to receive not
7 less than \$8.00/hour for all hours worked since January 1, 2008, not less than \$9.00/hour for all
8 hours worked since July 1, 2014, and not less than \$10.00/hour for all hours worked since
9 January 1, 2016.

10 57. During the Class Period, under the provisions of IWC Wage Order No. 4-2001
11 and MW-2014, Plaintiffs and each Class member should have received not less than the
12 minimum wage for every hour worked.

13 58. During the relevant statutory time period, Defendants systematically, routinely,
14 and willfully failed to pay Plaintiffs and Class members regular and minimum wages.

15 59. Defendants’ failure to pay minimum wages resulted from the following acts and
16 omissions: their failure to compensate Plaintiffs and the Class members for all hours worked at a
17 rate equivalent to minimum wage; such as off-the-clock work during meal periods that were
18 recorded as unpaid time. Defendants used artificial and/or falsely designated unpaid lunch
19 periods that were not duty free that resulted in meal period violations and unpaid wages.

20 60. For all hours that Plaintiffs and Class members worked, they are entitled to and
21 seek not less than the California minimum wage and, pursuant to Labor Code §1194.2(a)
22 liquidated damages in an amount equal to the unpaid minimum wages and interest thereon.
23 Pursuant to Labor Code §1194, Plaintiffs and the Class members are entitled to their attorneys’
24 fees and costs and interest according to proof.

25 61. As a direct result, Plaintiffs and the Class members have suffered, and continue
26 to suffer, substantial damages in an amount to be proven at trial, and are entitled to all
27 appropriate legal remedies provided by the California Labor Code and IWC Wage Orders,
28 including unpaid wages, liquidated damages, interest, attorneys’ fees and costs of suit.

1 **SECOND CAUSE OF ACTION**

2 **Failure to Pay All Overtime and Double Time Wages**

3 **Violation of Labor Code §§510 and 1194; IWC Wage Order No. 4-2001**

4 (Against all Defendants on Behalf of Plaintiffs and the Class)

5 62. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein,
6 paragraphs 1 through 50 of this Complaint.

7 63. Labor Code §510 mandates: “Eight hours of labor constitutes a day's work. Any
8 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
9 workweek and the first eight hours worked on the seventh day of work in any one workweek
10 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for
11 an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no
12 less than twice the regular rate of pay for an employee. In addition, any work in excess of eight
13 hours on any seventh day of a workweek shall be compensated at the rate of no less than twice
14 the regular rate of pay of an employee. Nothing in this section requires an employer to combine
15 more than one rate of overtime compensation in order to calculate the amount to be paid to an
16 employee for any hour of overtime work.” The California overtime requirement and wage
17 requirement are non-waivable rights pursuant to LC §219.

18 64. Section 3(a)(1) of Wage Order No. 4-2001 mandates that employers pay one and
19 one-half times the employees’ regular rate of pay for employees who work more than eight hours
20 in a day or forty hours in a week and two times their regular rate of pay for any work in excess of
21 twelve hours in one day.

22 65. Labor Code §1194(a) states: “Notwithstanding any agreement to work for a
23 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
24 compensation applicable to the employee is entitled to recover in a civil action the unpaid
25 balance of the full amount of this minimum wage or overtime compensation, including interest
thereon, reasonable attorney’s fees, and costs of suit.”

26 66. Pursuant to Labor Code §§218 and 1194(a), Plaintiffs may bring a civil action
27 for overtime wages directly against the employer without first filing a claim with the Division of
28 Labor Standards Enforcement (“DLSE”) and may recover such wages, together with interest

1 thereon, penalties, attorneys' fees and costs. Further, pursuant to Labor Code §1198, it is
2 unlawful to employ person for longer than the hours set by the IWC or under conditions
3 prohibited by the applicable IWC Wage Orders. IWC Wage Order No. 4, as amended, applies to
4 Plaintiffs and the Class.

5 67. During the Class Period, Plaintiffs and Class members were non-exempt for
6 purposes of the overtime and double-time pay requirements set forth in LC §510 and Wage
7 Order No. 4-2001. During the Class Period, Defendants uniform corporate policy and practice
8 routinely required its non-exempt employees and/or suffered and permitted its employees,
9 including Plaintiffs, to work over eight hours in a day and over forty hours in a workweek. This
10 corporate policy and pattern of conduct was/is accomplished with the advance knowledge and
11 design of Defendants herein. Thus, Plaintiffs and the members of the class regularly and
12 customarily performed overtime work.

13 68. Defendants required, permitted, encouraged and knew Plaintiffs and the class
14 members' off-the-clock work during meal periods that were recorded as unpaid time.
15 Defendants used artificial and/or falsely designated unpaid lunch periods that were not duty free
16 that resulted in meal period violations and unpaid wages.

17 69. During workweeks when Plaintiffs and Class Members worked overtime and
18 earned non-discretionary remuneration in the same workweek, Defendants failed to properly
19 calculate the regular rate of pay for purposes of paying overtime. In particular, Defendants failed
20 to factor any non-discretionary remuneration earned into the calculation of the regular rate of pay
21 for purposes of paying overtime wages. As a result of such policy and practice, Defendants
22 underpaid overtime wages to Plaintiffs and the Class and thus owe additional overtime wages.

23 70. Defendants have failed and refused to pay Plaintiffs and the class members
24 overtime compensation for all overtime hours worked in excess of eight (8) hours per day and
25 forty (40) hours per week as required by LC §§510, 1194 and the applicable Wage Orders.

26 71. Plaintiffs are informed and believe and based thereon allege that the obligations
27 and responsibilities of the class employees are irrelevant because Plaintiffs and all other similarly
28 situated employees were subjected to Defendants' unlawful pay plans and its failure to pay
overtime pay for all overtime hours worked by Plaintiffs and the class members.

1 72. Plaintiffs and the class members have been deprived of rightfully earned
2 overtime compensation as a direct and proximate result of Defendants' common policies,
3 practices, and refusal to pay the full amount of compensation earned for all overtime hours
4 worked.

5 73. Plaintiffs, and the class, are entitled to and seek the full amount of all earned
6 unpaid overtime pay, attorneys' fees and costs, and interest pursuant to LC §1194 in an amount
7 to be determined at trial.

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PROVIDE MEAL PERIODS**

10 **In Violation of Labor Code §§226.7, 512, & IWC Wage Order No. 4-2001**

11 (Against all Defendants on Behalf of Plaintiffs and the Class)

12 74. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein,
13 paragraphs 1 through 50 of this Complaint.

14 75. Labor Code §226.7 requires an employer to pay one additional hour of
15 compensation, at the regular rate of pay, per day for each meal period the employer fails to
16 provide pursuant to the Labor Code and/or applicable Wage Order. Plaintiffs allege that
17 Defendants failed to provide legally compliant meal periods to Plaintiffs and the class members;
18 in addition to impeding, discouraging, and/or dissuading employees from taking legally
19 compliant meal periods. Employees are entitled to a meal period of at least thirty (30) minutes
20 per five (5) hours work period. Plaintiff and the class consistently worked over five (5) hour
21 shifts without meal periods due to Defendants' policy of discouraging, dissuading and/or
impeding Plaintiffs and the class from taking meal periods.

22 76. Pursuant to Labor Code §512 and the applicable Wage Order, employees are
23 entitled to a meal period of at least thirty (30) minutes per five (5) hour work period. Plaintiffs
24 and the class consistently worked over five (5) hour shifts without meal periods due to
25 Defendants' policy of discouraging, dissuading and/or impeding Plaintiffs and the class members
26 from taking meal periods.

27 77. IWC Wage Order No. 4-2001 applies to the transportation industry and provides,
28 in pertinent part, that if an employer fails to allow an employee to take meal periods in

1 accordance with the applicable provisions of this Order, the employer shall pay the employee
2 one hour of pay at the employee's regular rate of compensation for each workday that the meal
3 period was not provided.

4 78. During the relevant statutory time period, Defendants failed to authorize and
5 permit uninterrupted meal breaks. Plaintiffs and Class members were routinely required to work
6 without an uninterrupted meal break at the direction of Defendants and/or with Defendants
7 knowledge or acquiescence. Defendants required, permitted, encouraged and knew of Plaintiff
8 and the class members' off-the-clock work during meal periods that were recorded as unpaid
9 time. Defendants used artificial and/or falsely designated unpaid lunch periods that were not
10 duty free that resulted in meal period violations and unpaid wages. Defendants ignored meal
11 period violations on its records that resulted in no penalty payment.

12 79. By its actions in requiring employees to work through meal periods and/or its
13 failure to relieve Plaintiffs and the class members of their duties for off-duty meal periods,
14 Defendants have violated California Labor Code §226.7 and §11 of IWC Wage Order No. 4-
15 2001, and are liable to Plaintiffs and the Class.

16 80. Defendants further failed to provide, impeded and/or discouraged Plaintiffs and
17 the other class members from taking timely and compliant meal breaks of not less than thirty
18 (30) minutes as required by the Labor Code and IWC Wage Order No. 4-2001.

19 81. Pursuant to Labor Code §226.7, Plaintiffs and the class are entitled to damages in
20 an amount equal to one (1) hour of wages per missed meal break per day, in a sum to be proven
21 at trial.

22 82. Pursuant to Labor Code §218.5, Plaintiffs and the class request that the court
23 award reasonable attorneys' fees and costs incurred by this action.

24 **FOURTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE REST PERIODS**

26 **In Violation of Labor Code §§226.7, 512, & IWC Wage Order No. 4-2001**

27 (Against all Defendants on Behalf of Plaintiffs and the Class)

28 83. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein,
paragraphs 1 through 50 of this Complaint.

1 84. Labor Code §226.7, and §12 of the IWC Wage Order No. 4-2001, provides that
2 employers authorize and permit all employees to take paid rest periods at the rate of ten (10)
3 minutes rest per four (4) hours worked or major fraction thereof.

4 85. Labor Code §226.7(b) requires an employer to pay one additional hour of
5 compensation, at the regular rate of pay, per day for each rest period the employer fails to
6 provide pursuant to the Labor Code and/or applicable Wage Order.

7 86. During the relevant time period, Defendants failed to provide legally compliant
8 rest periods to Plaintiffs and the class; in addition to impeding, discouraging, and/or dissuading
9 employees from taking legally compliant rest periods.

10 87. Defendants, and each of them, failed and or refused to implement a relief system
11 by which Plaintiffs and all other similarly situated could receive paid ten (10) minute rest breaks
12 and/or work free of interruption for every four hours worked, or major fraction thereof.
13 Furthermore, due Defendants' uniform lack of a relief system, Plaintiffs and the class members
14 did not receive their rest breaks within the required statutory time frame. By and through its
15 actions, Defendants intentionally and improperly denied rest periods to the Plaintiffs and class
16 members in violation of Labor Code §§226.7 and 512.

17 88. Defendants, and each of them, systematically and uniformly failed and/or refused
18 to implement a relief system by which Plaintiffs and the class members could receive paid rest
19 breaks and/or work free rest breaks for every four (4) hours worked or major fraction thereof.
20 By and through its actions, Defendants intentionally and improperly denied rest periods to
21 Plaintiffs and the class members in violation of Labor Code §226.7.

22 89. At all times relevant hereto, Plaintiffs and all other similarly situated employees
23 have worked at least two (2) and one-half (1/2) hours and regularly worked more than four (4)
24 hours in a workday.

25 90. By virtue of Defendants' unlawful failure to provide rest periods to Plaintiffs and
26 the hourly employees, Plaintiffs and members of the class have suffered, and will continue to
27 suffer, damages, in amounts which are presently unknown, which will be ascertained according
28 to proof at trial.

 91. IWC Wage Order No. 4-2001 applies to the transportation industry and provides,

1 in pertinent part, that if an employer fails to allow an employee to take rest periods in accordance
2 with the applicable provisions of this Order, the employer shall pay the employee one hour of
3 pay at the employee's regular rate of compensation for each workday that a rest period was not
4 provided. The authorized rest period is based on the total hours worked daily at the rate of ten
5 minutes net rest time per four hours or major fraction thereof.

6 92. During the relevant time period, Defendants failed to authorize and permit rest
7 breaks and the Class members, including Plaintiffs, were routinely required to work through or
8 without rest breaks at the direction of Defendants and/or with Defendants knowledge or
9 acquiescence.

10 93. At all relevant times, Defendants failed in their affirmative obligation to ensure
11 that Plaintiffs, and other Class members, had the opportunity to take and were provided with off-
12 duty 10-minute rest periods in accordance with the mandates of the California Labor Code and
13 IWC Wage Order No. 4-2001. Defendants' common policy and/or practice did not relinquish all
14 control over how Plaintiff and the Class members spent their rest break time and/or relieve
15 Plaintiff and the Class members of all duties for a rest period. Defendants' common policy
16 and/or practices established controlled or interrupted rest periods that resulted in "on call" or
17 "captive" or "captured" on premise rest periods. Defendants' common policy and/or practice,
18 which includes controlled, "on call" and being required to remain on premises for rest periods
19 and interrupted rest periods. Defendants failed to relieve Plaintiffs and other Class members of
20 all duties during their 10-minute rest breaks. Thus, Plaintiffs and Rest Period Class Members
21 were denied their right to 10-minute, off-duty rest breaks for any and all shifts in which they
22 worked 3.5 hours or longer. This includes whenever Plaintiffs and Class members worked
23 "captured" or "captive" meal break shifts, they were required to remain on premises and work
24 during rest breaks. In other words, Plaintiffs and Class Members were suffered and permitted to
25 work through legally required rest breaks and were denied the opportunity to take their full 10-
26 minute off-duty rest breaks because they remained under Defendants' control by virtue of having
27 to remain on the premises. As such, Defendants are responsible for paying premium
28 compensation for missed rest periods pursuant to Labor Code section 226.7 and IWC Wage
Order No. 4-2001. Defendants, as a matter of corporate policy and procedure, regularly failed to

1 pay such premium compensation for each full 10-minute duty-free rest period Plaintiffs and the
2 Class members missed or were not provided.

3 94. This policy of requiring employees to work through their legally mandated rest
4 periods and not allowing them to take proper off-duty rest periods is a violation of California
5 law.

6 95. This policy of controlled rest periods and not allowing them to take proper off-
7 duty rest periods is a violation of California law.

8 96. By its actions in requiring employees to work through or simply not provide rest
9 breaks, Defendants have violated California Labor Code §226.7 and §12 of IWC Wage Order
10 No. 4-2001, and are liable to Plaintiffs and the Class.

11 97. As a result of the unlawful acts of Defendants, Plaintiffs and Class members
12 have been deprived of legally compliant rest breaks and are entitled to recovery under Labor
13 Code §226.7(b) and §12 of IWC Wage Order No. 4-2001, in the amount of one additional hour
14 of pay at their regular rate of pay for each day a paid rest break was not provided. Plaintiffs and
15 the class request that the court award reasonable attorneys' fees and costs incurred by this action.

16 **FIFTH CAUSE OF ACTION**

17 **VACATION TIME AND PAY**

18 **In Violation of Labor Code §227.3**

19 (Against all Defendants on Behalf of Plaintiffs and the Class)

20 98. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein,
21 paragraphs 1 through 50 of this Complaint.

22 99. Pursuant to California Labor Code §227.3, "Unless otherwise provided by a
23 collective-bargaining agreement, whenever a contract of employment or employer policy
24 provides for paid vacations, and an employee is terminated without having taken off his vested
25 vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance
26 with such contract of employment or employer policy respecting eligibility or time served;
27 provided, however, that an employment contract or employer policy shall not provide for
28 forfeiture of vested vacation time upon termination."

100. Throughout the relevant time period, Defendants required Plaintiffs and the class

1 to use earned vacation before the new year's accrual or suffer a forfeiture. Defendants forced
2 vacation policy is unlawful in violation of Labor Code §227.3

3 101. Pursuant to Labor Code §227.3, Plaintiffs and the class are entitled to damages in
4 an amount equal to the forfeited vacation pay due to Defendants' "use-it-or-lose-it" forced
5 vacation policy.

6 102. Pursuant to Labor Code §218.5, Plaintiffs and the class request that the court
7 award reasonable attorneys' fees and costs incurred by this action.

8 **SIXTH CAUSE OF ACTION**

9 **FAILURE TO PAY ALL WAGES DUE AT SEPARATION**

10 **In Violation of Labor Code §§200, *et seq.***

11 (Against all Defendants on Behalf of Plaintiffs and the Class)

12 103. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein,
13 paragraphs 1 through 50 of this Complaint.

14 104. Plaintiffs and the members of the class whose employment ended with
15 Defendants during the class period, were entitled to be promptly paid all earned and unpaid
16 wages at or around the time employment was terminated, as required pursuant to Labor Code
17 §§201 and 202. Defendant refused and/or failed to promptly compensate Plaintiffs and the other
18 class members all earned minimum wages, overtime wages, meal and rest period premium pay,
19 and/or forfeited vacation pay at the time of separation. Based on this, Plaintiffs and the class
20 members seek statutory waiting time penalties pursuant to LC §203.

21 105. Additionally, Labor Code section 246 provides that an employee is entitled to
22 receive sick time pay. The employer shall calculate paid sick leave by using one of two
23 calculations: (1) "Paid sick time for nonexempt employees shall be calculated in the same
24 manner as the regular rate of pay for the workweek in which the employee uses paid sick time,
25 whether or not the employee actually works overtime in that workweek;" or (2) "Paid sick time
26 for nonexempt employees shall be calculated by dividing the employee's total wages, not
27 including overtime premium pay, by the employee's total hours worked in the full pay periods of
28 the prior 90 days of employment."

106. Whenever Defendants paid Plaintiffs and the Class Members sick time pursuant

1 to California Labor Code section 246, Defendants did so at the incorrect rate of pay. Defendants
2 paid Plaintiffs and the Class Members at the base hourly rate of pay, as opposed to the regular
3 rate of pay, which would take into account all non-discretionary incentive wages and bonuses, or
4 by dividing the employees' total wages, not including overtime premium pay, by the employees'
5 total hours worked in the full pay periods of the prior 90 days of employment, as required by
6 Labor Code section 246. This resulted in the employees being underpaid for sick time, and
7 resulted in violations of California Labor Code sections 201, 202, and 203, and other derivative
8 Labor Code violations, because Defendants did not pay, or timely pay, Plaintiffs and the Class
9 Members all owing and unpaid wages for work performed by them during their employment and
10 at the end of their employment.

11 107. During the relevant time period, Plaintiffs and all other similarly situated
12 employees were employees of Defendants covered by Labor Code §203 whose employment
13 ended with Defendants.

14 108. Accordingly, pursuant to Labor Code §203, Plaintiffs and the class are entitled to
15 waiting time penalties at an amount to be proven at trial, attorneys' fees and costs, and interest.

16 **SEVENTH CAUSE OF ACTION**

17 **VIOLATION OF LABOR CODE §§226**

18 (Against all Defendants on Behalf of Plaintiffs and the Class)

19 109. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein,
20 paragraphs 1 through 50 of this Complaint.

21 110. California Labor Code §226 provides:

22 (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish
23 each of his or her employees, either as a detachable part of the check, draft, or voucher
24 paying the employee's wages, or separately when wages are paid by personal check or
25 cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total
26 hours worked by the employee, except for any employee whose compensation is solely
27 based on a salary and who is exempt from payment of overtime under subdivision (a) of
28 Section 515 or any applicable order of the Industrial Welfare Commission, (3) the
number of piece-rate units earned and any applicable piece rate if the employee is paid
on a piece-rate basis, (4) all deductions, provided that all deductions made on written
orders of the employee may be aggregated and shown as one item, (5) net wages earned,
(6) the inclusive dates of the period for which the employee is paid, (7) the name of the
employee and only the last four digits of his or her social security number or an

1 employee identification number other than a social security number, (8) the name and
2 address of the legal entity that is the employer..., and (9) all applicable hourly rates in
3 effect during the pay period and the corresponding number of hours worked at each
4 hourly rate by the employee...

5 111. Labor Code §226(e) provides that an employee is entitled to recover the greater
6 of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation of §226
7 occurs and one hundred dollars (\$100) for each subsequent pay period not to exceed an
8 aggregate penalty of four thousand dollars (\$4,000), as well as an award of costs and reasonable
9 attorneys' fees, for all pay periods in which the employer knowingly and intentionally failed to
10 provide timely and accurate itemized statements to the employees showing the gross wages
11 earned by each of them.

12 112. At all material times, Defendants knowingly and intentionally failed to provide
13 its hourly non-exempt retail employees wage statements reflecting the actual employer name, the
14 hours actually worked, gross wages earned, net wages earned, and the applicable hourly rates at
15 the corresponding hours worked.

16 113. The class members suffered injury as a result of Defendants' knowing and
17 intentional failure to provide Plaintiffs and Class members with accurate itemized wage
18 statements during the relevant time period as Plaintiffs and the Class members were owed but
19 not paid compensation for hours worked, premium payments for meal and rest periods and
20 forfeited vacation pay owed which were not reflected on the wage statements. Further, Plaintiff
21 and the class suffered injury as a reasonable person could not promptly and easily determine
22 from the wage statements alone the accurate amount of gross wages, the hours worked, the net
23 wages earned for the pay period, or net wage paid per pay period.

24 114. Plaintiff and the class seek penalties pursuant to Labor Code §226(e), in an
25 amount to be determined at trial, and also seek costs and reasonable attorneys' fees pursuant to
26 Labor Code §226(e).

27 115. Plaintiff and the class further seek injunctive relief and an award of costs and
28 reasonable attorney's fees pursuant to Labor Code §226(h).

EIGHTH CAUSE OF ACTION

VIOLATION OF LABOR CODE §§226, 1174, and 1198.5 *et seq.*

(Against all Defendants on Behalf of Plaintiffs and the Class)

116. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein, paragraphs 1 through 50 of this Complaint.

117. Cal. Labor Code §1174(c)-(d) requires employers to keep records showing the names and addresses of all employees employed, and to keep, at a central location in the State of California 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, all employees employed at the respective plants or establishments. IWC Wage Order No. 4-2001§7(A)(3) further requires employers to keep time records showing when the employee begins and ends each work period, meal period, and split shift interval. Under §7(A)(5), employers must also record each employee's total hours worked and applicable rates of pay, and must make such information "readily available" to the employee upon request. Under §7(C), all required records must be in the English language and in ink or other indelible form, properly dated, showing month, day, and year; must be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California; and must be available for inspection by an employee upon reasonable request.

118. California Labor Code § 1198 makes unlawful the employment of an employee under conditions the IWC prohibits.

119. Cal. Labor Code §226(b) provides that "An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. . . ."

120. Cal. Labor Code §226(c) provides that "An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. . . ."

121. Cal. Labor Code §1198.5(a) provides that "Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records

1 that the employer maintains relating to the employee's performance or to any grievance
2 concerning the employee.”

3 122. Cal. Labor Code §1198.5(b) provides that “Upon a written request from a current
4 or former employee, or his or her representative, the employer shall also provide a copy of the
5 personnel records, at a charge not to exceed the actual cost of reproduction, not later than 30
6 calendar days from the date the employer receives the request, unless the current or former
7 employee, or his or her representative, and the employer agree in writing to a date beyond 30
8 calendar days to produce a copy of the records, as long as the agreed-upon date does not exceed
9 35 calendar days from the employer's receipt of the written request.”

10 123. Pursuant to Defendants’ policy or practice, Defendants have willfully failed, and
11 continue willfully to fail, to maintain accurate, complete, and readily available records, in
12 violation of Cal. Labor Code §§226(b)-(c), 1174(c)-(d), 1198.5(a) and WO 4-01§7.

13 124. Plaintiffs are informed and believe that employees of Defendants have requested
14 Defendants to produce certain required records and Defendants have not provided those records
15 in a timely fashion.

16 125. Plaintiffs and members of the class have suffered and will continue to suffer
17 actual economic harm resulting from these violations, as they have been, and will continue to be,
18 precluded from accurately monitoring the wages to which they are entitled, have been required to
19 retain counsel and other experts and consultants to evaluate and calculate unpaid wages, and
20 have suffered delays in receiving the wages and interest that are due and owing to them.
21 Defendants’ ongoing violations of these mandatory recordkeeping laws have caused, and will
22 continue to cause, irreparable harm to plaintiffs and class members, among other reasons because
23 as long as Defendants fail to maintain and make readily available the required records, Plaintiffs
24 and members of the class will be unable to determine or demonstrate the precise number of hours
25 actually worked, or the wages and penalties owed to them for the long hours that Defendants
26 have required them to work.

27 126. By willfully failing to maintain the records required by Cal. Labor Code
28 §1174(c) or the accurate and complete records required by §1174(d), Defendants are also liable
for a civil penalty of five hundred dollars (\$500) for each violation under §1174.5.

1 127. Cal. Labor Code § 1194.5 authorizes issuance of and injunction where an
2 employer has willfully violated laws governing wages, hours, or working conditions. Plaintiffs
3 and members of the class are entitled to injunctive relief under the governing legal standards, and
4 are entitled to an order requiring Defendants to provide Plaintiffs and members of the class all of
5 the information required by California Labor Code §1174 and IWC Wage Order No. 4-2001.

6 128. By failing to comply with Cal. Labor Code §§226(b)-(c), Defendants are also
7 liable for a civil penalty, recoverable by the employee, of seven-hundred-fifty-dollar (\$750)
8 penalty from the employer for each violation under §226(b)-(c) pursuant to §226(f). Plaintiff
9 and members of the class are entitled to injunctive relief and an award of costs and reasonable
10 attorney's fees and an order required Defendants to provide Plaintiffs and the members of the
11 call all of the required documents pursuant to Labor Code §226(b)-(c).

12 129. By failing to comply with Cal. Labor Code §1198.5(a), Defendants are also
13 liable for a civil penalty, recoverable by the employee, of seven-hundred-fifty-dollar (\$750)
14 penalty from the employer for each violation under §1198.5(a) pursuant to §1198.5(k). Plaintiff
15 and members of the class are entitled to injunctive relief and an award of costs and reasonable
16 attorney's fees and an order required Defendants to provide Plaintiffs and the members of the
17 call all of the required documents pursuant to Labor Code §1198.5(l).

18 **NINTH CAUSE OF ACTION**

19 **UNFAIR COMPETITION**

20 **In Violation of Business and Professions Code §§17200 et seq.**

21 (Against all Defendants on Behalf of Plaintiffs and the Class)

22 130. Plaintiffs re-allege and incorporate by reference and re-allege each and every one
23 of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if
24 fully set forth herein.

25 131. Beginning on an exact date unknown to Plaintiffs but believed to have occurred
26 at least since four (4) years before the filing of this action, Defendants have engaged in a pattern
27 and practice of acts of unfair competition in violation of B&PC §17200, including the practices
28 alleged herein.

132. Defendants, and each of them, are "persons" as defined by Business and

1 Professions Code §17201.

2 133. Plaintiffs seek to enforce important rights affecting the public interest. Plaintiffs
3 sue on their own behalf and on behalf of the current, former, and future employees of the
4 Defendants that were required to work off-the-clock without receiving minimum wage, overtime
5 hours without receiving overtime compensation, forfeit vacation pay, required to work shifts
6 without legally compliant meal breaks and rest periods without meal and rest period premium
7 payments and as parties harmed by Defendants unfair business practices.

8 134. Plaintiffs and the class have suffered injuries-in-fact and have lost money as a
9 result of the Defendants' unfair competition alleged herein.

10 135. Defendants have previously or continue to engage in unlawful, unfair, and/or
11 fraudulent business practices, as alleged in this Complaint, in violation of California's B&PC
12 §17200 *et seq.* by:

- 13 A. Failing and refusing to pay the class, including Plaintiffs, minimum wages
14 for all hours worked in violation of Labor Code §§510, 1194, 1194.2, &1197
15 and IWC Wage Order No. 4-2001;
- 16 B. Failing and refusing to pay the class, including Plaintiffs, earned overtime
17 wages in violation of Labor Code §§510 and 1194;
- 18 C. Failing and refusing to provide the class, including Plaintiffs, with meal and
19 rest breaks or premium payments in lieu thereof in violation of Labor Code
20 §§226.7, 512 and IWC Wage Order No. 4-2001;
- 21 D. Forcing forfeitures of earned vacation pay in violation of Labor Code §227.3;
- 22 E. Failing and refusing to pay the class, including Plaintiffs, all earned and
23 unpaid compensation in a timely manner upon termination or resignation, in
24 violation of Labor Code §§201-203; and
- 25 F. Failing and refusing to maintain and make readily available required records
26 pursuant to Labor Code §§226(b)-(c), 1174(c)-(d), 1198.5(a) and WO 4-
27 01§(7).

28 136. All of these allegations constitute unfair business practices and/or unlawful
business practices in violation of California B&PC §17200, *et seq.*

1 137. Defendants have avoided payment of wages, overtime wages and other benefits
2 as required by the California Labor Code, the California Code of Regulations and applicable
3 IWC Wage Orders. As a result of Defendants' unfair business practices, Defendants have reaped
4 unfair benefits and illegal profits at the expense of Plaintiffs, and others similarly situated, and
5 the members of the public. Defendants should be made to disgorge their ill-gotten gains and to
6 restore them to the Class, including Plaintiffs.

7 138. Plaintiffs and the putative class seek full restitution of said monies, as necessary
8 and according to proof, to restore any and all monies withheld and/or acquired by Defendants by
9 means of the unfair, unlawful, and fraudulent business practices complained of herein. Plaintiffs
10 seek, on behalf of all current and former employees of Defendants, restitution of monies retained
11 by Defendants. Plaintiffs further seek, on behalf of themselves and the putative class, the
12 appointment of a receiver, as necessary, to establish the total restitutionary relief from
13 Defendants. The restitution includes all wages withheld by Defendants as a result of the unfair,
14 unlawful, and/or fraudulent business practices; including interest thereon. Absent a statutory
15 provision specifically governing the type of claim at issue, the prejudgment interest rate is 10
16 percent. The acts complained of herein occurred, at least in part, within the last four (4) years
17 preceding the filing of the Complaint.

18 139. Plaintiffs are informed and believe and thereon allege that at all times herein
19 mentioned, Defendants have engaged in unlawful, deceptive, and unfair business practices
20 prohibited by California B&PC §17200, thereby depriving their employees and the putative
21 class, the minimum working condition, standards and conditions due to them under the
22 California labor laws and Industrial Welfare commission wage orders as specifically described
23 herein. Plaintiffs further seeks an order requiring Defendants to identify by full name, telephone
24 number, and last known address employees who worked or still work for Defendants as hourly
25 non-exempt retail banking employees from four (4) years preceding the filing of the original
26 Complaint through the date of class certification. Plaintiffs further seeks an order requiring
27 Defendants to timely pay restitution to all current and former employees, including back wages,
28 and interest.

 140. By and through its unfair, unlawful, and/or fraudulent business practices and acts

1 described herein, Defendants have obtained valuable services from Plaintiffs and all persons
2 similarly situated, and has deprived Plaintiffs and all persons similarly situated of valuable rights
3 and benefits guaranteed by law, all to their detriment.

4 141. Plaintiffs, and all persons similarly situated, and all persons in interest, are
5 entitled to and do seek such relief as may be necessary to restore to them the money and property
6 which Defendants have acquired, or of which Plaintiffs and class members have been deprived
7 by mean of the herein described unfair, unlawful, and/or fraudulent business practices.

8 142. Plaintiffs, and all persons similarly situated, and all persons in interest, are
9 further entitled to and do seek a declaration that the above described business practices are
10 unfair, unlawful, and/or fraudulent, and declaratory relief of Defendants engaging in any of the
11 herein described unfair, unlawful, and/or fraudulent business practices.

12 143. Plaintiffs and the class request attorney's fees and costs pursuant to Code of
13 Civil Procedure §1021.5 since this action is brought to vindicate important rights of a large class
14 and the public.

15 **TENTH CAUSE OF ACTION**

16 **DECLARATORY RELIEF**

17 **Code of Civil Procedure §1060**

18 (Against all Defendants on Behalf of Plaintiffs and the Class)

19 144. Plaintiffs re-allege and incorporate by reference each and every one of the
20 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
21 forth herein.

22 145. California Code of Civil Procedure §1060 provides that any person who desires a
23 declaration of his or her rights or duties with respect to another, in cases of actual controversy
24 relating to the legal rights and duties with respect to another, may ask the Court for a declaration
25 of rights or duties, and the Court may make a binding declaration of these rights or duties,
26 whether or not further relief is or could be claimed at the time; any such declaration by the Court
shall have the force of a final judgment.

27 146. Defendants engaged in the unlawful and unfair conduct as described herein. An
28 actual controversy exists as to the parties respective rights based on Plaintiffs' allegations as

1 described herein.

2 147. Plaintiffs seek a declaration as to the rights of Plaintiffs with respect to
3 Defendants' unlawful and unfair conduct, as described herein.

4 **ELEVENTH CAUSE OF ACTION**

5 **PRIVATE ATTORNEYS GENERAL ACT – RETAIL BANKING PAGA GROUP**

6 **Labor Code §§2699, *et seq.***

7 (Against all Defendants on Behalf of Plaintiffs and the Retail Banking PAGA Group)

8 148. Plaintiffs on behalf of themselves and on behalf of all other aggrieved employees
9 defined herein as the Retail Banking PAGA Group (in Paragraph 25) re-allege and incorporate
10 each and every one of the allegations contained in the preceding paragraphs, inclusive of this
11 complaint, as if fully set forth herein.

12 149. Labor Code §§2698 *et seq.*, the Labor Code Private Attorney General Act
13 (“PAGA”) of 2004, provides for a civil penalty to be assessed and collected by the Labor and
14 Workforce Development Agency (LWDA), or any of its departments, divisions, commissions,
15 boards, agencies or employees for a violation of the Labor Code, may be recovered through a
16 civil action by an aggrieved employee on behalf of himself or herself, and collectively on behalf
17 of all other current or former employees.

18 150. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
19 agencies or employees, has discretion to assess a civil penalty, a court in a civil action is
20 authorized to exercise the same discretion, subject to the same limitations and conditions to
21 assess a civil penalty.

22 151. The Retail Banking PAGA Group “aggrieved employees” are defined above in
23 Paragraph 25.

24 152. Prior to filing the First Amended Complaint, Plaintiff Rodriguez gave written
25 notice, by certified mail, to the LWDA and the employer of the specific provisions of the Labor
26 Code alleged to have been violated, including the facts and theories to support the alleged
27 violations as required by Labor Code §2699.3. More than 33 days lapsed since the mailing of
28 Plaintiff's notices to the LWDA and the LWDA did not indicate that it intends to investigate
Defendants' Labor Code violations in the notices. Accordingly, Plaintiff Rodriguez may

1 commence a civil action to recover civil penalties for themselves and other current and former
2 employees under Labor Code §2699 pursuant to §2699.3.

3 153. Pursuant to Labor Code §2699.3, notwithstanding any other provision of the law,
4 Plaintiff Rodriguez did as a matter of right amend the existing original complaint, to add a cause
5 of action under Labor Code §2699 at any time within 60 days under the code.

6 154. On or about January 9, 2019, Plaintiff Malik sent written notice to the LWDA.
7 To date, the LWDA has not responded to Plaintiff Malik's written notice.

8 155. On or about May 21, 2020, Plaintiff Yousefi sent written notice to the LWDA.
9 To date, the LWDA has not responded to Plaintiff Yousefi's written notice.

10 156. On or about June 23, 2020, Plaintiff Yousefi sent supplemental notice to the
11 LWDA. To date, the LWDA has not responded to Plaintiff Yousefi's supplemental notice.

12 157. Plaintiffs' LWDA notices are attached hereto as Exhibit A and their allegations
13 are incorporated herein by reference.

14 158. Plaintiffs assert all of the claims in this complaint against Defendants,
15 individually and on behalf of all aggrieved hourly non-exempt employees in their capacity as
16 private attorneys general, and seeks all civil penalties available under Labor Code sections 200-
17 204, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 246-248.5, 510, 512, 1194, 1194.2, 1197, 1197.1,
18 1198, and 1198.5.

19 159. Pursuant to Labor Code §2699, Plaintiffs, individually and on behalf of all
20 aggrieved employees, request and are entitled to recover from the Defendants: overtime
21 compensation, meal and rest period compensation, waiting time period wages, and penalties
22 according to proof, and Plaintiff further is entitled to recover interest, attorney's fees and costs
23 pursuant to Labor Code §2699(g)(1), as well as all civil penalties and attorneys' fees against
24 Defendants, including, but not limited to:

25 A. Penalties under Code of Regulations, Title 8 §1 1040 in the amount of \$50
26 for each aggrieved employee per pay period for the initial violation, and
27 \$200 for each aggrieved employee per pay period for each subsequent
28 violation;

B. Penalties under Labor Code §256, in addition to and entirely independent

1 and apart from other penalties provided in the Labor Code, including
2 Labor Code §203, for any aggrieved employee who was discharged or
3 quit, and was not paid all earned wages at termination in accordance with
4 Labor Code §§201, 201.1, 201.5, 202, 205.5, and 246, in the amount of a
5 civil penalty of one day of pay for each day that the aggrieved employee
6 was paid late, until payment was/is made, up to a maximum of thirty (30)
7 days;

8 C. Penalties under Labor Code §558, in addition to and entirely independent
9 and apart from other penalties provided under the Labor Code, in the
10 amount of \$50 for each underpaid aggrieved employee for each pay
11 period the aggrieved employee was underpaid in addition to an amount
12 sufficient to recover underpaid wages, and \$100 for each subsequent
13 violation for each underpaid employee for each pay period for which the
14 employee was underpaid in addition to an amount sufficient to recover
15 underpaid wages, with all wages recovered pursuant to Labor Code §558
16 provided to the affected employees;

17 D. Penalties under Labor Code §226.3, in addition to and entirely
18 independent and apart from other penalty provided in the Labor Code, in
19 the amount of \$250 for each aggrieved employee per pay period for each
20 violation, and \$1,000 for each aggrieved employee per pay period for
21 each subsequent violation;

22 E. Penalties under Labor Code §1197.1, in addition to and entirely
23 independent and apart from other penalties provided in the Labor Code,
24 as follows:

25 i. For any initial violation that is intentionally committed, \$100 for
26 each underpaid employee for each pay period for which the
27 employee is underpaid;

28 ii. For each subsequent violation for the same specific offense, \$200
for each underpaid employee for each pay period for which the

employee is underpaid regardless of whether the initial violation is intentionally committed; and

iii. Any and all wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to Labor Code §1197.1 to be paid to the affected employee;

F. Penalties under Labor Code §1174.5, in addition to and entirely independent and apart from other penalties provided in the Labor Code, civil penalties in the amount of \$500 for each violations of Labor Code §§1174(b), (c), and/or (d);

G. Penalties under Labor Code §226(f), in addition to and entirely independent and apart from other penalties provided in the Labor Code, civil penalties in the amount of \$750 for each failure to permit a current or former employee to inspect or copy records;

H. Penalties under Labor Code §1198.5(k), in addition to and entirely independent and apart from other penalties provided in the Labor Code, civil penalties in the amount of \$750 for each failure to permit a current or former employee to inspect or copy records;

I. Penalties under Labor Code §2699(f), in addition to and entirely independent and apart from other penalty provided in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

160. Any and all additional penalties and sums as provided by the Labor Code and/or other statutes.

161. In addition thereto, Plaintiffs seek and are entitled to 75% of all penalties obtained to be allocated to the LWDA and 25% to all aggrieved employees.

162. Further, Plaintiffs are entitled to seek and recover reasonable attorney's fees and costs pursuant to Labor Code §2699(g)(1).

1 **TWELFTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT – NON-RETAIL BANKING PAGA**
3 **RELEASED CLAIMS**

4 **Labor Code §§2699, *et seq.***

5 (Against all Defendants on Behalf of Plaintiffs and the Non-Retail Banking PAGA Release
6 Claims)

7 163. Plaintiffs on behalf of themselves and on behalf of all other aggrieved employees
8 defined herein as the Retail Banking PAGA Group (in Paragraph 25) re-alleges and
9 incorporates each and every one of the allegations contained in the preceding paragraphs,
10 inclusive of this complaint, as if fully set forth herein.

11 164. Labor Code §§2698-2699, the Labor Code Private Attorney General Act of
12 2004, provides for a civil penalty to be assessed and collected by the Labor and Workforce
13 Development Agency (LWDA), or any of its departments, divisions, commissions, boards,
14 agencies or employees for a violation of the Labor Code, may be recovered through a civil
15 action by an aggrieved employee on behalf of himself or herself, and collectively on behalf of
16 all other current or former employees.

17 165. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
18 agencies or employees, has discretion to assess a civil penalty, a court in a civil action is
19 authorized to exercise the same discretion, subject to the same limitations and conditions to
20 assess a civil penalty.

21 166. The Non-Retail Banking PAGA Group defined above in Paragraph 25.

22 167. On or about May 21, 2020, Plaintiff Yousefi sent written notice to the LWDA.
23 To date, the LWDA has not responded to Plaintiff Yousefi's written notice.

24 168. On or about June 23, 2020, Plaintiff Yousefi sent supplemental notice to the
25 LWDA. To date, the LWDA has not responded to Plaintiff Yousefi's supplemental notice.

26 169. Plaintiff Yousefi's LWDA notices are attached hereto as Exhibit A and their
27 allegations are incorporated herein by reference.

28 170. Pursuant to Labor Code §2699.3, notwithstanding any other provision of the law,
Plaintiff did as a matter of right amend the existing original complaint, to add a cause of action

1 under Labor Code §2699 at any time within 60 days under the code.

2 171. Plaintiff Yousefi asserts all of the claims in this complaint against Defendants,
3 individually and on behalf of all Non-Retail Banking PAGA Group aggrieved employees in his
4 capacity as private attorneys general, and seeks all civil penalties available under Labor Code
5 sections 200-204, 218.5, 218.6, 226, 226.3, 246-248.5, 510, and 1194.

6 172. Plaintiff brings this cause of action as a proxy for the State of California and in
7 this capacity, seeks penalties on behalf of all Aggrieved Employees from May 21, 2019,
8 through the present, for Defendants' policy and practice of: (a) failing to pay employees
9 overtime wages at the correct regular rate of pay that included all non-discretionary
10 remuneration, in violation of Labor Code sections 201-203, 510, and 1194; (b) failing to pay
11 employees sick pay at the correct regular rate of pay that included all non-discretionary
12 remuneration, in violation of Labor Code sections 201-203 and 246; and (c) failing to provide
13 accurate itemized wage statements in violation of Labor Code section 226(a).

14 173. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
15 and all applicable civil penalties for Defendants' violation of Labor Code sections 201, 202,
16 203, 226, 246, 510, and 1194 for the time period described above, on behalf of herself and other
17 Aggrieved Employees.

18 **PRAYER FOR RELIEF**

19 Plaintiffs and the class members pray for judgment as follows:

- 20 A. An order that the action be certified as a class action;
- 21 B. An order that Plaintiffs be appointed class representatives;
- 22 C. An order that counsel for Plaintiffs be appointed class counsel;
- 23 D. For all unpaid wages due to Plaintiffs and each Class member and liquidated damages,
24 in amounts to be proven at trial;
- 25 E. For all unpaid overtime and double time wages due Plaintiffs and each Class member;
- 26 F. For restitution of all expenses improperly charged against Plaintiffs' and each Class
27 member's pay;
- 28 G. For restitution of all unpaid wages due Plaintiff and each Class member;
- H. For all applicable statutory penalties, in amounts to be proven at trial;

- I. For all forfeited vacation pay, including personal day pay, in amounts to be proven at trial;
- J. For an award of waiting time penalties pursuant to section 203 of the California Labor Code, in amounts to be proven at trial;
- K. For general damages including compensatory damages according to proof;
- L. For pre-judgment interest as allowed by Labor Code §§218.6 and 1194(a) as well as Cal. Civil Code §3287 and to the extent permitted by law, the California Constitution, and/or deemed equitable by the Court;
- M. For all applicable interest on damages, wages, expenses, and penalties due;
- N. For injunctive relief to prevent further violations of the California Labor Code;
- O. For declaratory relief that Defendants engaged in unfair practices;
- P. For declaratory relief that Defendants violated Labor Code §§201-203, 226, 226.7, 246, 510, 512, 1194, 1194.2, 1197, and 2802
- Q. For restitution of all moneys due to Plaintiffs and Class members, and disgorged profits from the unlawful and/or unfair business practices of Defendants, pursuant to California Business & Professions Code §17200;
- R. For costs of suit, expenses and attorneys' fees pursuant to Labor Code §§218.5, 226(f), 1194(a), 2699(g)(1), and Code of Civil Procedure §1021.5;
- S. For one (1) hour of pay at each of the employees' regular rate of compensation for each workday that a legally compliant meal break was not provided, impeded, discouraged, and/or dissuaded;
- T. For one (1) hour of pay at each of the employees' regular rate of compensation for each workday that a legally compliant rest break was not provided, impeded, discouraged, and/or dissuaded, including but not limited to workdays that a rest break was controlled, captive, captures, or on premises;
- U. On behalf of Plaintiff and the Retail Banking PAGA Group and the Non-Retail PAGA Group defined above in Paragraph 25, for all applicable civil penalties authorized by LC §2699, based on the respective Eleventh and Twelfth Causes of Action, including but not limited to:

1. For civil penalties per LC §226.3 in the amount of \$250 for each aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for each subsequent violation;
2. For civil penalties per LC §256 in the amount of one day of pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination, until payment was/is made, up to a maximum of thirty (30) days;
3. For civil penalties pursuant to LC §558 as follows:
 - i. For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;
 - ii. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;
 - iii. For any and all unpaid wages that shall be paid to the affected employees:
4. For civil penalties per Code of Regulations, Title 4 §1 1070 in the amount of \$50 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;
5. For civil penalties under Labor Code §1174.5 in the amount of \$500 for each violations of Labor Code §§1174(b), (c), and/or (d);
6. For civil penalties under Labor Code §226(f) in the amount of \$750 for each failure to permit a current or former employee to inspect or copy records;
7. For civil penalties under Labor Code §1198.5(k) in the amount of \$750 for each failure to permit a current or former employee to inspect or copy records;
8. For civil penalties per Labor Code §1197.1, in the amount of:
 - i. \$100 for each underpaid employee for each initial pay period for which the employee was intentionally underpaid;
 - ii. \$200 for each underpaid employee for each subsequent pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed; and

- iii. Any and all wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to Labor Code §1197.1 to be paid to the affected employee;
- iv. For civil penalties under LC §2699(f), in addition to and entirely independent and apart from other penalties provided in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

V. For all such other and further relief that the Court may deem just and proper.

Date:

THE MYERS LAW GROUP, A.P.C.

By: _____

David P. Myers
Robert Kitson
Jason Hatcher
Attorney for Plaintiffs and others similarly situated

Dated: _____, 2021

DIVERSITY LAW GROUP, P.C.

By: Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Attorneys for Plaintiffs Malik and Yousefi,
the Class, and Aggrieved Employees

Dated: _____, 2021

POLARIS LAW GROUP LLP

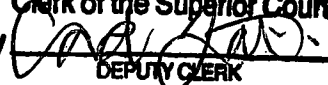
By: William L. Marder
Attorneys for Plaintiff Malik, the Class, and
Aggrieved Employees

Exhibit 2

FILED
SAN MATEO COUNTY

FEB 01 2019

Clerk of the Superior Court

By  DEPUTY CLERK

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Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

ALI MALIK, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

US BANK NATIONAL ASSOCIATION,
business entity form unknown; and DOES
1 through 50, inclusive,

Defendants.

Case No.:

19CIV00693

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

- (1) VIOLATION OF CAL. LABOR CODE § 226.7;
- (2) VIOLATION OF CAL. LABOR CODE § 226(a);
- (3) VIOLATION OF CAL. BUS. & PROF. CODE § 17200, *ET SEQ.*

DEMAND OVER \$25,000.00

BY FAX

Plaintiff Ali Malik ("Plaintiff") submits this Class Action Complaint ("Complaint") against Defendants US Bank National Association and DOES 1-50 (collectively referred to as "Defendants"), on behalf of himself and a class of all other similarly situated current and former employees of Defendants for premium pay for missed rest periods, penalties under the California

1 Labor Code, and for restitution as follows:

2 **INTRODUCTION**

3 1. This class action is within the Court's jurisdiction under California Labor Code
4 sections 226(a) and 226.7, the applicable Wage Orders of the California Industrial Welfare
5 Commission ("IWC"), and the California Unfair Competition Law (the "UCL"), Business and
6 Professions Code § 17200, *et seq.*

7 2. This Complaint challenges systemic illegal employment practices resulting in
8 violations of the California Labor Code and the UCL against individuals who worked for
9 Defendants.

10 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
11 jointly and severally, have acted intentionally and with deliberate indifference and conscious
12 disregard to the rights of all employees in Defendants' failure to pay premium pay for missed rest
13 periods and provide accurate itemized wage statements.

14 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
15 engaged in, among other things a system of willful violations of the California Labor Code and the
16 UCL by creating and maintaining policies, practices and customs that knowingly deny employees
17 the above stated rights and benefits.

18 5. The policies, practices and customs of defendants described above and below have
19 resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that
20 routinely adhere to the strictures of the California Labor Code and the UCL.

21 **JURISDICTION AND VENUE**

22 6. The Court has jurisdiction over the violations of the California Labor Code sections
23 226(a) and 226.7, and the UCL.

24 7. Venue is proper in San Mateo County because Plaintiff worked at Defendants'
25 business located in Burlingame, which is located in the County of San Mateo.

26 **PARTIES**

27 8. In or around June of 2016, Defendants hired Plaintiff to work as a personal banker
28 in Burlingame, California. Plaintiff's employment with Defendants ended on or about September

1 16, 2018. At all times during Plaintiff's employment with the Company, he worked as an hourly,
2 non-exempt employee.

3 9. Plaintiff was and is the victim of the policies, practices, and customs of Defendants
4 complained of in this action in ways that have deprived him of the rights guaranteed by California
5 Labor Code sections 226(a) and 226.7, and the UCL.

6 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant US
7 Bank National Association provides banking services and operates retail bank locations throughout
8 the United States, including locations in the State of California and in the County of San Mateo.

9 11. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
10 mentioned Defendant and Does 1 through 50, are and were corporations, business entities,
11 individuals, and partnerships, licensed to do business and actually doing business in the State of
12 California. As such, and based upon all the facts and circumstances incident to Defendants'
13 business, Defendants are subject to the California Labor Code and the UCL.

14 12. Plaintiff does not know the true names or capacities, whether individual, partner or
15 corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said
16 defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
17 complaint when the true names and capacities are known. Plaintiff is informed and believes and
18 based thereon alleges that each of said fictitious defendants was responsible in some way for the
19 matters alleged herein and proximately caused Plaintiff and members of the general public and
20 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

21 13. At all times herein mentioned, each of said Defendants participated in the doing of
22 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
23 Defendants, and each of them, were the agents, servants and employees of each of the other
24 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
25 within the course and scope of said agency and employment.

26 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
27 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
28 joint venturer of, or working in concert with each of the other co-Defendants and was acting within

1 the course and scope of such agency, employment, joint venture, or concerted activity. To the
2 extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
3 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
4 Defendants.

5 15. At all times herein mentioned, Defendants, and each of them, were members of, and
6 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
7 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

8 16. At all times herein mentioned, the acts and omissions of various Defendants, and
9 each of them, concurred and contributed to the various acts and omissions of each and all of the
10 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
11 herein mentioned, Defendants, and each of them, ratified each and every act or omission
12 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
13 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
14 damages as herein alleged.

15 CLASS ACTION ALLEGATIONS

16 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
17 California Code of Civil Procedure section 382. Plaintiff proposes the following Classes:

- 18 a. All current and former non-exempt employees who were employed by
19 Defendants in the State of California at any time from February 1, 2015,
20 through the present (the "Break Class");
- 21 b. All current and former non-exempt employees who were employed by
22 Defendants in the State of California and who worked any "captive" or
23 "captured" meal break work shifts at any time from February 1, 2015,
24 through the present (the "Break Subclass"); and
- 25 c. All current and former employees who were employed by Defendants in the
26 State of California at any time from February 1, 2018, to the present, in the
27 State of California (the "Wage Statement Class").

28 18. **Numerosity and Ascertainability:** The members of the Classes are so numerous

1 that joinder of all members would be impractical, if not impossible. The identity of the members of
2 the Classes are readily ascertainable by review of Defendants' records, including payroll records.
3 Plaintiff is informed and believes, and based thereon alleges, that Defendants: (a) failed to provide
4 off-duty 10-minute rest breaks to employees who worked 3.5 hours or more in one shift in
5 violation of Labor Code section 226.7; (b) failed to provide proper payroll records to employees in
6 violation of Labor Code section 226(a), and (c) engaged in unfair business practices in violation of
7 the California Labor Code, the applicable IWC Wage Orders, and the UCL.

8 19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
9 necessary steps to represent fairly and adequately the interests of the Classes defined above.
10 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the Classes and
11 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
12 actions in the past and currently have a number of wage-and-hour class actions pending in
13 California state and federal courts.

14 20. Defendants uniformly administered a corporate policy, practice of: (a) failing to
15 provide off-duty 10-minute rest breaks to employees who worked 3.5 hours or more in one shift in
16 violation of Labor Code section 226.7; (b) failing to provide proper payroll records to employees
17 in violation of Labor Code section 226(a); and (c) engaging in unfair business practices in
18 violation of the California Labor Code, the applicable IWC Wage Orders, and the UCL.

19 21. Plaintiff is informed and believes, and based thereon alleges, that Defendants had a
20 consistent and uniform policy, practice and procedure of willfully failing to comply with Labor
21 Code sections 226(a) and 226.7, and the UCL.

22 22. **Common Question of Law and Fact:** There are predominant common questions
23 of law and fact and a community of interest amongst Plaintiff and the claims of the Classes
24 concerning Defendants' policy and practice of: (a) failing to provide off-duty 10-minute rest
25 breaks to employees who worked 3.5 hours or more in one shift in violation of Labor Code section
26 226.7; (b) failing to provide proper payroll records to employees in violation of Labor Code
27 section 226(a); and (c) engaging in unfair business practices in violation of the California Labor
28 Code, the applicable IWC Wage Orders, and the UCL.

1 23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
2 Classes in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
3 as the Class Members. Pursuant to Defendants' policy, when non-exempt employees were
4 required to work "captured" or "captive" meal break shifts, they were required to stay on premises
5 during their rest breaks and not allowed to leave the bank. Plaintiff and other employees were
6 required to perform work during these rest breaks. Although it is well-settled that Defendants
7 should have paid rest period premium pay to Plaintiff and Class Members, Defendants failed to do
8 so. Defendants also failed to provide accurate, itemized wage statements to Plaintiff and Class
9 Members that identified the legal entity that is the employer. The wages statements issued to
10 Plaintiff showed the employer name as "US Bank National Assoc," which does not exist in the
11 State of California Secretary of State's records. Therefore, Plaintiff is a member of the Classes
12 and has suffered the alleged violations of California Labor Code sections 226(a) and 226.7.

13 24. The California Labor Code sections upon which Plaintiff bases these claims are
14 broadly remedial in nature. These laws and labor standards serve an important public interest in
15 establishing minimum working conditions and standards in California. These laws and labor
16 standards protect the average working employee from exploitation by employers who may seek to
17 take advantage of superior economic and bargaining power in setting onerous terms and conditions
18 of employment.

19 25. The nature of this action and the format of laws available to Plaintiff and members
20 of the Classes identified herein make the class action format a particularly efficient and appropriate
21 procedure to redress the wrongs alleged herein. If each employee were required to file an
22 individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage
23 since it would be able to exploit and overwhelm the limited resources of each individual plaintiff
24 with their vastly superior financial and legal resources. Requiring each Class Member to pursue
25 and individual remedy would also discourage the assertion of lawful claims by employees who
26 would be disinclined to file an action against their former and/or current employer for real and
27 justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

28 26. The prosecution of separate actions by the individual Class Members, even if

possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual class members against the Defendants and which would establish potentially incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other Class Members not parties to the adjudications or which would substantially impair or impede the ability of the Class Members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

27. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Classes identified herein, in a civil action, for applicable damages and/or penalties, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code sections 218.5, 226, and Code of Civil Procedure section 1021.5.

28. Proof of a common business practice or factual pattern, which the named Plaintiff experienced and is representative of, will establish the right of each of the members of the Plaintiff Classes to recovery on the causes of action alleged herein.

29. The Classes are commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Classes are commonly entitled to restitution of those funds being improperly withheld by Defendants. This action is brought for the benefit of the entire class and will result in the creation of a common fund.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226.7

(BY PLAINTIFF AND THE BREAK CLASS AND SUBCLASS AGAINST ALL DEFENDANTS)

30. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 29 as though fully set forth herein.

31. At all relevant times, Defendants failed in their affirmative obligation to ensure that Plaintiff, and other Break Class Members, had the opportunity to take and were provided with off-

1 duty 10-minute rest periods in accordance with the mandates of the California Labor Code and the
2 applicable IWC Wage Order. Specifically, whenever Plaintiff and Break Class Members worked
3 “captured” or “captive” meal break shifts, they were required to remain on premises and work
4 during rest breaks. Defendants failed to relieve Plaintiff and other Break Class Members of all
5 duties during their 10-minute rest breaks. Thus, Plaintiff and Break Class Members were denied
6 their right to 10-minute, off-duty rest breaks for any and all shifts in which they worked 3.5 hours
7 or longer. In other words, Plaintiff and Break Class Members were suffered and permitted to work
8 through legally required rest breaks and were denied the opportunity to take their full 10-minute
9 off-duty rest breaks because they remained under Defendants’ control by virtue of having to
10 remain on the premises. As such, Defendants are responsible for paying premium compensation
11 for missed rest periods pursuant to Labor Code section 226.7 and the applicable IWC Wage Order.
12 Defendants, as a matter of corporate policy and procedure, regularly failed to pay such premium
13 compensation for each full 10-minute duty-free rest period Plaintiff and the Break Class Members
14 missed.

15 32. This policy of requiring employees to work through their legally mandated rest
16 periods and not allowing them to take proper off-duty rest periods is a violation of California law.

17 33. Plaintiff is informed and believe and based thereon alleges that Defendants willfully
18 failed to pay employees who were not provided the opportunity to take rest breaks the premium
19 compensation set out in Labor Code section 226.7, and the applicable IWC Wage Order and that
20 Plaintiff and those employees similarly situated as them are owed wages for the rest period
21 violations set forth above.

22 34. Such a pattern, practice and uniform administration of corporate policy as described
23 herein is unlawful and creates an entitlement to recovery by the Plaintiff and Break Class Members
24 identified herein, in a civil action, for the unpaid balance of the unpaid premium compensation
25 pursuant to Labor Code section 226.7 and the applicable IWC Wage Order, including interest
26 thereon, penalties, reasonable attorneys’ fees, and costs of suit.

27 ///

28 ///

1 **SECOND CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 226(a)**

3 **(BY PLAINTIFF AND THE WAGE STATEMENT CLASS AGAINST ALL**
4 **DEFENDANTS)**

5 35. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 34 as though
6 fully set forth herein.

7 36. Defendants, as a matter of policy and practice, failed in their affirmative obligation
8 to provide accurate itemized wage statements.

9 37. Pursuant to Labor Code section 226(a), wage statements must identify the legal
10 name of the employer. The wage statements provided to Plaintiff and the Wage Statement Class
11 failed to identify such information, listing the company as "US Bank National Assoc," which does
12 not exist in the State of California Secretary of State's records.

13 38. Such a pattern, practice and uniform administration of corporate policy as described
14 herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Wage Statement
15 Class identified herein, in a civil action, for all damages or penalties pursuant to Labor Code
16 section 226(a), including interest thereon, attorneys' fees, and costs of suit according to the
17 mandate of California Labor Code section 226(a).

18 **THIRD CAUSE OF ACTION**

19 **VIOLATION OF THE UCL, BUSINESS & PROFESSIONS CODE § 17200, *ET SEQ.***

20 **(BY PLAINTIFF AND THE BREAK CLASS AND SUBCLASS AGAINST ALL**
21 **DEFENDANTS)**

22 39. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 38 as though
23 fully set forth herein.

24 40. Defendants, and each of them, have engaged and continue to engage in unfair and
25 unlawful business practices in California by practicing, employing and utilizing the employment
26 practices outlined above, include, to wit, by failing to provide rest periods in violation of Labor
27 Code § 226.7.

28 41. Defendants' utilization of such unfair and unlawful business practices constitutes

1 unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

2 42. Plaintiff seeks, individually and on behalf of other members of the Class similarly
3 situated, full restitution of monies, as necessary and according to proof, to restore any and all
4 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices
5 complained of herein.

6 43. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
7 mentioned Defendants have engaged in unlawful, deceptive, and unfair business practices, as
8 proscribed by California Business and Professions Code § 17200, *et seq.*, including those set forth
9 herein above thereby depriving Plaintiff and other members of the Class the minimum working
10 condition standards and conditions due to them under the California laws as specifically described
11 therein.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this
14 suit is brought against Defendants, jointly and severally, as follows:

- 15 1. For an order certifying the proposed Classes;
- 16 2. For an order appointing Plaintiff as the representative of the Classes as described
17 herein;
- 18 3. For an order appointing Counsel for Plaintiff as Class counsel;
- 19 4. Upon the First Cause of Action, for damages and/or penalties pursuant to California
20 Labor Code sections 226.7, and for costs and attorneys' fees;
- 21 5. Upon the Second Cause of Action, for penalties pursuant to California Labor Code
22 section 226(a), and for costs and attorneys' fees;
- 23 6. Upon the Third Cause of Action, for restitution to Plaintiff and other similarly
24 affected members of the general public of all funds unlawfully acquired by Defendants by means
25 of any acts or practices declared by this Court to be in violation of Business and Professions Code
26 § 17200, *et seq.*;
- 27 7. On all causes of action for attorneys' fees and costs as provided by California Labor
28 Code sections 218.5 and 226, and Code of Civil Procedure section 1021.5; and

1 8. For such other and further relief the Court may deem just and proper.

2
3 DATED: January 31, 2019

DIVERSITY LAW GROUP, P.C.

4
5 By: 

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

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7 Attorneys for Plaintiff and the Class
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Exhibit 3

1 Larry W. Lee (State Bar No. 228175)
 2 Kristen M. Agnew (State Bar No. 247656)
 3 Nicholas Rosenthal (State Bar No. 268297)
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9 Attorneys for Plaintiff and the Class

ELECTRONICALLY FILED
 Superior Court of California,
 County of San Diego

07/02/2020 at 03:08:41 PM

Clerk of the Superior Court
 By Valeria Contreras, Deputy Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 11 **FOR THE COUNTY OF SAN DIEGO**

12 ATEFEH YOUSEFI, as an individual and
 13 on behalf of all others similarly situated,

14 Plaintiffs,

15 vs.

16 U.S. BANK NATIONAL ASSOC,
 17 business entity form unknown; and DOES
 18 1 through 50, inclusive,

19 Defendants.

Case No.: 37-2020-00022823-CU-OE-CTL

**CLASS AND REPRESENTATIVE ACTION
 COMPLAINT FOR DAMAGES FOR:**

- (1) VIOLATION OF CAL. LABOR CODE
 §§ 510 AND 1194;
 (2) VIOLATION OF CAL. LABOR CODE
 §§ 201-203;
 (3) VIOLATION OF CAL. LABOR CODE §
 226;
 (4) VIOLATION OF BUSINESS AND
 PROFESSIONS CODE § 17200, *ET*
SEQ.; AND
 (5) VIOLATION OF CAL. LABOR CODE
 §§ 2698, *ET SEQ.*

DEMAND OVER \$25,000.00

Plaintiff Atefeh Yousefi ("Plaintiff") hereby submits this Class and Representative Action Complaint ("Complaint") against Defendant U.S. Bank National Assoc ("Defendant") and Does 1 through 50 (hereinafter collectively referred to as "Defendants"), on behalf of herself and a class of all other similarly situated current and former employees of Defendants for penalties and/or damages under the California Labor Code and California Business and Professions Code as follows:

INTRODUCTION

1. This class and representative action is within the Court's jurisdiction under California Labor Code sections 201-203, 226, 246, 510, 1194, and 2698 *et seq.*, the California Industrial Welfare Commission's ("IWC") Wage Orders, and the California Unfair Competition Law (the "UCL"), California Business & Professions Code section 17200, *et seq.*

2. This Complaint challenges systemic illegal employment practices resulting in violations of the California Labor Code and Business and Professions Code against individuals who worked for Defendants.

3. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly and severally, have acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees by Defendants' failure to properly calculate the rate of pay for overtime and employees paid sick time, pay all wages due at the time of termination and/or separation from employment, and provide accurate itemized wage statements.

4. Plaintiff is informed and believes, and based thereon alleges, that Defendants have engaged in, among other things a system of willful violations of the California Labor Code, California Business and Professions Code, and applicable IWC Wage Orders by creating and maintaining policies, practices and customs that knowingly deny employees the above stated rights and benefits.

5. The policies, practices, and customs of Defendants described above and below have resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of the California Labor Code and the California Business & Professions Code.

JURISDICTION AND VENUE

6. The Court has jurisdiction over the violations of California Labor Code sections 201-203, 226, 246, 510, 1194, and 2698 *et seq.*, and the UCL.

7. Venue is proper in San Diego County because Defendants maintain business locations in San Diego County, and Plaintiff was employed by Defendants in San Diego County.

PARTIES

8. Plaintiff was employed by Defendants as a personal banker from approximately September 2000, until on or about July 2019. Plaintiff was a non-exempt, hourly employee.

9. Plaintiff was and is the victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived her of the rights guaranteed by California Labor Code sections 201-203, 226, 246, 510, 1194, and 2698 *et seq.*, the applicable IWC Wage Orders, and the UCL.

10. Plaintiff is informed and believes, and based thereon alleges, that U.S. Bank National Assoc is a banking entity that maintains operations in the State of California, including locations in Rancho Santa Fe, California.

11. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendants are and were business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. As such, and based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to the California Labor Code, IWC Wage Orders, and UCL.

12. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious defendants was responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

1 13. At all times herein mentioned, each of said Defendants participated in the doing
 2 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
 3 Defendants, and each of them, were the agents, servants and employees of each of the other
 4 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
 5 acting within the course and scope of said agency and employment.

6 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
 7 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
 8 joint venturer of, or working in concert with each of the other co-Defendants and was acting
 9 within the course and scope of such agency, employment, joint venture, or concerted activity. To
 10 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
 11 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
 12 Defendants.

13 15. At all times herein mentioned, Defendants, and each of them, were members of,
 14 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
 15 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

16 16. At all times herein mentioned, the acts and omissions of various Defendants, and
 17 each of them, concurred and contributed to the various acts and omissions of each and all of the
 18 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
 19 herein mentioned, Defendants, and each of them, ratified each and every act or omission
 20 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
 21 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
 22 damages as herein alleged.

23 CLASS ACTION ALLEGATIONS

24 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
 25 California Code of Civil Procedure section 382. Plaintiff proposes the following classes
 26 (together, "Class"):

- 27 a. All current and former non-exempt employees of Defendants in the State
 28 of California who were paid overtime and non-discretionary wages in the

1 same workweek during their employment, at any time during July 2, 2017,
 2 to the present (the "Overtime Regular Rate Class"); and

- 3 b. All current and former non-exempt employees of Defendants in the State
 4 of California who were paid sick pay and non-discretionary wages in the
 5 same workweek during their employment, and whose employment ended
 6 at any time between July 2, 2017, through the present (the "Sick Pay
 7 Class").

8 18. **Numerosity:** The members of the Class are so numerous that joinder of all
 9 members would be impractical, if not impossible. The identity of the members of the Class is
 10 readily ascertainable by review of Defendant's records, including payroll records. Plaintiff is
 11 informed and believes, and based thereon alleges, that Defendant: (a) failed to pay employees
 12 overtime wages at the correct regular rate of pay that included all non-discretionary
 13 remuneration, in violation of Labor Code sections 201-203, 510, and 1194; (b) failed to pay
 14 employees sick pay at the correct regular rate of pay that included all non-discretionary
 15 remuneration, in violation of Labor Code sections 201-203 and 246; (c) failed to provide
 16 accurate itemized wage statements in violation of Labor Code section 226(a); and (d) engaged in
 17 unfair business practices in violation of the California Labor Code, UCL, and applicable IWC
 18 Wage Orders.

19 19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
 20 necessary steps to represent fairly and adequately the interests of the Class defined above.
 21 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and
 22 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
 23 actions in the past and currently have a number of wage-and-hour class actions pending in
 24 California state and federal courts.

25 20. Defendants uniformly administered a corporate policy and practice of: (a) failing
 26 to pay employees overtime wages at the correct regular rate of pay that included all non-
 27 discretionary remuneration, in violation of Labor Code sections 201-203, 510, and 1194; (b)
 28 failing to pay employees sick pay at the correct regular rate of pay that included all non-

1 discretionary remuneration, in violation of Labor Code sections 201-203 and 246; (c) failing to
 2 provide accurate itemized wage statements in violation of Labor Code section 226(a); and (d)
 3 engaging in unfair business practices in violation of the California Labor Code, UCL, and
 4 applicable IWC Wage Orders.

5 21. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
 6 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
 7 Labor Code sections 201-203, 226, 246, 510, and 1194, the UCL, and applicable IWC Wage
 8 Orders.

9 22. **Common Question of Law and Fact:** There are predominant common questions
 10 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
 11 concerning Defendants' policy and practice of: (a) failing to pay employees overtime wages at
 12 the correct regular rate of pay that included all non-discretionary remuneration, in violation of
 13 Labor Code sections 201-203, 510, and 1194; (b) failing to pay employees sick pay at the correct
 14 regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code

15 sections 201-203 and 246; (c) failing to provide accurate itemized wage statements in violation
 16 of Labor Code section 226(a); and (d) engaging in unfair business practices in violation of the
 17 California Labor Code, UCL, and applicable IWC Wage Orders.

18 23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
 19 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
 20 as the Class Members. As with other California employees, Plaintiff earned non-discretionary
 21 remuneration, including without limitation, "AwardPrize," "Best InUS," "InvestInsur," and
 22 "BuLineCls" wages. During workweeks when Plaintiff worked in excess of eight hours in a
 23 workday and/or forty hours in a workweek and received non-discretionary compensation in that
 24 same workweek, Defendants failed to include any non-discretionary remuneration earned into
 25 the calculation of the regular rate. Thus, Plaintiff is owed additional overtime pay based on the
 26 correct, higher regular rate of pay. Similarly, when Plaintiff received sick pay, it was disbursed at
 27 the base rate of pay, rather than the correct, higher regular rate of pay. To date, Plaintiff has yet
 28 to receive the underpaid overtime wages and sick pay owed to her. Thus, Defendants are liable

1 for waiting time penalties under Labor Code section 203. Moreover, due to Defendants'
 2 miscalculation of the regular rate of pay for purposes of paying overtime, the wage statements
 3 provided to Plaintiff did not reflect the accurate overtime rate of pay and gross and net wages
 4 earned, in violation of Labor Code sections 226(a)(1), (a)(5), and (a)(9). As such, Plaintiff is a
 5 member of the Class and has suffered the alleged violations of California Labor Code
 6 sections 201-203, 226, 246, 510, and 1194.

7 24. The California Labor Code section upon which Plaintiff bases these claims is
 8 broadly remedial in nature. These laws and labor standards serve an important public interest in
 9 establishing minimum working conditions and standards in California. These laws and labor
 10 standards protect the average working employee from exploitation by employers who may seek
 11 to take advantage of superior economic and bargaining power in setting onerous terms and
 12 conditions of employment.

13 25. The nature of this action and the format of laws available to Plaintiff and
 14 members of the Class identified herein make the class action format a particularly efficient and
 15 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
 16 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
 17 advantage since it would be able to exploit and overwhelm the limited resources of each
 18 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
 19 Member to pursue an individual remedy would also discourage the assertion of lawful claims by
 20 employees who would be disinclined to file an action against their former and/or current
 21 employer for real and justifiable fear of retaliation and permanent damage to their careers at
 22 subsequent employment.

23 26. The prosecution of separate actions by the individual Class Members, even if
 24 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
 25 to individual Class Members against the Defendants and which would establish potentially
 26 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
 27 individual Class Members which would, as a practical matter, be dispositive of the interest of the
 28 other Class Members not parties to the adjudications or which would substantially impair or

1 impede the ability of the Class Members to protect their interests. Further, the claims of the
 2 individual members of the Class are not sufficiently large to warrant vigorous individual
 3 prosecution considering all of the concomitant costs and expenses.

4 27. Such a pattern, practice and uniform administration of corporate policy regarding
 5 illegal payroll practices described herein is unlawful and creates an entitlement to recovery by
 6 Plaintiff and the Class identified herein, in a civil action, for applicable penalties, reasonable
 7 attorneys' fees, and costs of suit according to the mandate of Labor Code sections 201-203,
 8 218.5, 226, 246, 510, 1194, and Code of Civil Procedure section 1021.5.

9 28. Proof of a common business practice or factual pattern, which the named Plaintiff
 10 experienced and is representative of, will establish the right of each of the members of the
 11 Plaintiff Class to recovery on the causes of action alleged herein.

12 29. The Class is commonly entitled to a specific fund with respect to the
 13 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to
 14 restitution of those funds being improperly withheld by Defendants. This action is brought for
 15 the benefit of the entire Class and will result in the creation of a common fund.

16 FIRST CAUSE OF ACTION

17 **VIOLATION OF LABOR CODE §§ 510 AND 1194**

18 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

19 30. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
 20 though fully set forth herein.

21 31. This cause of action is brought pursuant to Labor Code section 510, which
 22 requires an employer to pay employees overtime at a rate of one and one-half the employee's
 23 regular rate of pay for any work in excess of eight hours in a workday or forty hours in a
 24 workweek.

25 32. As a pattern and practice, Defendants suffered and permitted employees to work
 26 in excess of eight hours in a workday and/or over forty hours in a workweek without proper
 27 overtime pay. During workweeks when Plaintiff and Class Members worked overtime and
 28 earned non-discretionary remuneration in the same workweek, Defendants failed to properly

1 calculate the regular rate of pay for purposes of paying overtime. In particular, Defendants failed
 2 to factor any non-discretionary remuneration earned into the calculation of the regular rate of pay
 3 for purposes of paying overtime wages. As a result of such policy and practice, Defendants
 4 underpaid overtime wages to Plaintiff and the Class and thus owe additional overtime wages.

5 33. Such a pattern, practice, and uniform administration of corporate policy regarding
 6 illegal employee compensation as described herein is unlawful and creates an entitlement to
 7 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
 8 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
 9 to the mandate of California Labor Code sections 218.5, 510, 558, and 1194.

10 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
 11 willful failure to provide all overtime wages due and owing to Plaintiff and Class Members upon
 12 separation from employment results in a continued payment of wages up to thirty (30) days from
 13 the time the wages were due. Therefore, Plaintiff and other members of the Class who have
 14 separated from employment from Defendants are entitled to compensation pursuant to Labor
 15 Code section 203.

16 **SECOND CAUSE OF ACTION**

17 **VIOLATION OF LABOR CODE §§ 201-203**

18 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

19 35. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
 20 though fully set forth herein.

21 36. Labor Code section 203 provides that if an employer willfully fails to pay wages
 22 owed in accordance with Labor Code sections 201 and 202, then the wages of the employee shall
 23 continue as a penalty from the due date, and at the same rate until paid, but the wages shall not
 24 continue for more than thirty (30) days.

25 37. Labor Code section 201 provides if an employer discharges an employee, the
 26 wages earned and unpaid at the time of discharge are due and payable immediately.

27 38. Labor Code section 202 provides that an employee is entitled to receive all unpaid
 28 wages no later than 72 hours after an employee quits his or her employment, unless the employee

1 has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the
2 employee is entitled to his or her wages at the time of quitting.

3 39. Labor Code section 246 provides that an employee is entitled to receive sick time
4 pay. The employer shall calculate paid sick leave by using one of two calculations: (1) "Paid sick
5 time for nonexempt employees shall be calculated in the same manner as the regular rate of pay
6 for the workweek in which the employee uses paid sick time, whether or not the employee
7 actually works overtime in that workweek;" or (2) "Paid sick time for nonexempt employees
8 shall be calculated by dividing the employee's total wages, not including overtime premium pay,
9 by the employee's total hours worked in the full pay periods of the prior 90 days of
10 employment."

11 40. Whenever Defendants paid Plaintiff and the Class Members sick time pursuant to
12 California Labor Code section 246, Defendants did so at the incorrect rate of pay. Defendants
13 paid Plaintiff and the Class Members at the base hourly rate of pay, as opposed to the regular rate
14 of pay, which would take into account all non-discretionary incentive wages and bonuses, or by
15 dividing the employees' total wages, not including overtime premium pay, by the employees'
16 total hours worked in the full pay periods of the prior 90 days of employment, as required by
17 Labor Code section 246. This resulted in the employees being underpaid for sick time, and
18 resulted in violations of California Labor Code sections 201, 202, and 203, and other derivative
19 Labor Code violations, because Defendants did not pay, or timely pay, Plaintiff and the Class
20 Members all owing and unpaid wages for work performed by them during their employment and
21 at the end of their employment.

22 41. Defendants willfully failed to pay Plaintiff and the Class Members all their wages
23 due, as alleged hereinabove and hereinafter, upon the termination of their employment within the
24 times prescribed by Labor Code sections 201 and 202 and are therefore subject to a waiting time
25 penalty. Plaintiff and the Class Members are entitled to recover from Defendants the statutory
26 penalty for each day they were not paid at their regular hourly rate of pay, up to a thirty (30) day
27 maximum pursuant to California Labor Code section 203.

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THIRD CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226

(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)

42. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

43. Labor Code section 226 requires employers to provide itemized wage statements to its employees that identify accurate information, including without limitation, all applicable hourly rates of pay, and gross and net wages earned. Defendants, as a matter of policy and practice, failed in its affirmative obligation to provide accurate itemized wage statements to Plaintiff and the Class in violation of Labor Code section 226.

44. As a result of Defendants' violations of Labor Code sections 510 and 1194 as identified above, the wage statements issued to Plaintiff and Class Members intentionally did not accurately identify the correct applicable hourly rate for overtime wages and gross and net wages earned, in violation of Labor Code sections 226(a)(1), (a)(5), and (a)(9).

45. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by the Plaintiff and Class Members identified herein, in a civil action, for all damages or penalties pursuant to Labor Code section 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code section 226.

FOURTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.*

(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)

46. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

47. Defendants, and each of them, have engaged and continue to engage in unfair and unlawful business practices in California by practicing, employing, and utilizing the employment practices outlined above, including by failing to pay employees overtime wages and sick pay at the correct regular rate of pay in violation of Labor Code sections 246, 510, 558, and 1194.

201, 202, 203, and 246, pursuant to Labor Code section 2698, *et seq.*, the Private Attorneys General Act ("PAGA"). To date, the LWDA has not responded to Plaintiff's written notice.

54. On or about June 23, 2020, Plaintiff sent supplemental notice to the LWDA of Defendants' violations of Labor Code sections 201, 202, 203, 226, 510, and 1194, pursuant to PAGA. To date, the LWDA has not responded to Plaintiff's supplemental notice.

55. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants' violation of Labor Code sections 201, 202, 203, 226, 246, 510, and 1194 for the time period described above, on behalf of herself and other Aggrieved Employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class as described herein;
3. For an order appointing Counsel for Plaintiff as Class counsel;
4. Upon the First Cause of Action, for damages and/or penalties pursuant to California Labor Code sections 201-203, 218.5, 510, 558, and 1194, and for costs and attorneys' fees;
5. Upon the Second Cause of Action, for penalties pursuant to California Labor Code sections 201, 202, and 203, and for costs and attorneys' fees;
6. Upon the Third Cause of Action, for damages and/or penalties pursuant to statute as set forth in California Labor Code section 226, and for costs and attorneys' fees;
7. Upon the Fourth Cause of Action, for restitution to Plaintiff and other similarly affected members of the general public of all funds unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business & Professions Code section 17200, *et seq.*;
8. Upon the Fifth Cause of Action, for civil penalties according to proof pursuant to

1 Labor Code sections 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

2 9. On all causes of action for attorneys' fees and costs as provided by Labor Code
3 sections 218.5, 226, 1194, and 2699, and Code of Civil Procedure section 1021.5; and

4 10. For such other and further relief the Court may deem just and proper.
5

6 DATED: July 2, 2020

DIVERSITY LAW GROUP, P.C.

7
8 By: 

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Class
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PROOF OF SERVICE

I am employed in the office of a member of the bar of this Court at whose direction this service was made. I am over the age of 18 and not a party to the within action; my business address is 9327 Fairway View Place, Ste. 100, Rancho Cucamonga, California 91730.

On November 29, 2021, I served the foregoing document described as **DECLARATION OF JASON HATCHER IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND PAGA SETTLEMENT** on the interested parties in this action as follows:

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SERVICE BY EMAIL

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PROOF OF SERVICE

1 I am “readily familiar” with the firm’s practice of services of process. Under that
2 practice, this document would be deposited:

3 **(VIA E-SERVICE)** I caused the document(s) to be served by CASEANYWHERE
4 by transmitting a true and correct copy to CASEANYWHERE to serve the parties listed
5 above; and

6 **(BY EMAIL)** I caused the document(s) to be sent to the person(s) at the electronic
7 address(es) listed above.

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

10 Executed on November 29, 2021 at Rancho Cucamonga, California.

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12 _____
13 Yvonne Medina
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