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ALAMEDA COUNTY
NOV 13 2020
CLERK OF THE SUPERIOR COURT
By ________ Deputy

FILE BY FAX

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

UNLIMITED JURISDICTION

NICOLE DEMARINIS and KELLY PATIRE, individually and on behalf of all current and former similarly situated employees in the State of California,

Plaintiffs,

v.

HERITAGE BANK OF COMMERCE, a California Corporation, and DOES 1 through 50, inclusive,

Defendants.

Case No.: RG20080970

CLASS ACTION COMPLAINT FOR:

1. FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES;
2. FAILURE TO PROVIDE MEAL PERIODS;
3. FAILURE TO PROVIDE REST PERIODS;
4. FAILURE TO PAY MINIMUM WAGES;
5. FAILURE TO PAY OVERTIME COMPENSATION;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;
7. FAILURE TO PAY ALL WAGES DUE AT SEPARATION OF EMPLOYMENT; and
8. UNFAIR COMPETITION.

AND REPRESENTATIVE ACTION FOR:

9. PRIVATE ATTORNEYS GENERAL ACT; and

DEMAND FOR JURY TRIAL

Plaintiffs NICOLE DEMARINIS and KELLY PATIRE ("Plaintiffs"), bring this action against Defendant HERITAGE BANK OF COMMERCE, and DOES 1-50, inclusive, on behalf of themselves and, as specified herein, all others similarly situated and the State of California. The allegations in this Complaint are based upon information and belief except those allegations which pertain to the Plaintiffs named herein and their counsel. Plaintiffs' information and belief are based upon, *inter alia*, the investigation conducted to date by Plaintiffs and their counsel. Each allegation in this Complaint has evidentiary support or is likely to have evidentiary support upon further investigation and discovery.

THE PARTIES

1. Defendant HERITAGE BANK OF COMMERCE ("HERITAGE" OR "DEFENDANT") is a California corporation with its headquarters and principal executive office located at 224 Airport Parkway in San Jose, California and its address of record on file with the California Secretary of State is 150 Almaden Boulevard in San Jose, California. At all relevant times HERITAGE has and continues to regularly conduct substantial business within the State of California and Alameda County.

2. HERITAGE is an independent bank that offers a full range of commercial banking services to small and medium-sized businesses and their owners, managers, and employees. HERITAGE operates through 19 full-service branch offices located entirely in the general San Francisco Bay Area of California (the "Bay Area") in the counties of Alameda, Contra Costa, Marin, San Benito, San Francisco, San Mateo, and Santa Clara. As of December 31, 2019, HERITAGE had 357 full-time equivalent employees.

3. Plaintiff NICOLE DEMARINIS is a resident of the County of Alameda. From 2017 to 2020, Plaintiff NICOLE DEMARINIS was employed in California by HERITAGE in the non-exempt positions of Marketing Assistant and Senior Branch Utility Representative. As part of HERITAGE's Operations division, Plaintiff NICOLE DEMARINIS worked at various bank locations in the counties of Alameda, Contra Costa, and Santa Clara where multiple other HERITAGE employees were stationed on-site. During her employment with HERITAGE, Plaintiff

NICOLE DEMARINIS was denied reimbursement for necessary business-related expenses, was systematically denied meal periods and rest breaks to which she had been legally entitled and did not receive premium pay as compensation for those meal and rest period violations, was denied full compensation for all hours worked and all overtime hours worked, was not paid all wages due at separation of employment, and was regularly provided inaccurate wage statements that failed to account for all wages earned and all hours worked.

4. Plaintiff KELLY PATIRE is a resident of the County of Contra Costa. Since 2016, Plaintiff KELLY PATIRE has been employed in California by HERITAGE in the non-exempt position of Operations Officer II. As part of HERITAGE's Operations division, Plaintiff KELLY PATIRE worked at a Heritage bank location in Danville, California where multiple other HERITAGE employees were stationed on-site. During her employment with HERITAGE, Plaintiff KELLY PATIRE was denied reimbursement for necessary business-related expenses, was systematically denied meal periods and rest breaks to which she had been legally entitled and did not receive premium pay as compensation for those meal and rest period violations, was denied full compensation for all hours worked and all overtime hours worked, and was regularly provided inaccurate wage statements that failed to account for all wages earned and all hours worked.

5. Plaintiffs NICOLE DEMARINIS and KELLY PATIRE bring this action on behalf of themselves, individually, on behalf of two classes (an ALL EMPLOYEE Class and a NON-EXEMPT EMPLOYEE Class—both defined below), and on behalf of the State of California.

6. Plaintiffs bring this action in order to fully compensate the ALL EMPLOYEE Class for their losses incurred from the four years preceding the filing of this action through the conclusion of this action (the "CLASS PERIOD") caused by HERITAGE's uniform policy and practice of failing to reimburse class members for necessary business-related expenses. This uniform policy and practice, as alleged herein, is also an unlawful, unfair, and deceptive business practice under California Business and Professions Code, section 17200.

7. Plaintiffs also bring this action in order to fully compensate the NON-EXEMPT EMPLOYEE Class for their losses incurred during the CLASS PERIOD caused by HERITAGE's uniform policy and practice of: failing to provide all legally required meal and rest periods; failing

to pay all minimum and overtime wages for all hours worked; failing to pay all wages owed at separation of employment; and failing to provide accurate wage statements. HERITAGE's uniform policies and practices, as alleged herein, are also unlawful, unfair, and deceptive business practices under California Business and Professions Code section 17200.

8. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise, of Defendants DOES 1 through 50, inclusive, are presently unknown to Plaintiffs, who therefore sue these Defendants by such fictitious names pursuant to Code of Civil Procedure section 474. Plaintiffs will seek leave to amend this Complaint to allege the true names and capacities of DOES 1 through 50, inclusive, when they are ascertained. Plaintiffs are informed and believe, and thereon allege, that Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

9. Unless otherwise specified, "Defendants" as used herein shall refer collectively to Defendants HERITAGE and DOES 1-50, inclusive.

10. At all times relevant, each of the Defendants, including DOES 1-50, inclusive, was the agent, servant, employee, co-conspirator and/or joint venture of each of the other Defendants. In doing the things herein alleged, each and every Defendant was acting within the course and scope of this agency, employment, conspiracy, and/or joint venture, and was acting with the consent, permission and authorization of each of the other Defendants. All actions of each Defendant, as alleged in the causes of action stated herein, were ratified, approved, and/or authorized by every other Defendant with full knowledge of such acts. Defendants are thus jointly and severally liable for such actions.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10, which grants the superior court "original jurisdiction." This Court also has unlimited jurisdiction in this matter because both the individual and aggregate monetary damages and restitution sought herein exceed the minimal jurisdictional threshold of the

unlimited jurisdiction of the Court and will be established at trial, according to proof. The California Superior Court has personal jurisdiction over Defendants because they are corporations and/or entities and/or persons with sufficient minimum contacts in California, are citizens of California, or otherwise intentionally availed themselves of the California market through regularly conducting business and/or by having such other contacts with California so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

12. Venue is proper in the Superior Court of California, Alameda County pursuant to Code of Civil Procedure sections 393(a), 395(a), and 395.5 because: (i) Plaintiff NICOLE DEMARINIS and members of the ALL EMPLOYEE and NON-EXEMPT EMPLOYEE Classes were or are employed by Defendants in Alameda County; (ii) at all times relevant Defendants maintained offices and facilities in Alameda County and/or conducted business in Alameda County (and currently maintain and conduct business in Alameda County); (iii) Defendants committed (and are currently committing) the wrongful conduct alleged herein in Alameda County against Plaintiff NICOLE DEMARINIS and members of the ALL EMPLOYEE and NON-EXEMPT EMPLOYEE Classes. In other words, liability arose in Alameda County because at least some of the acts and omissions that are the subject matter of this Complaint occurred therein and/or each Defendant either is found, maintains offices, transacts business, exists, and/or has an agent therein.

FACTUAL BACKGROUND

13. As detailed above, HERITAGE is a large, exclusively Bay Area bank, operating numerous branch offices across several counties and employing over 300 individuals. In conducting its business, HERITAGE must comply with the requisite operational laws and regulations that govern financial institutions as well as places of commerce more generally, including the labor and employment laws. HERITAGE, and Defendants generally, however, fell short of these obligations, particularly with respect to those who work on its behalf—HERITAGE's employees.

14. As is detailed below, during the CLASS PERIOD, HERITAGE damaged its employees and violated numerous provisions of the California Labor Code, related Industrial Welfare

Commission ("IWF") Wage Order(s), and section 17200 of the California Business and Professions Code by uniformly denying reimbursement for (and/or failing to provide reimbursement of) necessary business-related expenses, systematically denying legally required meal periods and rest breaks without providing mandated premium payment as compensation for the missed meal and rest periods, denying full compensation for all hours worked and all overtime hours worked, regularly providing inaccurate wage statements, and not paying all wages due at separation of employment. Each are detailed below, in turn.

15. **Heritage Failed to Reimburse Employees for Business Expenses**. At all times relevant, California Labor Code section 2802 has required employers, including the Defendants, to reimburse employees for all necessary expenditures or losses incurred in direct consequence of the discharge of their duties.

16. Instead of doing so, however, Defendants systematically required Plaintiffs and ALL EMPLOYEE Class members to absorb certain necessary expenditures and losses, wrongfully shifting HERITAGE's cost of doing business onto its employees.

17. Specifically, Defendants required Plaintiffs and ALL EMPLOYEE Class members to pay, among other things, the costs of using their personal devices (the cost of the device itself, as well as the service plan) that Defendants required them to use in the course of their employment. Indeed, Defendants themselves acknowledged that "there often is a business need to use [cell phone, iPads, and similar] devices" in HERITAGE's Cell Phone Usage Policy.

18. Defendants also unlawfully required Plaintiffs and ALL EMPLOYEE Class members who work from home to bear the costs of necessary work-related services (e.g., internet access) and work equipment (e.g., computers, monitors, and printers). A problem that has only been made worse during the COVID-19 pandemic (the "Pandemic").

19. Defendants additionally failed to indemnify employees for the costs of mileage expenses incurred driving from one worksite to another within the same workday, as is regularly required by Defendants, and manufactured and manipulated expense reports in order to artificially lower the total expenses documented from the actual amount of expenses incurred by the Plaintiffs and the ALL EMPLOYEE Class members.

20. **Heritage Failed to Permit Employees to Take Lawful and Required Meal and Rest Periods**. At all times relevant, California Labor Code sections 226.7 and 512 provide that an employer shall not require a non-exempt employee, such as Plaintiffs and NON-EXEMPT EMPLOYEE Class members, to work during any meal or rest period mandated by an applicable order of the California Industrial Welfare Commission (the "IWC"). And, further, that in the event an employer fails to provide a meal or rest period in accordance with an applicable IWC order, the employer shall pay the employee one additional hour of pay ("Premium Pay").

21. During the CLASS PERIOD, the applicable IWC Wage Order (Wage Order No. 4) required (and still requires) employers, including Defendants, to provide certain employees, such as Plaintiffs and NON-EXEMPT EMPLOYEE CLASS members, with a half hour meal period after they had worked for a period of more than five hours[1] (the "Meal Period") and with a rest period of at least ten "net" minutes per four hours (or major fraction thereof) worked in a day[2] (the "Rest Period"). Defendants failed to provide both.

22. Defendants' policies and practices essentially necessitated such violations. For example, HERITAGE has a uniform policy and practice of operating its many branch locations with a lean staff of employees—often only three personnel and sometimes only two. Not only do these employees have to interface with the bank's clientele, but they must operate the bank's essential operations, including security. One such operation is to access the bank vault which, per HERITAGE policy, must be conducted by two employees. Another operation is to safeguard restricted and controlled areas, which requires a third employee to be present to greet and monitor customers, mandating that certain restricted areas—like a teller's work area—be "well controlled at all times" and that personnel must recognize or properly identify any "non-company personnel" that attempt to enter these restricted areas. But the nexus of just these two policies, combined with the lean staffing practice, creates a clear problem: if two personnel are required to access the vault and at least one employee is required to interface with customers

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[1] Unless the total day's work was six hours or less and employee and employer had consented to no meal period.

[2] Unless the total day's work time was less than 3.5 hours.

and control restricted areas, then if a bank location has only three personnel on site it would be impossible for any of those employees to take a meal or rest period and still be able to operate these essential operations.

23. And that is precisely what happened, and is happening, at HERITAGE. At all times relevant, Defendants required or otherwise suffered their employees, including Plaintiffs and NON-EXEMPT EMPLOYEE Class members, not to take Meal or Rest Periods, or to work through them by failing to relieve employees from duty, failing to relinquish control over employees, and by otherwise pressuring employees to perform their duties in a way that impeded or discouraged them from taking a Meal or Rest Period.

24. In order to make this right, Defendants could have compensated the above employees, including Plaintiffs and NON-EXEMPT EMPLOYEE Class members, by paying them Premium Pay when a required off-duty meal or rest period was not provided.

25. Defendants did not. Instead of providing these lawfully required meal and rest periods, or compensating the non-exempt employees for having to work through these periods, HERITAGE and Defendants required Plaintiffs and NON-EXEMPT EMPLOYEE Class members to continue to vigilantly observe the premises and to respond to customers and attend to other job duties, which was (and is) a violation of the law.

26. **Heritage Failed to Compensate Employees with a Minimum and/or Overtime Wage.** California Labor Code section 1197 entitles employees, including Plaintiffs and NON-EXEMPT EMPLOYEE Class members, to an amount equal to or greater than the minimum wage for all hours worked. Labor Code section 510 and Labor Code section 1198 and its applicable IWC Wage Order, also provide employees, including Plaintiffs and NON-EXEMPT EMPLOYEE Class members, the right to overtime compensation.[3] Defendants failed to adequately pay both.

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[3] Overtime compensation is one-and-one-halftimes the regular hourly rate for hours worked in excess of 8 hours a day or 40 hours a week or for the first 8 hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of 12 hours in a day or in excess of 8 hours in a day on the seventh day of work.

27. At all times relevant, HERITAGE has a regular practice of requiring its non-exempt employees to work more than eight hours a day or 40 hours a week, and in numerous such circumstances has failed to pay those employees (payment that should be at the overtime rate). For instance, Plaintiffs and NON-EXEMPT EMPLOYEE Class members were required to use personal time outside of their work shifts to attend company-mandated meetings that were not compensated. Plaintiffs and Class members are also not compensated for time spent traveling from one worksite to another during the same workday.

28. **Heritage Failed to Keep Accurate Payroll Records and to Provide Accurate Wage Statements.** Labor Code section 1174(d) requires employers, including HERITAGE, to keep and maintain accurate payroll records showing hours worked and applicable hourly rates. In turn, Labor Code section 226 requires employers, including HERITAGE, to provide employees, including Plaintiffs and NON-EXEMPT EMPLOYEE Class members, an accurate itemized statement at the time of each payment of wages. This itemized statement must accurately state, among other things: (1) gross and net wages earned, (2) total hours worked by the employee, and (3) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

29. Defendants, however, willfully failed to keep and maintain accurate payroll records by not requiring or appropriately monitoring the time entry of non-exempt employees and actively discouraging the maintenance of such accurate records. In addition, the payroll records were inaccurate given the inaccuracy of the furnished wage statements as described below.

30. In addition to the inaccurate payroll records, Defendants knowingly and intentionally failed to provide accurate itemized wage statements to Plaintiffs and NON-EXEMPT EMPLOYEE Class members by failing to accurately provide gross and net wages earned, total hours worked, and the correct applicable hourly rate. And they did so in several distinct ways.

31. First, as described above, Defendants failed to provide (and thus account for on employee wage statements) the time Plaintiffs and NON-EXEMPT EMPLOYEE Class members spent working through Meal and Rest Periods, as well as the hours spent working overtime.

32. Second, HERITAGE does not include employee hourly rates in its pay statements as required by law, but instead only includes the total salary figure for that pay period.

33. And third, rather than including the actual hours worked by employees, HERITAGE's wage statements only include a formulaic computation that averages the hours worked over an entire year.

34. As a result of these failures, Plaintiffs and NON-EXEMPT EMPLOYEE Class members cannot promptly and easily determine (from their wage statements alone) the accurate amount of gross and net wages, the amount of total hours worked, and the number of hours worked at each applicable hourly rate.

35. **Heritage Failed to Pay All Wages Due at Separation of Employment.** California Labor Code sections 201 and 202 provide that if an employer, including HERITAGE, discharges an employee, including Plaintiff NICOLE DEMARINIS and NON-EXEMPT EMPLOYEE Class members who are no longer employed with HERITAGE, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter.

36. As a result of Defendants' conduct described above and alleged herein, Defendants failed to pay Plaintiff NICOLE DEMARINIS and NON-EXEMPT EMPLOYEE Class members who are no longer employed with Defendants, all regular, Premium, overtime, and double-time wages earned and owed as of the time of separation of employment within the time provided by the California Labor Code.

37. **Heritage Engaged in Unfair and Unlawful Business Practices**. California's Unfair Competition Law, Cal. Bus. & Prof. Code sections 17200, *et seq.* (the "UCL") has been in effect at all relevant times and prohibits any "unfair," unlawful," or "fraudulent" business act or practice.

38. Because of the conduct described above and as alleged herein, which was unfair and unlawful, Defendants violated the UCL by engaging in practices that offend established public policy regarding reimbursing employees for necessary business-related expenses, providing meal

and rest periods to employees, providing full and prompt payment of wages for all hours worked, and providing accurate wage statements to employees, among other things.

39. By engaging in these unlawful and unfair practices, Defendants unjustly enriched themselves by receiving unearned commercial benefits at the expense of competitors and the public. Defendants' unlawful and unfair business practices thus present a continuing threat to the public as Defendants continue to engage in said conduct.

CLASS ALLEGATIONS

40. Plaintiffs NICOLE DEMARINIS and KELLY PATIRE bring this class action individually and on behalf of all others similarly situated pursuant to California Code of Civil Procedure section 382. This action may be brought and properly maintained as a class action because Plaintiffs' proposed classes satisfy the numerosity, adequacy, typicality, and commonality pre-requisites for suing as a representative party pursuant to California Code of Civil Procedure section 382.

41. As detailed in the individual counts below, Plaintiffs NICOLE DEMARINIS and KELLY PATIRE seek to represent an ALL EMPLOYEE Class defined as follows: All persons employed by HERITAGE in the State of California within the CLASS PERIOD.

42. As detailed in the individual counts below, Plaintiffs NICOLE DEMARINIS and KELLY PATIRE also seek to represent a NON-EXEMPT EMPLOYEE Class defined as follows: All persons employed by HERITAGE in the State of California in non-exempt positions within the CLASS PERIOD.

43. At all times relevant, each Plaintiff named herein was and is within the proposed class they seek to represent, as described above.

44. <u>Numerosity.</u> The proposed classes are so numerous that joinder of all members is unfeasible and impractical. Plaintiffs reasonably estimate that the ALL EMPLOYEE CLASS has over three hundred members and the NON-EXEMPT CLASS has over a hundred members. The exact quantity and identities of class members is readily ascertainable via inspection of Defendants' records. Membership in the proposed classes will also be ascertainable from class members' records.

45. Typicality. The claims of Plaintiffs are typical of the claims of all members of each class Plaintiffs seek to represent because all members of each class sustained injuries and damages arising out of Defendants' common course of conduct in violation of the law and the injuries and damages of all members of each class were caused by Defendants' wrongful conduct in violation of law, as alleged herein. Plaintiffs have no interests antagonistic to those of class members, and Defendants have no defenses unique to Plaintiffs.

46. Adequacy. Plaintiffs are adequate representatives of each class they seek to represent and will fairly protect the interests of the members of each class. Plaintiffs' interests do not conflict with Class Members' interests, Plaintiffs have retained counsel competent and experienced in complex class action litigations, and Plaintiffs intend to vigorously pursue favorable resolution of this suit on behalf of themselves and the members of each class.

47. Predominant Common Questions of Law and/or Fact. Common questions of law and fact exist as to all members of each proposed class and predominate over questions affecting only individual class members; these common questions will drive the resolution of this litigation.

48. Common questions of law and fact exist as to all members of the proposed ALL EMPLOYEE Class and predominate over questions affecting only individual class members; these common questions will drive the resolution of this litigation. Common questions applicable to all members of the ALL EMPLOYEE Class include, without limitation:

a. Whether Defendants reimbursed Plaintiffs and ALL EMPLOYEE Class members for all necessary business-related expenses;

b. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200;

c. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violations of California law; and

d. Whether injunctive relief is necessary and proper.

49. Common questions of law and fact also exist as to all members of the proposed NON-EXEMPT EMPLOYEE Class and predominate over questions affecting only individual class

members; these common questions will drive the resolution of this litigation. Common questions applicable to all members of the NON-EXEMPT EMPLOYEE Class include, without limitation:

a. Whether Defendants provided Plaintiffs and NON-EXEMPT EMPLOYEE Class members with an uninterrupted, duty-free meal period of no less than thirty-minutes for each work period of more than five hours, and whether Defendants have paid the required premiums when such meal periods were not provided, as required by California law;

b. Whether Defendants provided Plaintiffs and NON-EXEMPT EMPLOYEE Class members with a ten-minute rest period for every four hours worked or major fraction thereof, and whether Defendants have paid the required premiums when such rest periods were not provided, as required by California law;

c. Whether Defendants have paid Plaintiffs and NON-EXEMPT EMPLOYEE Class members minimum and overtime wages for all hours worked, as required by California law;

d. Whether Defendants provided accurate, itemized wage statements to Plaintiffs and NON-EXEMPT EMPLOYEE Class members, as required by California law;

e. Whether Defendants paid Plaintiff NICOLE DEMARINIS and NON-EXEMPT EMPLOYEE Class members all wages owed upon the separation of their employment within the time periods required by California law;

f. Whether Defendants engaged in unfair and unlawful business practices in violation of California Business & Professions Code section 17200;

g. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violations of California law; and

h. Whether injunctive relief is necessary and proper.

50. Superiority. A class action is superior to any other available method for the fair and efficient adjudication of the claims of each class member because Defendants have acted or refused to act on grounds generally applicable to each group of Class members, thereby making final injunctive or declaratory relief appropriate on a class-wide basis. In addition, Plaintiffs

and Class members will not be able to obtain effective and economical legal redress unless the action is maintained as a class action. Finally, without class certification, the prosecution of separate actions by individual Class members would create a risk of:

a. Defendants necessarily gaining an unconscionable advantage because Defendants would be able to exploit and overwhelm the limited resources of each individual member of the Class with Defendants' vastly superior financial and legal resources;

b. Inconsistent or varying adjudications with respect to individual Class members, which would establish incompatible standards of conduct for Defendants;

c. Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication, or would substantially impair or impede their ability to protect their interests; and

d. Unnecessary delay and expense to all parties and to the court system.

51. Plaintiffs do not anticipate any difficulty in the management of this litigation.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Against All Defendants for Failure to Reimburse Business-Related Expenses, in Violation of California Labor Code Sections 2800 and 2802)

52. Plaintiffs incorporate every allegation contained in the previous paragraphs, as though fully set forth herein, in this cause of action.

53. Plaintiffs NICOLE DEMARINIS and KELLY PATIRE bring this cause of action on behalf of themselves and the ALL EMPLOYEE Class, against all Defendants.

54. At all times relevant, Plaintiffs and ALL EMPLOYEE Class members were employed by Defendants within the State of California.

55. At all times relevant, California Labor Code section 2802 has required employers, including Defendants, to reimburse employees, including Plaintiffs and ALL EMPLOYEE

Class members, for all necessary expenditures or losses incurred in direct consequence of the discharge of their duties.

56. Throughout the CLASS PERIOD, Plaintiffs and ALL EMPLOYEE Class members have incurred necessary expenditures in direct consequence of the discharge of their duties, including the cost of their personal cellular phones that Defendants required them to use in the course of their employment and the cost of mileage expenses incurred driving from one worksite to another within the same workday. Defendants also required Plaintiffs and ALL EMPLOYEE Class members working from home to bear the costs of necessary work-related services (e.g., internet access) and work equipment (e.g., computers, monitors, and printers). Defendants did not indemnify or reimburse Plaintiffs or ALL EMPLOYEE Class members for all necessary expenditures or losses incurred by Plaintiff and proposed Class Members in discharging their duties.

57. Instead, at all times relevant, as detailed above and alleged herein, Defendants required Plaintiffs and ALL EMPLOYEE Class members to absorb those necessary expenditures and losses, wrongfully shifting Defendants' cost of doing business onto Plaintiffs and ALL EMPLOYEE Class members. by failing to indemnify or reimburse them for all necessary expenditures or losses they incurred in discharging their duties.

58. As a result of Defendants' conduct alleged herein, Plaintiffs and ALL EMPLOYEE Class members have suffered damages and are entitled to recover the full amount of business-related expenses charged to them in an amount to be proven at trial and interest thereon, and costs of suit including attorney's fees pursuant to California Labor Code section 2802.

SECOND CAUSE OF ACTION

(Against All Defendants for Failure to Provide Meal Periods, in Violation of California Labor Code Sections 226.7 and 512)

59. Plaintiffs incorporate every allegation contained in the previous paragraphs, as though fully set forth herein, in this cause of action.

60. Plaintiffs NICOLE DEMARINIS and KELLY PATIRE bring this cause of action on behalf of themselves and the NON-EXEMPT EMPLOYEE Class, against all Defendants.

61. At all times relevant, Plaintiffs and NON-EXEMPT EMPLOYEE Class members were employed by Defendants in non-exempt positions within the State of California.

62. On information and belief, as alleged above, Defendants did not permit or authorize Plaintiffs and NON-EXEMPT EMPLOYEE Class members to take meal periods during the CLASS PERIOD. By their failure to provide meal periods for days in which non-exempt employees work(ed) periods in excess of five hours, Defendants willfully violated Labor Code sections 226.7 and 512 and IWC Wage Order No. 4.

63. Plaintiffs and NON-EXEMPT EMPLOYEE Class members did not voluntarily or willfully waive meal periods and were regularly required to work through meal periods. As alleged above, Defendants created a working environment in which non-exempt employees were incapable of taking meal periods or were intimidated, coerced, or otherwise pressured into waiving their meal periods. As such, HERITAGE non-exempt employees did not voluntarily waive meal periods.

64. Defendants further violated Labor Code section 226.7 and IWC Wage Order No. 4 by failing to pay Plaintiffs and NON-EXEMPT EMPLOYEE Class members an additional one hour of compensation at their regular rate of pay for each workday when a lawful off-duty meal period was not provided.

65. As a result of Defendants' conduct alleged herein, Plaintiffs and NON-EXEMPT EMPLOYEE Class members have suffered damages and are entitled to recover the full amount of unpaid wages in an amount to be proven at trial and interest thereon, applicable penalties, liquidated damages, and costs of suit including attorney's fees.

THIRD CAUSE OF ACTION

(Against All Defendants for Failure to Provide Rest Periods, in Violation of California Labor Code Section 226.7)

66. Plaintiffs incorporate every allegation contained in the previous paragraphs, as though fully set forth herein, in this cause of action.

67. Plaintiffs NICOLE DEMARINIS and KELLY PATIRE bring this cause of action on behalf of themselves and the NON-EXEMPT EMPLOYEE Class, against all Defendants.

68. At all times relevant, Plaintiffs and NON-EXEMPT EMPLOYEE Class members were employed by Defendants in non exempt positions within the State of California.

69. California Labor Code section 226.7 provides that no employer shall require a non-exempt employee, such as Plaintiffs and NON-EXEMPT EMPLOYEE Class members, to work during any rest period mandated by an applicable order of the California Industrial Welfare Commission ("IWC").

70. At all times relevant, the applicable IWC Wage Order (Wage Order No. 4) required employers, including Defendants, to provide employees, including Plaintiffs and NON-EXEMPT EMPLOYEE Class members, with a rest period of at least ten "net" minutes per four hours or major fraction thereof worked in a day (unless the total day's work time was less than 3.5 hours).

71. On information and belief, as alleged above, Defendants did not permit or authorize Plaintiffs and NON-EXEMPT EMPLOYEE Class members to take the required rest periods during the CLASS PERIOD. Through this failure to provide a rest period of at least ten "net" minutes per four hours (or major fraction thereof) worked in a day, Defendants willfully violated Labor Code section 226.7 and IWC Wage Order No. 4.

72. Plaintiffs and NON-EXEMPT EMPLOYEE Class members did not voluntarily or willfully waive rest periods and were regularly required to work through rest periods. As alleged above, Defendants created a working environment in which non-exempt employees were incapable of taking rest periods or were intimidated, coerced, or otherwise pressured into waiving their rest periods. As such, HERITAGE non-exempt employees did not voluntarily waive rest periods.

73. Defendants further violated Labor Code section 226.7 and IWC Wage Order No. 4 by failing to pay Plaintiffs and NON-EXEMPT EMPLOYEE Class members an additional one hour of compensation at their regular rate of pay for each workday when a lawful off-duty rest period was not provided.

74. As a result of Defendants' conduct alleged herein, Plaintiffs and NON-EXEMPT EMPLOYEE Class members have suffered damages and are entitled to recover the full amount of

unpaid wages in an amount to be proven at trial and interest thereon, applicable penalties, liquidated damages, and costs of suit including attorney's fees.

FOURTH CAUSE OF ACTION

(Against All Defendants for Failure to Pay Minimum Wages, in Violation of California Labor Code Sections 1197 and 1197.1)

75. Plaintiffs incorporate every allegation contained in the previous paragraphs, as though fully set forth herein, in this cause of action.

76. Plaintiffs NICOLE DEMARINIS and KELLY PATIRE bring this cause of action on behalf of themselves and the NON-EXEMPT EMPLOYEE Class, against all Defendants.

77. At all times relevant, Plaintiffs and NON-EXEMPT EMPLOYEE Class members were employed by Defendants in non-exempt positions within the State of California.

78. California Labor Code sections 1197 and 1197.1 entitle non-exempt employees, including Plaintiffs and NON-EXEMPT EMPLOYEE Class members, to an amount equal to or greater than the minimum wage for all hours worked.

79. At all times relevant, Defendants willfully failed to pay minimum wages for all hours worked by Plaintiffs and NON-EXEMPT EMPLOYEE Class members. Specifically, Plaintiffs and NON-EXEMPT EMPLOYEE Class members were required to use their personal time outside of their work shifts to go to company-mandated meetings that were not compensated. Plaintiffs and NON-EXEMPT EMPLOYEE Class members were also not compensated for time spent traveling from one worksite to another during the same workday.

80. As a result of Defendants' conduct alleged herein, Plaintiffs and NON-EXEMPT EMPLOYEE Class members have suffered damages and are entitled to recover the full amount of unpaid wages in an amount to be proven at trial and interest thereon, applicable penalties, liquidated damages, and costs of suit including attorney's fees.

FIFTH CAUSE OF ACTION

(Against All Defendants for Failure to Pay Overtime Compensation, in Violation of California Labor Code Sections 510 and 1198)

81. Plaintiffs incorporate every allegation contained in the previous paragraphs, as though fully set forth herein, in this cause of action.

82. Plaintiffs NICOLE DEMARINIS and KELLY PATIRE bring this cause of action on behalf of themselves and the NON-EXEMPT EMPLOYEE Class, against all Defendants.

83. At all times relevant, Plaintiffs and NON-EXEMPT EMPLOYEE Class members were employed by Defendants in non-exempt positions within the State of California.

84. California Labor Code section 510 provides non-exempt employees, including Plaintiffs and NON-EXEMPT EMPLOYEE Class members, the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of 8 hours in a day or 40 hours in a week or for the first 8 hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of 12 hours in a day or in excess of 8 hours in a day on the seventh day of work.

85. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons, such as Plaintiffs and NON-EXEMPT EMPLOYEE Class members, without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

86. At all times relevant, and as alleged above, Defendants regularly required Plaintiffs and NON-EXEMPT EMPLOYEE Class members to work in excess of 8 hours per day or 40 hours per week without paying the appropriate overtime wage required under the law, and thus knew or should have known that Plaintiffs and NON-EXEMPT EMPLOYEE Class members had worked overtime.

87. As a result of Defendants' conduct alleged herein, Plaintiffs and NON-EXEMPT EMPLOYEE Class members have suffered damages and are entitled to recover the full amount of unpaid wages in an amount to be proven at trial and interest thereon, applicable penalties, liquidated damages, and costs of suit including attorney's fees.

SIXTH CAUSE OF ACTION

(Against All Defendants for Failure to Provide Accurate Wage Statements, in Violation of California Labor Code Section 226)

88. Plaintiffs incorporate every allegation contained in the previous paragraphs, as though fully set forth herein, in this cause of action.

89. Plaintiffs NICOLE DEMARINIS and KELLY PATIRE bring this cause of action on behalf of themselves and the NON-EXEMPT EMPLOYEE Class, against all Defendants.

90. At all times relevant, Plaintiffs and NON-EXEMPT EMPLOYEE Class members were employed by Defendants in non-exempt positions within the State of California.

91. At all times relevant, Labor Code section 226 has required employers, including Defendants, to provide employees, including Plaintiffs and NON-EXEMPT EMPLOYEE Class members, an accurate itemized statement at the time of each payment of wages. Such itemized statement must accurately state, *inter alia*: (1) gross wages earned; (2) total hours worked by the employee; (3) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (4) net wages earned; (5) the inclusive dates of the period for which the employee is paid; (6) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (7) the name and address of the legal entity that is the employer; and (8) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

92. At all times relevant, Defendants knowingly and intentionally failed to provide accurate itemized wage statements to Plaintiffs and NON-EXEMPT EMPLOYEE Class members by failing to accurately provide gross wages earned, total hours worked, net wages earned, and the correct applicable hourly rate. As a result, Plaintiffs and NON-EXEMPT EMPLOYEE Class members cannot promptly and easily determine from their wage statements alone the amount of total hours worked and the number of hours worked at each applicable hourly rate.

93. Plaintiffs and NON-EXEMPT EMPLOYEE Class members have suffered injury as a result of Defendants' failure to provide accurate and complete information as required by Labor Code section 226(a).

94. Labor Code section 226, in part, permits employees suffering injury to collect actual damages or liquidated damages in the amount specified therein. Regarding the latter, Labor Code section 226(e) requires Defendants to pay the greater of all actual damages or fifty dollars ($50.00) for the initial pay period in which a violation occurred and one hundred dollars ($100.00) per employee for each violation in subsequent pay periods.

95. As a result of Defendants' conduct alleged herein, Plaintiffs and NON-EXEMPT EPLOYEE Class Members have suffered damages and are entitled to recover the full amount in an amount to be proven at trial and interest thereon, applicable penalties, and costs of suit, including attorney's fees.

SEVENTH CAUSE OF ACTION

(Against All Defendants for Failure to Pay All Wages Due at Separation of Employment, in Violation of California Labor Code Sections 201 and 202)

96. Plaintiffs incorporate every allegation contained in the previous paragraphs, as though fully set forth herein, in this cause of action.

97. Plaintiff NICOLE DEMARINIS brings this cause of action on behalf of herself and the NON-EXEMPT EMPLOYEE Class, against all Defendants.

98. At all times relevant, California Labor Code sections 201 and 202 provide that if an employer, including HERITAGE, discharges an employee, including Plaintiff NICOLE DEMARINIS and NON-EXEMPT EMPLOYEE Class members, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

99. California Labor Code section 203 provides that if an employer willfully fails to timely pay any wages that are due to an employee who quits or is discharged, the employer must, as a

penalty, continue to pay the employee's wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

100. As a result of Defendants' conduct alleged above and herein, Defendants willfully failed to pay Plaintiff NICOLE DEMARINIS and NON-EXEMPT EMPLOYEE Class members who are no longer employed with Defendants all regular, overtime, and double-time wages earned and owed as of the time of separation of employment within the time provided by the California Labor Code. As a result, Defendants violated California Labor Code sections 201 and 202.

101. Defendants' failure to comply with California Labor Code sections 201 and 202 was willful and not in good faith because all California employers know (or should know) that employees must be paid for all hours worked, which includes all time spent under the employer's control, and that employees are owed premium pay for missed meal and rest periods as provided by law.

102. As a result of Defendants' conduct alleged herein, Plaintiff NICOLE DEMARINIS and NON-EXEMPT EMPLOYEE Class members have suffered damages and are entitled to recover the full amount of unpaid wages in an amount to be proven at trial and interest thereon, and the statutory penalty wages for each day they were not paid, up to 30 days, pursuant to California Labor Code section 203.

EIGHTH CAUSE OF ACTION

(Against All Defendants for Unfair Competition, in Violation of California Business and Professions Code Section 17200)

103. Plaintiffs incorporate every allegation contained in the previous paragraphs, as though fully set forth herein, in this cause of action.

104. Plaintiffs NICOLE DEMARINIS and KELLY PATIRE bring this cause of action on behalf of themselves, the ALL EMPLOYEE Class, and the NON-EXEMPT EMPLOYEE Class against all Defendants.

105. At all times relevant, California Business and Professions Code section 17200, *et seq.*, the Unfair Competition Law (the "UCL"), has been in effect and prohibits any "unfair," "unlawful," or "fraudulent" business act or practice.

106. Beginning at an exact date as yet unknown and continuing up through the present, Defendants engaged in unlawful and unfair business acts and practices in violation of the UCL, as detailed above and as alleged herein.

107. Defendants violated the unfair prong of the UCL by engaging in practices that offend established public policy regarding reimbursing employees for necessary business-related expenses, providing meal and rest periods to employees, full and prompt payment of wages for all hours worked, providing accurate wage statements to employees, and providing all wages due at separation of employment.

108. Defendants violated the unlawful prong of the UCL by engaging in practices that violate California law, including but not limited to: California Labor Code sections 201, 202, 226, 226.7, 510, 512, 1197, 1197.1, 1198, and 2802.

109. Defendants engaged in these unlawful and unfair practices of withholding wages and payments owed to Plaintiffs, ALL EMPLOYEE Class members, and NON-EXEMPT EMPLOYEE Class members, thereby unjustly enriching Defendants. Defendants' unlawful and unfair business practices present a continuing threat to the public in that Defendants continue to engage in said conduct.

110. As a result of the repeated violations described herein, Defendants received and continue to receive unearned commercial benefits at the expense of their competitors and the public. Plaintiffs, ALL EMPLOYEE Class members, and NON-EXEMPT EMPLOYEE Class members have standing under the UCL because they have suffered injury in fact, and have lost money or property as a result of Defendants' unfair and unlawful practices as outlined above.

111. Plaintiffs, on behalf of themselves and on behalf of members of the proposed ALL EMPLOYEE and NON-EXEMPT EMPLOYEE Classes, seek restitution, injunctive relief, and all other allowable relief under Business and Professions Code section 17200, *et seq*.

REPRESENTATIVE ACTION

NINTH CAUSE OF ACTION

(Against All Defendants for Violation of the Private Attorneys General Act ("PAGA"), California Labor Code Section 2698, *et seq.*)

112. Plaintiffs incorporate every allegation contained in the previous paragraphs, as though fully set forth herein, in this cause of action.

113. PAGA is a mechanism by which the State of California itself can enforce state labor laws through employees, such as Plaintiffs, who initiate lawsuits as the proxy or agent of the state's labor law enforcement agencies. Thus, an action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public. In enacting PAGA, the California Legislature specified that "it was . . . in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations." Stats. 2003, ch. 906, § 1.

114. Plaintiffs NICOLE DEMARINIS and KELLY PATIRE are aggrieved employees as defined in Labor Code section 2699(a). Plaintiffs bring this cause of action on behalf of the State of California with respect to themselves and all persons employed by HERITAGE in the State of California at any time during the CLASS PERIOD (the "AGGRIEVED EMPLOYEES") against all Defendants.

115. Plaintiffs have met the jurisdictional requirements for proceeding with claims for civil penalties under PAGA by timely providing written notice in the manner required by Labor Code section 2699.3. Specifically, on September 4, 2020, Plaintiffs exhausted their administrative remedies by notifying HERITAGE via certified U.S. Mail and by online filing to the Labor and Workforce Development Agency (the "Agency") of the specific code provisions alleged to have been violated (the "Notice").

116. Over 65 calendar days have elapsed since the Notice, and Plaintiffs have not received any notice from the Agency stating its intention to investigate or prosecute the claims. As a result, pursuant to Labor Code section 2699.3, Plaintiffs NICOLE DEMARINIS and

KELLY PATIRE have the right to commence (and hereby do commence) a representative civil action as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES.

117. The policies, acts and practices heretofore described were and are unlawful business acts or practices because Defendants: (a) failed to reimburse Plaintiffs and the AGGRIEVED EMPLOYEES for business expenses; (b) failed to properly record and compensate Plaintiffs and the AGGRIEVED EMPLOYEES for all missed meal and rest periods and for all hours worked; (c) failed to compensate Plaintiffs and the AGGRIEVED EMPLOYEES for all hours worked, including overtime, violating the minimum wage and overtime laws; (d) failed to keep accurate payrolls records and provide accurate itemized wage statements to Plaintiffs and the AGGRIEVED EMPLOYEES; and (e) failed to timely pay wages to Plaintiffs and the AGGRIEVED EMPLOYEES, all in violation of the applicable Labor Code sections listed in Labor Code section 2699.5, including but not limited to Labor Code sections 201, 202, 226, 226.7, 510, 512, 1174, 1197, 1197.1, 1198, and 2802, which thereby give rise to the corresponding statutory penalties as a result of such conduct.

118. In addition, based on information and belief, HERITAGE misclassifies many of its employees as salaried-exempt, particularly in its lending group, when they should properly be classified as non-exempt. These misclassified employees work in positions including, but not limited to, Credit Analyst and Deposit Relationship Manager positions. These employees that HERITAGE has classified as exempt do not customarily and regularly exercise discretion and independent judgment; do not perform work along specialized or technical lines requiring special training, experience, or knowledge; do not customarily and regularly direct the work of two or more employees; do not have authority to hire or fire other employees (and their recommendations regarding the same are not given particular weight); and do not have responsibilities involving the management of HERITAGE or of any department. For instance, upon information and belief, employees who were formerly classified by HERITAGE as non-exempt received a change in title redesignating them as "Deposit Relationship Managers" and reclassifying them as exempt, although they had no substantive change in duties or responsibilities. As a result of this misclassification, HERITAGE failed to provide these employees with lawful meal or rest periods, minimum and

overtime wages, wages due at separation of employment, or accurate wage statements in violation of the applicable Labor Code sections listed in Labor Code section 2699.5.

119. Plaintiffs hereby seek recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on Plaintiffs and the other AGGRIEVED EMPLOYEES and for an award of attorneys' fees and costs incurred in securing these penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for judgment against Defendants, and each of them, as follows:

On the First Cause of Action:

a. For an order certifying the proposed class, appointing Plaintiffs as ALL EMPLOYEE Class Representatives, and designating Plaintiffs' counsel to serve as ALL EMPLOYEE Class Counsel;
b. For actual damages, according to proof;
c. For statutory and civil penalties, as allowed by law and according to proof;

On the Second through Seventh Causes of Action:

a. For an order certifying the proposed class, appointing Plaintiffs as NON-EXEMPT EMPLOYEE Class Representatives, and designating Plaintiffs' counsel to serve as NON-EXEMPT EMPLOYEE Class Counsel;
b. For actual damages, according to proof;
c. For liquidated damages, according to proof;
d. For statutory and civil penalties, as allowed by law and according to proof;

On the Eighth Cause of Action:

a. For an order certifying the proposed classes, appointing Plaintiffs as ALL EMPLOYEE and NON-EXEMPT EMPLOYEE Class Representatives, and designating Plaintiffs' counsel to serve as ALL EMPLOYEE and NON-EXEMPT EMPLOYEE Class Counsel;

b. For restitution of all monies due to Plaintiffs and ALL EMPLOYEE and NON-EXEMPT EMPLOYEE Class members, as allowed by law and according to proof;

c. For an injunction prohibiting Defendants from doing the wrongful conduct alleged herein;

On the Ninth Cause of Action:

a. On behalf of the State of California with respect to all AGGRIEVED EMPLOYEES, recovery of civil penalties as prescribed by the Private Attorneys General Act.

On all Claims:

a. For an award of attorney's fees and costs, as allowed by law;

b. For pre- and post- judgment interest to the extent allowed by law; and,

c. For such other and further relief as the Court deems just and proper.

Dated: November 13, 2020

TORRES & TOLMAN

By: /s/ Benjamin J. Tolman
Benjamin J. Tolman

Attorneys for Plaintiffs Nicole DeMarinis and Kelly Patire and the Proposed Classes

DEMAND FOR JURY TRIAL

Plaintiffs NICOLE DEMARINIS and KELLY PATIRE, on behalf of themselves and all others similarly situated, hereby demand a jury trial on all claims so triable.

Dated: November 13, 2020

TORRES & TOLMAN

By: /s/ Benjamin J. Tolman
Benjamin J. Tolman

Attorneys for Plaintiffs Nicole DeMarinis and Kelly Patire and the Proposed Classes