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

ALVARO BARRIENTOS, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

vs.

FIRST FOUNDATION BANK, a
California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 20STCV48370

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

1 Plaintiff Alvaro Barrientos, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

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

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

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

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

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

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

9 **THE PARTIES**

10 6. Plaintiff Alvaro Barrientos is a resident of Los Angeles, in Los Angeles
11 County, California. Defendants employed Plaintiff as an hourly paid, non-exempt
12 Commercial Client Services Banker from approximately June 1, 2018, to April 28, 2020.
13 Plaintiff worked for Defendants based out of their location in Torrance, California. Plaintiff
14 typically worked eight (8) hours or more per day, five (5) days per week, from 8:00 a.m. to
15 5:00 p.m. or later. Plaintiff was compensated approximately \$22.55 per hour. His job duties
16 included, without limitation, opening accounts for bank clients, conducting wire transfers,
17 notifying bank clients of incoming transfers, completing monthly statement check lists for
18 clients, and completing daily overdraft reports.

19 7. On information and belief, Defendants required some employees, including
20 Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of
21 their hire or during their employment. On further information and belief, Defendants’ dispute
22 resolution policy and/or arbitration agreement was and is both procedurally and substantively
23 unconscionable. Specifically, Defendants presented new hires with a “Mutual Binding
24 Arbitration Agreement” (“Arbitration Agreement”) during the onboarding process, which had
25 to be reviewed and signed immediately. In fact, upon information and belief, this Arbitration
26 Agreement was one of several documents presented to new employees for signature during the
27 orientation process, including the First Foundation Inc. Employee Handbook and Meal and
28 Rest Period Policy, among other documents. Also, employees did not have a meaningful

1 opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was provided to
2 Defendants' employees for them to sign on a take-it or leave-it basis at the time they were
3 hired, along with all of the other on-boarding documents.

4 8. FIRST FOUNDATION BANK was and is, upon information and belief, a
5 California corporation, and at all times hereinafter mentioned, an employer whose employees
6 are engaged throughout this county and the State of California.

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

11 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
12 were the partners, agents, owners, or managers of FIRST FOUNDATION BANK at all
13 relevant times.

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

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

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

PAGA REPRESENTATIVE ALLEGATIONS

14. Defendants provide retail banking services to customers throughout the United States, including California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their corporate headquarters in Irvine, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

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

16. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in Irvine, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee’s employment ends.

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

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

1 practices, and about the requirements of California law.

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

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

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

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

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

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

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

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

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

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

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

1 premiums, within permissible time periods.

2 29. Plaintiff is informed and believes, and thereon alleges, that at all time herein
3 mentioned, Defendants knew or should have known that they had a duty to cover the costs and
4 expenses other non-party Aggrieved Employees incurred obtaining mandatory examinations
5 and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

6 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
8 receive reimbursement for all business-related expenses and costs they incurred during the
9 course and scope of their employment and that they did not receive reimbursement of
10 applicable business-related expenses and costs incurred.

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

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

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

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

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

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

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

- 25 (a) The aggrieved employee or representative shall give written notice by
26 online filing to the LWDA and by certified mail to the employer of the
27 specific provisions of the California Labor Code alleged to have been
28 violated (other than those listed in Section 2699.5), including the facts

1 and theories to support the alleged violation.

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

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

13 37. On October 13, 2020, Plaintiff provided written notice by online filing to the
14 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
15 Code alleged to have been violated, including facts and theories to support the alleged
16 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
17 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
18 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
19 Plaintiff PAGA Case Number LWDA-CM-809473-20. A true and correct copy of Plaintiff's
20 written notice to the LWDA and Defendants dated October 13, 2020, is attached hereto as
21 "Exhibit 1."

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

25 39. Thus, Plaintiff has satisfied the administrative prerequisites under California
26 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
27 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
28 512, 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

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

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

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

24 43. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
25 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
26 private attorney general, seeks assessment and collection of civil penalties for himself, all
27 other non-party Aggrieved Employees, and the State of California against Defendants for
28 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,

512, 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

45. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

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

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

- 1 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
2 IWC wage order for Defendants' failure to authorize and permit
3 Plaintiff and other non-party Aggrieved Employees to take rest periods,
4 as set forth below;
- 5 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
6 wage order for failure to provide accurate and complete wage statements
7 to Plaintiff and other non-party Aggrieved Employees, as set forth
8 below;
- 9 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
10 IWC wage order for failure to maintain payroll records as set forth
11 below;
- 12 (g) Violation of Labor Code section 204 for failure to pay all earned wages
13 during employment as set forth below;
- 14 (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
15 earned wages upon termination as set forth below;
- 16 (i) Violation of Labor Code section 222.5 for failure to compensate other
17 non-party Aggrieved Employees for mandatory physical examinations
18 and/or drug testing as set forth below; and
- 19 (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
20 and other non-party Aggrieved Employees for all business expenses
21 necessarily incurred, as set forth below.

22 **FAILURE TO PAY OVERTIME**

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

24 47. Labor Code section 1198 makes it illegal to employ an employee under
25 conditions of labor that are prohibited by the applicable wage order. California Labor Code
26 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
27 be the . . . standard conditions of labor for employees. The employment of any employee . . .
28 under conditions of labor prohibited by the order is unlawful.”

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

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

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

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

21 52. First, during the relevant period, Defendants had, and continue to have, a
22 company-wide policy and/or practice of strictly limiting the amount of overtime employees
23 could accrue. On information and belief, this limitation on overtime accrual was based on a
24 company-wide policy of staffing their locations strictly based on the labor hours or labor
25 budget set by corporate. This policy of limiting overtime, coupled with Defendants'
26 understaffing policy, as well as the assignment of heavy workloads and strict targets or quotas
27 for conducting audits (*see infra*), led Plaintiff and other non-party Aggrieved Employees to
28 work off-the-clock before and after their scheduled shift times in order to complete their

1 assigned tasks.

2 53. As a result of this restriction on overtime accrual, Defendants forced Plaintiff
3 and other non-party Aggrieved Employees to perform work off-the-clock outside of their
4 scheduled shifts, such as pre-shift opening tasks, including turning on all lights and disarming
5 the alarm; post-shift closing responsibilities, including clearing hallways, turning off lights,
6 and activating the alarm; and responding to phone calls or text messages from management on
7 their personal cellular phones. Defendants discouraged and impeded Plaintiff and other non-
8 party Aggrieved Employees from recording hours worked that were outside of their scheduled
9 shifts, upon threat of discipline for incurring unapproved overtime hours. Alternatively, when
10 Plaintiff and other non-party Aggrieved Employees did not clock out at their designated shift
11 end-times, on information and belief, Plaintiff and other non-party Aggrieved Employees were
12 subject to Defendants' supervisors falsifying their time records in order to prevent employees
13 from accruing excessive overtime.

14 54. Thus, Plaintiff and other non-party Aggrieved Employees were required to
15 work off-the-clock performing tasks before and after their scheduled shifts, but were
16 prevented from accounting for and recording this time in the electronic timekeeping system.
17 For example, Plaintiff was required to open the office and disarm the alarm upon arrival; each
18 time, he spent several minutes disarming the alarm before he could clock into Defendants'
19 timekeeping system for the start of his shift. Plaintiff would also frequently arrive 5-10
20 minutes early to turn on all lights, prepare his workstation, and gather paperwork for his
21 upcoming assignments, but he was not permitted to clock in before his scheduled shift start-
22 time. He was also required to clock out at his designated shift end-time even when he had
23 additional tasks to complete for the day, and regularly worked 5-10 minutes after he had
24 clocked out, removing boxes from hallways, turning off all office lights, ushering out any
25 remaining clients, and activating the alarm. When Plaintiff asked whether he could clock in
26 prior to his scheduled shift time or clock out after his scheduled shift time in order to account
27 for this time spent working, his supervisor told him that he could only clock in and out
28 according to his scheduled shifts and that anything else would be considered unapproved

1 overtime. Thus, Defendants failed to track all of this time spent working before clocking in or
2 after clocking out, and Plaintiff and other non-party Aggrieved Employees received no
3 compensation for this time.

4 55. Second, as stated, upon information and belief, Defendants had, and continue to
5 have, a company-wide policy staffing their locations strictly based on the labor hours or labor
6 budget set by the corporate office. Defendants' use of a labor budget resulted in chronic
7 understaffing, such that there were too few employees on duty to handle the heavy workload,
8 which included monthly and individual targets or quotas for conducting audits, as well as
9 daily tasks to be completed on a deadline. Because Defendants did not employ or staff an
10 adequate number of employees to meet their productivity expectations and failed to provide
11 employees with adequate meal period coverage, Plaintiff and other non-party Aggrieved
12 Employees were assigned heavy workloads, which Defendants knew or should have known
13 could only be met by working additional hours. For example, Defendants also required
14 Plaintiff and other non-party Aggrieved Employees to complete 2-3 mandatory online trainings
15 per month, which, coupled with the heavy workload, sometimes resulted in Plaintiff and other
16 non-party Aggrieved Employees completing these trainings and performing work during
17 unpaid meal periods. Thus, Defendants did not compensate them for all of their time spent
18 undergoing these trainings. Plaintiff and other non-party Aggrieved Employees missed meal
19 periods and/or had meal periods cut short or interrupted in order to handle their workloads.

20 56. Third, Defendants have, on a company-wide basis, failed to adhere to a
21 schedule of meal periods. This company-wide practice, coupled with the heavy workload and
22 pressure from Defendants to complete assigned tasks, impeded Plaintiff and other non-party
23 Aggrieved Employees from taking timely, compliant meal periods. Additionally, Plaintiff and
24 other non-party Aggrieved Employees would be required to respond to calls on their personal
25 cellular phones from clients and other bankers requesting expedited fund transfers for clients
26 during unpaid meal periods. As a result, Plaintiff and other non-party Aggrieved Employees
27 were not afforded timely, uninterrupted thirty (30) minute meal periods during shifts in which
28 they were entitled to receive meal periods. Further, on information and belief, because

1 Defendants frowned upon employees accruing meal period penalties, Defendants pressured
2 Plaintiff and other non-party Aggrieved Employees to clock out for meal periods and/or
3 adjusted employee time records to reflect compliant meal periods, regardless of whether they
4 had received a compliant meal period or not, in order to strictly limit meal penalties that
5 Defendants would otherwise owe. Thus, Plaintiff and other non-party Aggrieved Employees
6 performed work during meal periods for which they were not paid.

7 57. Defendants knew or should have known that, as a result of these company-wide
8 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
9 their assigned duties off-the-clock and during their meal periods, and were suffered or
10 permitted to perform work for which they were not paid. Because Plaintiff and other non-
11 party Aggrieved Employees worked shifts of eight (8) hours a day or more or forty (40) hours
12 a week or more, some of this off-the-clock work qualified for overtime premium pay.
13 Therefore, Plaintiff and other non-party Aggrieved Employees were not paid overtime wages
14 for all of the overtime hours they actually worked.

15 58. Furthermore, Defendants did not pay Plaintiff and other non-party Aggrieved
16 Employees the correct overtime rate for the recorded overtime hours that they generated. In
17 addition to an hourly wage, Defendants paid Plaintiff and other non-party Aggrieved
18 Employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.
19 However, in violation of the California Labor Code, Defendants failed to incorporate all
20 compensation, including but not limited to, all incentive pay, nondiscretionary bonuses, and/or
21 other forms of remuneration, into the calculation of the regular rate of pay for purposes of
22 calculating the overtime wage rate. Therefore, during times when Plaintiff and other non-
23 party Aggrieved Employees worked overtime and received these other forms of pay,
24 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

25 59. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
26 the balance of overtime compensation as required by California law, violates the provisions of
27 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
28 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or

1 2699(a), (f), and (g).

2 **FAILURE TO PAY MINIMUM WAGES**

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

4 60. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
5 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
6 to be paid to employees, and the payment of a wage less than the minimum so fixed is
7 unlawful. Compensable work time is defined by the applicable wage order as “the time
8 during which an employee is subject to the control of an employer, and includes all the time
9 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
10 Regs. tit. 8, § 11040(2)(K) (defining “Hours Worked”).

11 61. As stated, upon information and belief, due to Defendants’ restrictions on
12 overtime accrual, Defendants systematically failed to pay Plaintiff and other non-party
13 Aggrieved Employees for actual hours worked before and after scheduled shifts, because these
14 hours were not accurately recorded. Additionally, as set forth above, upon information and
15 belief, due to Defendants’ uniform practice of utilizing labor budgets, resultant understaffing,
16 assignment of heavy workloads and strict targets or quotas, and failure to adhere to a schedule
17 of meal periods, Plaintiff and other non-party Aggrieved Employees were impeded from
18 taking all uninterrupted meal periods to which they were entitled and were required to work
19 off-the-clock. In addition, Defendants systematically failed to pay Plaintiff and other non-
20 party Aggrieved Employees for actual hours worked during unpaid meal periods because these
21 hours were not always correctly recorded. As set forth above, on information and belief,
22 Defendants’ policies required Plaintiff and other non-party Aggrieved Employees to clock out
23 for meal periods, upon threat of discipline, even though Plaintiff and other non-party
24 Aggrieved Employees performed additional duties, such as completing online trainings and
25 responding to phone calls, and were subject to Defendants’ control during this time.

26 62. Moreover, on information and belief, Defendants implemented, on a company-
27 wide basis, an employer-imposed requirement that other non-party Aggrieved Employees
28 undergo a mandatory drug test and/or physical examination upon hiring. At all times,

1 Defendants were in control of scheduling the date and time for the testing and/or
2 examinations, selecting the provider/facility where the testing and/or examinations were to
3 take place, and determining the scope of the testing and/or examinations. Defendants gave
4 other non-party Aggrieved Employees strict instructions to obtain drug testing and/or physical
5 examinations, and other non-party Aggrieved Employees underwent the testing and/or
6 examinations for the sole benefit of Defendants. Other non-party Aggrieved Employees were
7 required to travel in their own personal vehicles or obtain alternate transportation and spend
8 time undergoing Defendants' mandatory drug testing and/or physical examinations. However,
9 Defendants did not compensate other non-party Aggrieved Employees for the time they spent
10 traveling to and from the medical facilities and for the time they spent undergoing the drug
11 testing and/or physical examinations.

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

17 64. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
18 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
19 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
20 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

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

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

26 66. At all relevant times herein set forth, California Labor Code section 512(a)
27 provides that an employer may not require, cause, or permit an employee to work for a period
28 of more than five (5) hours per day without providing the employee with a meal period of not

1 less than thirty (30) minutes, except that if the total work period per day of the employee is
2 not more than six (6) hours, the meal period may be waived by mutual consent of both the
3 employer and the employee. Under California law, first meal periods must start after no more
4 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
5 2012).

6 67. At all relevant times herein set forth, California Labor Code section 226.7,
7 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
8 meal period mandated by an applicable order of the IWC.

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

16 69. As stated, Defendants had, and continue to have, a company-wide policy and/or
17 practice of understaffing pursuant to their labor budget practices, while simultaneously
18 assigning heavy workloads and discouraging employees from incurring overtime, which
19 resulted in a lack of meal period coverage and prevented Plaintiff and other non-party
20 Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were
21 entitled. Additionally, Defendants failed to adhere to a schedule of meal periods, resulting in
22 Plaintiff and other non-party Aggrieved Employees having their meal periods interrupted to
23 return to work or waiting extended periods of time before taking meal periods, due to the
24 workload and pressure to meet quotas without incurring overtime. Furthermore, as stated,
25 Defendants required Plaintiff and other non-party Aggrieved Employees to attend 2-3
26 mandatory online trainings per month, which, coupled with the heavy workload, sometimes
27 resulted in Plaintiff and other non-party Aggrieved Employees completing these trainings and
28 performing work during unpaid meal periods. Finally, as stated, Plaintiff and other non-party

1 Aggrieved Employees were required to respond to calls on their personal cellular phones from
2 clients and other bankers requesting expedited fund transfers for clients during unpaid meal
3 periods. These policies and practices discouraged and impeded Plaintiff and other non-party
4 Aggrieved Employees from taking compliant meal periods.

5 70. As a result of Defendants' practices and/or policies, Plaintiff and other non-
6 party Aggrieved Employees were forced to work in excess of five (5) hours before taking a
7 meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal
8 periods altogether. For example, Plaintiff's meal periods would be interrupted and/or
9 shortened in order to respond to phone calls and requests from Defendants' clients and other
10 bankers, which could take 5-10 minutes per instance, and to complete mandatory online
11 trainings, which could also take 10-15 minutes per instance. Plaintiff also occasionally
12 worked in excess of five (5) hours before taking a meal period.

13 71. Additionally, on information and belief, because Defendants frowned upon
14 employees accruing meal period penalties, Defendants' management would pressure
15 employees to clock out for meal periods and continue working in order to strictly limit meal
16 penalties that would need to be paid by Defendants. Plaintiff and other non-party Aggrieved
17 Employees worked through meal periods or had their meal periods interrupted, because there
18 were not enough employees on duty to handle the workload.

19 72. Moreover, Defendants did not provide other non-party Aggrieved Employees
20 with second 30-minute meal periods on days that they worked in excess of ten (10) hours in
21 one day. Plaintiff and other non-party Aggrieved Employees did not sign valid meal period
22 waivers on days that they were entitled to meal periods and were not relieved of all duties.

23 73. Defendants knew or should have known that as a result of their policies,
24 Plaintiff and other non-party Aggrieved Employees were not actually relieved of all duties to
25 take timely, uninterrupted meal periods. Defendants further knew or should have known that
26 they did not pay Plaintiff and other non-party Aggrieved Employees meal period premium
27 wages when they were missed, late, short, and/or interrupted because, on information and
28 belief, Defendants adjusted employee time records to reflect compliant meal periods, even if

1 none were taken.

2 74. Furthermore, Defendants engaged in a company-wide practice and/or policy of
3 not paying meal period premiums owed when compliant meal periods are not provided.
4 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
5 have not received premium pay for missed, late, and interrupted meal periods. Alternatively,
6 to the extent that Defendants did pay meal period premium wages to Plaintiff and other non-
7 party Aggrieved Employees, they did so at the incorrect rates. Because Defendants did not
8 properly calculate Plaintiff's and other non-party Aggrieved Employees' regular rates of pay
9 by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any
10 premiums paid for meal period violations were also paid at an incorrect rate and resulted in an
11 underpayment of meal period premium wages.

12 75. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
13 Employees compliant meal periods and failed to pay the full meal period premiums due.
14 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
15 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
16 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
17 (g).

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

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

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

23 77. At all relevant times, the applicable IWC Wage Order provides that "[e]very
24 employer shall authorize and permit all employees to take rest periods, which insofar as
25 practicable shall be in the middle of each work period" and that the "rest period time shall be
26 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
27 hours or major fraction thereof" unless the total daily work time is less than three and one-half
28 (3½) hours.

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

9 79. Pursuant to the applicable IWC Wage Order and California Labor Code section
10 226.7, Plaintiff and other non-party Aggrieved Employees are entitled to recover from
11 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
12 required rest period was not authorized and permitted.

13 80. During the relevant time period, Defendants regularly failed to authorize and
14 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
15 period per each four (4) hour period worked or major fraction thereof. Upon information and
16 belief, as with meal periods, Defendants’ policies and/or practice of understaffing and
17 assigning heavy workloads prevented Plaintiff and other non-party Aggrieved Employees
18 from being relieved of all duty in order to take compliant rest periods. Defendants also failed
19 to adhere to a schedule of rest periods, which, coupled with Defendants’ failure to provide
20 adequate rest period coverage, further led to Plaintiff and other non-party Aggrieved
21 Employees not being authorized and permitted to take rest periods. Moreover, Plaintiff and
22 other non-party Aggrieved Employees were expected to respond to their personal cellular
23 phones at all times, including during rest periods.

24 81. Additionally, Defendants maintained and implemented a company-wide
25 practice and/or policy requiring that other non-party Aggrieved Employees remain on the
26 work premises during their rest periods. Because other non-party Aggrieved Employees were
27 restricted from leaving the premises during rest periods, they were denied the ability to use
28 their rest periods freely for their own purposes. Thus, Defendants effectively maintained

1 control over other non-party Aggrieved Employees during rest periods, and, as a result of this
2 rest period policy, Defendants did not relinquish control over other non-party Aggrieved
3 Employees during rest periods.

4 82. As a result of Defendants' practices and policies, Plaintiff and other non-party
5 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
6 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
7 were entitled. Throughout his employment, Plaintiff missed his rest periods due to
8 understaffing and the heavy workload, which included performing fund transfers, responding
9 to client emails, and gathering clients' bank statements before a noon deadline. Plaintiff
10 would also have his rest periods interrupted by calls from bankers asking him to perform
11 expedited fund transfers for clients.

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

22 84. Defendants' conduct violates the applicable IWC Wage Order and California
23 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
24 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
25 558 and/or 2699(a), (f), and (g).

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

28 85. At all relevant times herein, California Labor Code section 226(a) provides that

1 every employer shall furnish each of his or her employees an accurate and complete itemized
2 wage statement in writing, including, but not limited to, the name and address of the legal
3 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
4 applicable rates of pay.

5 86. During the relevant time period, Defendants have knowingly and intentionally
6 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
7 inaccurate wage statements. For example, Defendants issued uniform wage statements to
8 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
9 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
10 the pay period, including overtime rates of pay, and the corresponding number of hours
11 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
12 226(a)(5), and 226(a)(9).

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

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

1 rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of
2 pay for premium wages, in violation of section 226(a)(9).

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

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

26 91. California Labor Code section 1174(d) provides that “[e]very person employing
27 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
28 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the

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

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

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

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

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

28 95. During the relevant time period, Defendants willfully failed to pay Plaintiff and

1 other non-party Aggrieved Employees all wages due to them within any time period specified
2 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
3 wages, and/or meal and rest period premium wages.

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

6 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

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

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

26 **FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATION**

27 **VIOLATION OF LABOR CODE SECTION 222.5**

28 100. At all relevant times herein, California Labor Code section 222.5 requires

1 employers to pay for the costs an employee incurs for obtaining any required medical or
2 physical examination.

3 101. During the relevant time period, Defendants implemented, on a company-wide
4 basis, an employer-imposed requirement that other non-party Aggrieved Employees undergo
5 mandatory drug tests and/or physical examinations, but required them to do so at their own
6 expense. As stated, Defendants had a company-wide policy requiring that other non-party
7 Aggrieved Employees travel to a specified medical facility on their own time and use their
8 own means of transportation to undergo drug testing and/or physical examinations. At all
9 times, Defendants were in control of scheduling the date and time for the drug testing and/or
10 physical examinations, selecting the provider/facility where the drug testing and/or physical
11 examinations were to take place, and determining the scope of the drug test and/or physical
12 examinations.

13 102. However, Defendants did not compensate other non-party Aggrieved
14 Employees for the time they spent traveling to and from their drug tests and/or physical
15 examinations, or for the time they spent undergoing the testing and/or examinations, or
16 reimburse them for the travel expenses they incurred getting to and from the medical facilities.
17 Defendants' policy and/or practice of not paying for all costs other non-party Aggrieved
18 Employees incurred obtaining mandatory drug tests and/or physical examinations tests is in
19 violation of California Labor Code section 222.5.

20 103. Other non-party Aggrieved Employees are therefore entitled to recover civil
21 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

22 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

23 **VIOLATION OF LABOR CODE SECTION 2802**

24 104. At all times herein set forth, California Labor Code section 2802 provides that
25 an employer must reimburse employees for all necessary expenditures and losses incurred by
26 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
27 to prevent employers from passing off their cost of doing business and operating expenses on
28 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144

(2014). The applicable wage order, IWC Wage Order 4-2001, provides that: “[w]hen the employer requires the use of tools or equipment or they are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage may provide and maintain hand tools and equipment customarily required by the particular trade or craft.”

105. First, during the relevant time period, Defendants, on a company-wide basis, required that Plaintiff and other non-party Aggrieved Employees utilize their own personal cellular phones and/or cellular phone data to carry out their job duties, but failed to reimburse them for the costs of their cellular phone and/or data plans. Plaintiff and other non-party Aggrieved Employees were required to use their personal cellular phones to complete their work-related tasks, such as discussing assignments with supervisors and responding to other bankers asking for expedited fund transfers for clients. Although Defendants required Plaintiff and other non-party Aggrieved Employees to utilize their personal cellular phones to carry out their work-related responsibilities, Defendants failed to fully reimburse them for this cost.

106. Second, Defendants had a company-wide policy of requiring other non-party Aggrieved Employees to travel in their own personal vehicles to medical facilities to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses. At all times, Defendants were control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. Defendants gave other non-party Aggrieved Employees strict instructions to obtain drug testing and/or physical examinations, and other non-party Aggrieved Employees underwent the examinations and/or testing for the sole benefit of Defendants. Although Defendants required other non-party Aggrieved Employees to use their own vehicles or obtain alternate transportation to undergo physical examinations and/or drug testing, Defendants never reimbursed them for their travel expenses.

107. Defendants could have provided Plaintiff and other non-party Aggrieved

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

6 108. Defendants' company-wide policy and/or practice of passing on their operating
7 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
8 section 2802. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
9 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

10 **REQUEST FOR JURY TRIAL**

11 Plaintiff requests a trial by jury.

12 **PRAYER FOR RELIEF**

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

15 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
16 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

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

18 2. That the Court declare, adjudge and decree that Defendants violated the
19 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
20 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
21 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516,
22 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
23 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
24 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
25 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
26 employment); 222.5 (by failing to pay the costs of mandatory drug testing and/or physical
27 examinations); and 2802 (by failing to reimburse business expenses).

28 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,

1 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
2 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and
3 2802;

4 4. For attorneys' fees and costs pursuant to California Labor Code section
5 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
6 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d),
7 1182.12, 1194, 1197, 1198, and 2802;

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

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

11
12 Dated: December 18, 2020

Respectfully submitted,

13 Capstone Law APC

14
15 By: 

16 Mark A. Ozzello
17 Brandon K. Brouillette
18 Joseph Hakakian

19 Attorneys for Plaintiff Alvaro Barrientos
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EXHIBIT 1



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Los Angeles, California 90067
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MICHELLE KENNEDY
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October 13, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/295>)

Subject: *Alvaro Barrientos v. First Foundation Bank*

Dear PAGA Administrator:

This office represents Alvaro Barrientos in connection with his claims under the California Labor Code. Mr. Barrientos was an employee of FIRST FOUNDATION BANK ("FFB").

The employer may be contacted directly at the address below:

FIRST FOUNDATION BANK
18101 VON KARMAN AVE, SUITE 750
IRVINE, CALIFORNIA 92612

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

FFB employed Mr. Barrientos as a non-exempt, hourly paid Commercial Client Services Banker from approximately June 2018 to April 2020. Mr. Barrientos worked for FFB at its location in Torrance, California. He typically worked eight (8) or more hours per day, five (5) or more days per week, and approximately 40 hours or more per week. At the time his employment ended, Mr. Barrientos was compensated approximately \$22.55 per hour. His job duties included opening accounts for bank clients, conducting wire transfers, notifying bank clients of incoming transfers, completing monthly statement check lists for clients, and completing daily overdraft reports.

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

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

FFB is a California corporation headquartered in Irvine, California. FFB provides integrated investment management, wealth planning, consulting, trust, banking, and insurance services to customers throughout the United States, including California. FFB operates approximately 23 branches and advisor offices in at least 3 states, including approximately 19 branch locations and advisor offices in California, and employs approximately 500 employees nationwide. Upon information and belief, FFB maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Irvine, California, for all non-exempt, hourly paid employees working for FFB in California, including Mr. Barrientos and other aggrieved employees. At all relevant times, FFB issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Barrientos and other aggrieved employees, regardless of their location or position.

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

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

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

FFB willfully failed to pay all overtime wages owed to Mr. Barrientos and other aggrieved employees. During the relevant time period, Mr. Barrientos and other aggrieved employees were not

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

paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, FFB had a company-wide policy and/or practice of strictly limiting the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing its locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with FFB's understaffing policy, as well as the assignment of heavy workloads and strict targets or quotas for conducting audits (*see infra*), led Mr. Barrientos and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks.

As a result of this restriction on overtime accrual, FFB forced Mr. Barrientos and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts, such as pre-shift opening tasks, including turning on all lights and disarming the alarm; post-shift closing responsibilities, including clearing hallways, turning off lights, and activating the alarm; and responding to phone calls or text messages from management on their personal cellular phones. FFB discouraged and impeded Mr. Barrientos and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, upon threat of discipline for incurring unapproved overtime hours. Alternatively, when Mr. Barrientos and other aggrieved employees did not clock out at their designated shift end-times, on information and belief, Mr. Barrientos and other aggrieved employees were subject to FFB's supervisors falsifying their time records in order to prevent employees from accruing excessive overtime.

Thus, Mr. Barrientos and other aggrieved employees were required to work off-the-clock performing tasks before and after their scheduled shifts, but were prevented from accounting for and recording this time in the electronic timekeeping system. For example, Mr. Barrientos was required to open the office and disarm the alarm upon arrival; each time, he spent several minutes disarming the alarm before he could clock into FFB's timekeeping system for the start of his shift. Mr. Barrientos would also frequently arrive 5-10 minutes early to turn on all lights, prepare his workstation, and gather paperwork for his upcoming assignments, but he was not permitted to clock in before his scheduled shift start-time. He was also required to clock out at his designated shift end-time even when he had additional tasks to complete for the day, and regularly worked 5-10 minutes after he had clocked out, removing boxes from hallways, turning off all office lights, ushering out any remaining clients, and activating the alarm. When Mr. Barrientos asked whether he could clock in prior to his scheduled shift time or clock out after his scheduled shift time in order to account for this time spent working, his supervisor told him that he could only clock in and out according to his scheduled shifts and that anything else would be considered unapproved overtime. Thus, FFB failed to track all of this time spent working before clocking in or after clocking out, and Mr. Barrientos and other aggrieved employees received no compensation for this time.

Second, as stated, upon information and belief, FFB had, and continues to have, a company-wide policy staffing its locations strictly based on the labor hours or labor budget set by the corporate office. FFB's use of a labor budget resulted in chronic understaffing, such that there were too few employees on duty to handle the heavy workload, which included monthly and individual targets or quotas for conducting audits, as well as daily tasks to be completed on a deadline. Because FFB did not employ or staff an adequate number of employees to meet their productivity expectations and failed to provide employees with adequate meal period coverage, Mr. Barrientos and other aggrieved employees were assigned heavy workloads, which FFB knew or should have known could only be

met by working additional hours. For example, FFB also required Mr. Barrientos and other aggrieved employees to complete 2-3 mandatory online trainings per month, which, coupled with the heavy workload, sometimes resulted in Mr. Barrientos and other aggrieved employees completing these trainings and performing work during unpaid meal periods. Thus, FFB did not compensate them for all of their time spent undergoing these trainings. Mr. Barrientos and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads.

Third, FFB has, on a company-wide basis, failed to adhere to a schedule of meal periods. This company-wide practice, coupled with the heavy workload and pressure from FFB to complete assigned tasks, impeded Mr. Barrientos and other aggrieved employees from taking timely, compliant meal periods. Additionally, Mr. Barrientos and other aggrieved employees would be required to respond to calls on their personal cellular phones from clients and other bankers requesting expedited fund transfers for clients during unpaid meal periods. As a result, Mr. Barrientos and other aggrieved employees were not afforded timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods. Further, on information and belief, because FFB frowned upon employees accruing meal period penalties, FFB pressured Mr. Barrientos and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that FFB would otherwise owe. Thus, Mr. Barrientos and other aggrieved employees performed work during meal periods for which they were not paid.

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

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

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

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

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

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

As stated above, upon information and belief, due to FFB’s restrictions on overtime accrual, FFB systematically failed to pay Mr. Barrientos and other aggrieved employees for actual hours worked before and after scheduled shifts, because these hours were not accurately recorded. Additionally, as set forth above, upon information and belief, due to FFB’s uniform practice of utilizing labor budgets, resultant understaffing, assignment of heavy workloads and strict targets or quotas, and failure to adhere to a schedule of meal periods, Mr. Barrientos and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. In addition, FFB systematically failed to pay Mr. Barrientos and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded. As set forth above, on information and belief, FFB’s policies required Mr. Barrientos and other aggrieved employees to clock out for meal periods, upon threat of discipline, even though Mr. Barrientos and other aggrieved employees performed additional duties, such as completing online trainings and responding to phone calls, and were subject to FFB’s control during this time.

Moreover, on information and belief, FFB implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo a mandatory drug test and/or physical examination upon hiring. At all times, FFB was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations. FFB gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of FFB. Other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing FFB’s mandatory drug testing and/or physical examinations. However, FFB did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and for the time they spent undergoing the drug testing and/or physical examinations.

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

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

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

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

As stated, FFB had, and continues to have, a company-wide policy and/or practice of understaffing pursuant to its labor budget practices, while simultaneously assigning heavy workloads and discouraging employees from incurring overtime, which resulted in a lack of meal period coverage and prevented Mr. Barrientos and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, FFB failed to adhere to a schedule of meal periods, resulting in Mr. Barrientos and other aggrieved employees having their meal periods interrupted to return to work or waiting extended periods of time before taking meal periods, due to the workload and pressure to meet quotas without incurring overtime. Furthermore, as stated, FFB required Mr. Barrientos and other aggrieved employees to attend 2-3 mandatory online trainings per month, which, coupled with the heavy workload, sometimes resulted in Mr. Barrientos and other aggrieved employees completing these trainings and performing work during unpaid meal periods. Finally, as stated, Mr. Barrientos and other aggrieved employees were required to respond to calls on their personal cellular phones from clients and other bankers requesting expedited fund transfers for clients during unpaid meal periods. These policies and practices discouraged and impeded Mr. Barrientos and other aggrieved employees from taking compliant meal periods.

As a result of FFB's practices and/or policies, Mr. Barrientos and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, Mr. Barrientos's meal periods would be interrupted and/or shortened in order to respond to phone calls and requests from FFB's clients and other bankers, which could take 5-10 minutes per instance, and to complete mandatory online trainings, which could also take 10-15 minutes per instance. Mr. Barrientos also occasionally worked in excess of five (5) hours before taking a meal period.

Additionally, on information and belief, because FFB frowned upon employees accruing meal period penalties, FFB's management would pressure employees to clock out for meal periods and continue working in order to strictly limit meal penalties that would need to be paid by FFB. Mr. Barrientos and other aggrieved employees worked through meal periods or had their meal periods interrupted, because there were not enough employees on duty to handle the workload.

Moreover, on information and belief, FFB did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Other aggrieved employees did not sign valid meal period waivers on all days that they were entitled to meal periods and were not relieved of all duties.

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

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

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

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

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

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

During the relevant time period, FFB regularly failed to authorize and permit Mr. Barrientos and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked

or major fraction thereof. Upon information and belief, as with meal periods, FFB's policies and/or practice of understaffing and assigning heavy workloads prevented Mr. Barrientos and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. FFB also failed to adhere to a schedule of rest periods, which, coupled with FFB's failure to provide adequate rest period coverage, further led to Mr. Barrientos and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, Mr. Barrientos and other aggrieved employees were expected to respond to their personal cellular phones at all times, including during rest periods.

Furthermore, on information and belief, FFB maintained and implemented a company-wide practice and/or policy requiring that Mr. Barrientos and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Barrientos and other aggrieved employees were restricted from leaving the work premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, FFB effectively maintained control over Mr. Barrientos and other aggrieved employees during rest periods, and, as a result of this rest period policy, FFB did not relinquish control over Mr. Barrientos and other aggrieved employees during rest periods.

As a result of FFB's practices and policies, Mr. Barrientos and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. Throughout his employment, Mr. Barrientos missed his rest periods due to understaffing and the heavy workload, which included performing fund transfers, responding to client emails, and gathering clients' bank statements before a noon deadline. Mr. Barrientos would also have his rest periods interrupted by calls from bankers asking him to perform expedited fund transfers for clients.

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

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

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. FFB has not provided Mr. Barrientos and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00

for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

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

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

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

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

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

1174(d), FFB willfully failed to maintain accurate payroll records for Mr. Barrientos and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, as stated, FFB engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Barrientos and other aggrieved employees in violation of section 1198. Furthermore, in light of FFB’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, FFB kept no records of meal start and end times for second meal periods.

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

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

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

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

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

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

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

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

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

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

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, FFB implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, FFB had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, FFB was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations. However, FFB did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. FFB's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11040 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of

labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11040(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

FFB’s California branch locations are generally similar in their layout and design and there was, and continues to be, space behind each teller station (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by other aggrieved employees during the performance of their work duties. FFB could provide other aggrieved employees with a seat or stool at its teller stations, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind or at these teller stations. The nature of the work of an employee performing such duties can reasonably be accomplished from a seated position. However, as set forth herein, FFB systematically, and on a company-wide basis, does not provide seats or stools at or near the teller stations, forcing other aggrieved employees to stand throughout their work shifts.

FFB violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11040(14)(A) because other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. FFB’s management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of FFB’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. FFB’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 4-2001, Section 14(A).

Other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring FFB into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11040 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11040(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Id.*

As stated, FFB’s California branch locations are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by other aggrieved employees during lulls in operation. FFB could have provided other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

FFB did not provide other aggrieved employees with suitable seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent other aggrieved employees engaged in duties in which the nature of the work required standing, FFB denied them the use of seats nearby during lulls in their work duties. Moreover, FFB did not inform other aggrieved employees of their rights to a seat or stool under California law.

As a result of FFB’s company-wide policy and/or practice of effectively prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, other aggrieved employees were forced to stand during shifts and denied seats. FFB’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 4-2001, Section 14(B).

Other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring FFB into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, FFB, on a company-wide basis, required that Mr. Barrientos and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for all of the costs of their work-related cellular phone expenses. Mr. Barrientos and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as discussing assignments with supervisors and responding to other bankers asking him to perform expedited fund transfers for clients. Although FFB required Mr. Barrientos and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, FFB failed to fully reimburse them for this cost.

Additionally, as stated, FFB had a company-wide policy of requiring other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles or alternate transportation to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, FFB was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. FFB gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the examinations and/or testing for the sole benefit of FFB. Although FFB required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, FFB never reimbursed them for their travel expenses.

FFB could have provided Mr. Barrientos and other aggrieved employees with the actual tools for use on the job, such as company phones or company vehicles to be used for fulfilling work-related tasks, or, FFB could have reimbursed employees for the costs of their cellular phone usage, mileage, and travel expenses. Instead, FFB passed these operating costs off onto Mr. Barrientos and other aggrieved employees. At all relevant times, Mr. Barrientos did not earn at least two (2) times the minimum wage.

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

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision

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

Accordingly, Mr. Barrientos seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Barrientos, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against FFB for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

Pre-Litigation Demand

This notice shall further serve as Mr. Barrientos’s reasonable attempt to settle his dispute with FFB prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform FFB of Mr. Barrientos’s aforementioned grievances and the proposed remedies as detailed below, while affording FFB a reasonable opportunity to satisfy Mr. Barrientos’s demands.

Demand is hereby made that FFB shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. FFB shall pay Mr. Barrientos and all other aggrieved employees employed by FFB at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. FFB shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. FFB shall conduct a survey or interview all current and former aggrieved employees in California who worked for FFB in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for cellular phone expenses, mandatory medical examinations, travel, mileage, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. FFB shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor

Code sections 226.7, 512, 516, and 1198. FFB also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.

5. FFB shall implement and provide suitable seating to all aggrieved employees.
6. FFB shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for FFB's benefit, including, but not limited to, costs of cellular phone expenses, mandatory medical examinations, and travel expenses, as required by Labor Code sections 222.5 and 2802.
7. FFB shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. FFB shall provide Mr. Barrientos and all aggrieved employees employed by FFB at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
9. FFB shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 4-2001, section 20.

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

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

Best Regards,



Michelle Kennedy

Copy: FIRST FOUNDATION BANK (via U.S. Certified Mail)