

Bevin Allen Pike (SBN 221936)
Bevin.Pike@capstonelawyers.com
Orlando Villalba (SBN 232165)
Orlando.Villalba@capstonelawyers.com
Daniel Jonathan (SBN 262209)
Daniel.Jonathan@capstonelawyers.com
Trisha K. Monesi (SBN 303512)
Trisha.Monesi@capstonelawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiffs Lilly Maxwell
and Maria Villanueva

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

LILLY MAXWELL and MARIA
VILLANUEVA individually, and on behalf
of other members of the general public
similarly situated,

Plaintiffs,

vs.

APOYO FINANCIERO, INC., a Delaware
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: BCV-20-102712

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During

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- Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiffs Lilly Maxwell and Maria Villanueva, individually and on behalf of all other
2 members of the public similarly situated and as aggrieved employees and on behalf of all other
3 aggrieved employees, allege as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiffs, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt, hourly
9 paid employees and received at least one wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiffs’ share of damages,
17 penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
21 over them by the California courts consistent with traditional notions of fair play and substantial
22 justice. There is no basis for federal diversity jurisdiction in this action because there is no
23 complete diversity, and this case falls within the statutory exceptions to “minimal diversity”
24 jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4). Upon information
25 and belief, two-thirds or more of the class members and Defendants are citizens of California
26 and/or (a) two-thirds of the class members and Defendants are citizens of California; (b) the
27 alleged wage and hour violations occurred in California; (c) significant relief is being sought
28 against Defendants whose violations of California wage and hour laws form a significant basis

1 for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years
2 on behalf of the same proposed class against Defendants asserting the same or similar factual
3 allegations.

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

7 **THE PARTIES**

8 4. Plaintiff Lilly Maxwell is a resident of Bakersfield, in Kern County, California.
9 Defendants employed Plaintiff Maxwell as an hourly paid, non-exempt Customer Service
10 Representative from approximately August 2019 to December 2019, and as a Senior Customer
11 Service Representative from approximately December 2019 to August 2020. Plaintiff Maxwell
12 worked for Defendants out of their branch location in Bakersfield, California. During her
13 employment, Plaintiff Maxwell typically worked eight (8) hours or more per day, five (5) days
14 per week, from 10:00 a.m. to 7:00 p.m. Plaintiff Maxwell's primary job duties included, without
15 limitation, conducting phone calls with clients, counting and managing funds, processing loan
16 applications, conducting onsite collections, depositing funds at the bank, and appearing in court
17 for debt collection matters.

18 5. Plaintiff Maria Villanueva is a resident of Winton, in Merced County, California.
19 Defendants employed Plaintiff Villanueva as an hourly paid, non-exempt Customer Service
20 Representative from approximately September 2018 to May 2020 at Defendants' branch
21 location in Modesto, California. During her employment, Plaintiff Villanueva typically worked
22 eight (8) hours or more per day, five (5) days per week, from 9:00 a.m. to 7:00 p.m. Plaintiff
23 Villanueva's primary job duties included, without limitation, processing loan applications,
24 responding to client phone calls, verifying client credit and employment, conducting collections,
25 processing payments, and filing collections claims.

26 6. APOYO FINANCIERO, INC. was and is, upon information and belief, a
27 Delaware corporation, and at all times hereinafter mentioned, an employer whose employees
28 are engaged throughout this county, the State of California, or the various states of the United

1 States of America.

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

6 8. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
7 were the partners, agents, owners, or managers of APOYO FINANCIERO, INC. at all relevant
8 times.

9 9. Plaintiffs are informed and believe, and thereon allege, that each and all of the
10 acts and omissions alleged herein was performed by, or is attributable to, APOYO
11 FINANCIERO, INC. and/or DOES 1 through 10 (collectively, “Defendants” or “APOYO”),
12 each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert
13 with, each of the other co-Defendants and was acting within the course and scope of such
14 agency, employment, joint venture, or concerted activity with legal authority to act on the
15 others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the
16 official policy of Defendants.

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

21 11. Plaintiffs are informed and believe, and thereon allege, that each of said
22 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
23 omissions, occurrences, and transactions alleged herein.

24 **GENERAL ALLEGATIONS**

25 12. Defendants are a microfinance company serving underbanked Spanish-speaking
26 communities. Defendants operate approximately 28 branch locations in California. Upon
27 information and belief, Defendants maintain a single, centralized Human Resources (“HR”)
28 department at their company headquarters in Walnut Creek, California which is responsible for

1 the recruiting and hiring of new employees, and communicating and implementing Defendants’
2 company-wide policies, including timekeeping policies and meal and rest period policies, to
3 employees throughout California.

4 13. In particular, Plaintiffs and class members, on information and belief, received
5 the same standardized documents and/or written policies. Upon information and belief, the
6 usage of standardized documents and/or written policies, including new-hire documents,
7 indicate that Defendants dictated policies at the corporate level and implemented them
8 company-wide, regardless of their employees’ assigned locations or positions. Upon
9 information and belief, Defendants set forth uniform policies and procedures in several
10 documents provided at an employee’s time of hire.

11 14. Upon information and belief, Defendants maintain a centralized Payroll
12 department at their company headquarters in Walnut Creek, California, which processes payroll
13 for all non-exempt, hourly paid employees working for Defendants at their various locations
14 and jobsites in California, including Plaintiffs and class members. Based upon information and
15 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
16 employees in California, irrespective of their work locations. Upon information and belief,
17 Defendants process payroll for departing employees in the same manner throughout the State
18 of California, regardless of the manner in which each employee’s employment ends.

19 15. Defendants continue to employ non-exempt or hourly paid employees in
20 California.

21 16. Plaintiffs are informed and believe, and thereon allege, that at all times herein
22 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
23 advisors knowledgeable about California labor and wage law, employment and personnel
24 practices, and about the requirements of California law.

25 17. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and class
26 members were not paid for all hours worked because all hours worked were not recorded.

27 18. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
28 should have known that Plaintiffs and class members were entitled to receive certain wages for

overtime compensation and that they were not receiving certain wages for overtime compensation.

19. Plaintiffs are informed and believes, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to be paid at a regular rate of pay, and corresponding overtime rate of pay, that included as eligible income all remuneration required by law, including but not limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation.

20. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for work that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiffs and class members were not paid at least minimum wages for work done off-the-clock.

21. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiffs and class members were not provided with all meal periods or payment of one (1) additional hour of pay at their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

22. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiffs and class members were not authorized and permitted to take compliant rest periods, nor did Defendants provide Plaintiffs and class members with payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period.

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1 23. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that Plaintiffs and class members were entitled to receive complete and
3 accurate wage statements in accordance with California law. In violation of the California
4 Labor Code, Plaintiffs and class members were not provided complete and accurate wage
5 statements.

6 24. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
7 should have known that they had a duty to maintain accurate and complete payroll records in
8 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
9 and intentionally failed to do so.

10 25. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
11 should have known that Plaintiffs and class members were entitled to timely payment of all
12 wages earned upon termination of employment. In violation of the California Labor Code,
13 Plaintiffs and class members did not receive payment of all wages due, including, but not limited
14 to, overtime wages, minimum wages, and/or meal and rest period premiums, within permissible
15 time periods.

16 26. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
17 should have known that Plaintiffs and class members were entitled to timely payment of wages
18 during their employment. In violation of the California Labor Code, Plaintiffs and class
19 members did not receive payment of all wages, including, but not limited to, overtime wages,
20 minimum wages, and/or meal and rest period premiums, within permissible time periods.

21 27. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
22 should have known that Plaintiff Villanueva and class members were entitled to the portion of
23 wages previously paid and subsequently unlawfully deducted by Defendants.

24 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
25 should have known that Plaintiff Villanueva and class members were entitled to payment of
26 wages as designated by statute. In violation of the California Labor Code, Defendants secretly
27 paid Plaintiff Villanueva and class members lower wages than required by statute while
28 purporting to pay them proper wages.

1 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that Plaintiffs and class members were entitled to receive full reimbursement
3 for all business-related expenses and costs they incurred during the course and scope of their
4 employment and that they did not receive full reimbursement of applicable business-related
5 expenses and costs incurred.

6 30. Plaintiffs are informed and believe, and thereon allege, that at all times herein
7 mentioned, Defendants knew or should have known that Defendants had a duty to provide
8 Plaintiffs and class members with written notice of the material terms of their employment with
9 Defendants as required by the California Wage Theft Prevention Act, but willfully, knowingly,
10 and intentionally failed to do so.

11 31. Plaintiffs are informed and believe, and thereon allege, that at all times herein
12 mentioned, Defendants knew or should have known that they had a duty to compensate
13 Plaintiffs and class members for all hours worked, and that Defendants had the financial ability
14 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
15 represented to Plaintiffs and class members that they were properly denied wages, all in order
16 to increase Defendants' profits.

17 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

27 34. Plaintiffs and other current and former employees of Defendants are "aggrieved
28 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current

1 or former employees and one or more of the alleged violations were committed against them.

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

5 (a) The aggrieved employee or representative shall give written notice by
6 online filing with the LWDA and by certified mail to the employer of the
7 specific provisions of the California Labor Code alleged to have been
8 violated, including the facts and theories to support the alleged violation.

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 accompanied
11 by a filing fee of seventy-five dollars (\$75).

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

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

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

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

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

13 37. On December 2, 2020, Plaintiff Maxwell provided written notice by online filing
14 to the LWDA and by Certified Mail to Defendants of the specific provisions of the California
15 Labor 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 Maxwell's
17 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
18 LWDA PAGA Administrator confirmed receipt of Plaintiff Maxwell's written notice and
19 assigned Plaintiff Maxwell PAGA Case Number LWDA-CM-814192-20. A true and correct
20 copy of Plaintiff Maxwell's written notice to the LWDA and Defendants is attached hereto as
21 "Exhibit 1."

22 38. On December 2, 2020, Plaintiff Villanueva provided written notice by online
23 filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the
24 California Labor Code alleged to have been violated, including facts and theories to support the
25 alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff
26 Villanueva's written notice was accompanied with the applicable filing fee of seventy-five
27 dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff Villanueva's
28 written notice and assigned Plaintiff Villanueva PAGA Case Number LWDA-CM-814207-20.

1 A true and correct copy of Plaintiff Villanueva's written notice to the LWDA and Defendants
2 is attached hereto as "Exhibit 2."

3 39. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
4 sent the notices described above to the LWDA, and the LWDA has not responded that it intends
5 to investigate Plaintiffs' claims and Defendants have not cured the violations.

6 40. Thus, Plaintiffs have satisfied the administrative prerequisites under California
7 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
8 violations of California Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7,
9 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

10 41. Labor Code section 558(a) provides "[a]ny employer or other person acting on
11 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
12 provision regulating hours and days of work in any order of the Industrial Welfare Commission
13 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
14 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
15 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
16 each pay period for which the employee was underpaid. . . ." Labor Code section 558(c)
17 provides "[t]he civil penalties provided for in this section are in addition to any other civil or
18 criminal penalty provided by law."

19 42. Defendants, at all times relevant to this complaint, were employers or persons
20 acting on behalf of an employer(s) who violated Plaintiffs' and other aggrieved employees'
21 rights by violating various sections of the California Labor Code as set forth above.

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

25 44. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
26 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiffs, acting in the public interest as
27 private attorneys general, seek assessment and collection of civil penalties for themselves, all
28 other aggrieved employees, and the State of California against Defendants for violations of

California Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

CLASS ACTION ALLEGATIONS

45. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all other persons similarly situated, and thus seek class certification under California Code of Civil Procedure section 382.

46. All claims alleged herein arise under California law for which Plaintiffs seek relief authorized by California law.

47. Plaintiffs' proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial ("Class").

48. Plaintiffs' proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

49. Members of the Class and Subclass are referred to herein as "class members."

50. Plaintiffs reserve the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

51. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

- (a) Whether Defendants required Plaintiffs and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiffs and class members;
- (b) Whether Defendants failed to properly calculate the "regular rate" of pay on which Plaintiffs' and class members' overtime rate of pay was based;
- (c) Whether Defendants failed to pay Plaintiffs and class members at least

- 1 minimum wages for all hours worked;
- 2 (d) Whether Defendants failed to provide Plaintiffs and class members with
- 3 meal periods;
- 4 (e) Whether Defendants failed to authorize and permit Plaintiffs and class
- 5 members to take rest periods;
- 6 (f) Whether Defendants provided Plaintiffs and class members with
- 7 complete and accurate wage statements as required by California Labor
- 8 Code section 226(a);
- 9 (g) Whether Defendants maintained accurate payroll records as required by
- 10 California Labor Code section 1174(d);
- 11 (h) Whether Defendants failed to pay earned overtime wages, minimum
- 12 wages, and/or meal and rest period premiums, due to Plaintiffs and class
- 13 members upon their discharge;
- 14 (i) Whether Defendants failed timely to pay overtime wages, minimum
- 15 wages, and/or meal and rest period premiums, to Plaintiffs and class
- 16 members during their employment;
- 17 (j) Whether Defendants unlawfully deducted a portion of wages previously
- 18 paid to Plaintiff Villanueva and class members, in violation of Labor
- 19 Code sections 221 and 224;
- 20 (k) Whether Defendants secretly paid Plaintiff Villanueva and class members
- 21 lower wages than required by statute while purporting to pay the proper
- 22 wages, in violation of Labor Code section 223;
- 23 (l) Whether Defendants failed to reimburse Plaintiffs and class members for
- 24 necessary and required business-related expenditures and/or losses
- 25 incurred by them in the scope of their employment;
- 26 (m) Whether Defendants failed to provide written notice of information
- 27 material to Plaintiffs' and class members' employment with Defendants;

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- 1 (n) Whether Defendants engaged in unlawful and unfair business practices in
2 violation of California Business & Professions Code sections 17200, *et*
3 *seq.*; and
4 (o) The appropriate amount of damages, restitution, or monetary penalties
5 resulting from Defendants' violations of California law.

6 52. There is a well-defined community of interest in the litigation and the class
7 members are readily ascertainable:

- 8 (a) Numerosity: The class members are so numerous that joinder of all
9 members would be unfeasible and impractical. The membership of the
10 entire class is unknown to Plaintiffs at this time; however, the class is
11 estimated to be greater than one hundred (100) individuals and the
12 identity of such membership is readily ascertainable by inspection of
13 Defendants' employment records.
14 (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately
15 protect the interests of each class member with whom they have a well-
16 defined community of interest, and Plaintiffs' claims (or defenses, if any)
17 are typical of all class members as demonstrated herein.
18 (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately
19 protect the interests of each class member with whom they have a well-
20 defined community of interest and typicality of claims, as demonstrated
21 herein. Plaintiffs acknowledge that they have an obligation to make
22 known to the Court any relationship, conflicts or differences with any
23 class member. Plaintiffs' attorneys, the proposed class counsel, are
24 versed in the rules governing class action discovery, certification, and
25 settlement. Plaintiffs have incurred, and throughout the duration of this
26 action, will continue to incur costs and attorneys' fees that have been, are,
27 and will be necessarily expended for the prosecution of this action for the
28 substantial benefit of each class member.

1 (d) Superiority: The nature of this action makes the use of class action
2 adjudication superior to other methods. A class action will achieve
3 economies of time, effort, and expense as compared with separate
4 lawsuits, and will avoid inconsistent outcomes because the same issues
5 can be adjudicated in the same manner and at the same time for the entire
6 class.

7 (e) Public Policy Considerations: Employers in the State of California
8 violate employment and labor laws every day. Current employees are
9 often afraid to assert their rights out of fear of direct or indirect retaliation.
10 Former employees are fearful of bringing actions because they believe
11 their former employers might damage their future endeavors through
12 negative references and/or other means. Class actions provide the class
13 members who are not named in the complaint with a type of anonymity
14 that allows for the vindication of their rights while simultaneously
15 protecting their privacy.

16 **FIRST CAUSE OF ACTION**

17 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime** 18 **(Against all Defendants)**

19 53. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
20 every allegation set forth above.

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

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

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

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

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

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

17 59. During the relevant time period, Defendants willfully failed to pay all overtime
18 wages owed to Plaintiffs and class members. During the relevant time period, Plaintiffs and
19 class members were not paid overtime premiums for all of the hours they worked in excess of
20 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
21 hours in a week, because all hours worked were not recorded.

22 60. First, during the relevant period, Defendants had a policy and/or practice of
23 discouraging and impeding Plaintiffs and class members from recording hours worked that were
24 outside of their scheduled shifts, upon threat of discipline, in order to limit the amount of
25 overtime employees could accrue. On information and belief, this policy of limiting overtime,
26 coupled with Defendants' use of labor budgets and assignment of heavy workloads and loan
27 quotas (*see infra*), led Plaintiffs and class members to work off-the-clock before and after their
28 scheduled shift times in order to complete their assigned tasks. For example, Plaintiff Maxwell

1 would arrive to work early three (3) times per week and spend 15 minutes off-the-clock prior to
2 the start of her scheduled shift processing checks and creating folders for customers, tasks that
3 she did not have time to complete during her scheduled shift. Plaintiff Maxwell was also
4 required to continue working after clocking out at the end of her shift, twice per week, for 10-
5 15 minutes, to resolve any register discrepancies or finish processing client payments.
6 Similarly, Plaintiff Villanueva would arrive to work early five (5) times per week and spend 30-
7 40 minutes off-the-clock scanning files and completing paperwork in preparation of her shift.
8 Plaintiff Villanueva was also required to clock out and continue working 2-3 times per month,
9 for 15-30 minutes, to process payments or continue assisting clients.

10 61. Moreover, on information and belief, Defendants had a policy of improperly
11 adjusting Plaintiffs' and class members' clock-in and clock-out duration times in their
12 timekeeping system. Defendants' time-shaving policy resulted in the failure to compensate
13 Plaintiffs and class members fully for all hours worked, causing Plaintiffs and class members
14 to not be paid overtime wages for all of the overtime hours they actually worked. Consequently,
15 Plaintiffs and class members performed work before and after their shifts for which they were
16 not paid.

17 62. Second, Defendants had, and continue to have, a company-wide policy and/or
18 practice of requiring Plaintiffs and class members to perform tasks off-the-clock, such as
19 responding to phone communications from supervisors and/or customers and traveling to attend
20 mandatory meetings and training. Plaintiffs and class members were required to use their
21 personal cellular phones to complete their work-related duties, such as discussing upcoming
22 tasks with Defendants' management and responding to clients. For example, Defendants
23 required Plaintiff Maxwell to attend mandatory conference calls and respond to phone
24 communications from her supervisor outside of her scheduled shifts and on her days off.
25 Similarly, Plaintiff Villanueva spent one (1) hour each week off-the-clock responding to phone
26 calls and text messages from clients. Furthermore, Plaintiffs and class members were required
27 to travel to mandatory meetings and training throughout California, but were not paid for their
28 travel time. For example, Plaintiff Maxwell spent approximately 4.5 hours driving to and from

1 a mandatory company-wide conference in Montclair, California, while Plaintiff Villanueva was
2 similarly required to drive approximately four (4) hours off-the-clock to and from a mandatory
3 training in Walnut Creek, California. Defendants failed to track this time Plaintiffs and class
4 members spent responding to phone communications and traveling to mandatory meetings and
5 training, and thus, Plaintiffs and class members received no compensation for this time.

6 63. Third, Defendants had, and continue to have, a company-wide security policy
7 requiring employees to leave the branch premises in pairs. Thus, after clocking out at the end
8 of their shifts, Plaintiff Villanueva and class members were required to wait for another
9 employee to become available before they could leave Defendants' premises. For example, 1-
10 2 times per week, Plaintiff Villanueva was required to clock out at the end of her shift and wait
11 for 10-30 minutes for her fellow employee to finish assisting a client before she was permitted
12 to exit the branch with her co-worker. As a result of this security policy and/or practice, Plaintiff
13 Villanueva and class members were subject to Defendants' control after they had completed
14 their scheduled shifts, but were not compensated for this time.

15 64. Fourth, upon information and belief, Defendants had, and continue to have, a
16 company-wide policy and/or practice of strictly staffing their branch locations based on the
17 labor hours allocated by corporate for each location. Defendants' uniform use of labor budgets
18 resulted in chronic understaffing, such that there were too few employees on duty to handle the
19 heavy workload and meet loan quotas, such as branch-wide and individual quotas for monthly
20 and daily loans issued and amounts collected from customers. Because Defendants did not
21 employ or staff an adequate number of employees to meet their productivity expectations and
22 failed to provide employees with adequate meal period coverage, Plaintiffs and class members
23 were assigned heavy workloads, which Defendants knew or should have known could only be
24 completed by working additional hours. Plaintiffs and class members missed meal periods
25 and/or had meal periods cut short or interrupted in order to handle their workloads and address
26 client demand. For example, Plaintiff Maxwell was required to clock out and continue working
27 through her meal periods three (3) times per week in order to attend to customers; similarly,
28 Plaintiff Villanueva was instructed by Defendants to clock out and continue working through

1 her meal periods 1-2 times per month in order to travel to and conduct off-site collections. In
2 addition, Plaintiffs were regularly interrupted by management during meal periods and asked to
3 spend several minutes per instance unlocking their cash registers for other employees' use.

4 65. Moreover, Defendants had a practice of failing to schedule meal periods, which
5 further caused Plaintiffs and class members to not be relieved of their duties for compliant meal
6 periods. Additionally, on information and belief, because Defendants frowned upon employees
7 accruing meal period penalties, Defendants pressured Plaintiffs and class members to clock out
8 for meal periods and/or adjusted employee time records to reflect compliant meal periods,
9 regardless of whether they had received a compliant meal period, in order to strictly limit meal
10 penalties that Defendants would otherwise owe. Further, Defendants' company-wide
11 timekeeping system also prevented Plaintiffs and class members from recording all hours
12 worked when their meal periods were shortened or interrupted, because the system locked out
13 Plaintiffs and class members once they clocked out for a meal period, and would not permit
14 them to clock back in from a meal period before the allotted time had elapsed. Defendants'
15 timekeeping system prevented Plaintiffs and class members from recording all hours worked
16 when their meal periods were shortened or interrupted. Thus, Plaintiffs and class members
17 performed work during meal periods for which they were not paid.

18 66. Defendants knew or should have known that as a result of these company-wide
19 practices and/or policies, Plaintiffs and class members were performing their assigned duties
20 off-the-clock before and after their shifts and during meal periods, and were suffered or
21 permitted to perform work for which they were not paid. Because Plaintiffs and class members
22 worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this
23 off-the-clock work qualified for overtime premium pay. Therefore, Plaintiffs and class
24 members were not paid overtime wages for all of the overtime hours they actually worked.

25 67. Furthermore, on information and belief, Defendants did not pay Plaintiffs and
26 class members the correct overtime rate for the recorded overtime hours that they generated. In
27 addition to an hourly wage, Defendants paid Plaintiffs and class members incentive pay,
28 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the

1 California Labor Code, Defendants failed to incorporate all compensation, including incentive
2 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
3 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times
4 when Plaintiffs and class members worked overtime and received these other forms of pay,
5 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

6 68. Specifically, Defendants paid Plaintiffs and class members nondiscretionary
7 bonuses when they exceeded certain branch-wide and individual quotas. On information and
8 belief, some of these nondiscretionary bonuses were listed on Plaintiffs' and class members'
9 wage statements as "Bonus w/ 401k." During pay periods that Plaintiffs and class members
10 were paid overtime wages, Defendants did not incorporate the nondiscretionary bonuses and/or
11 incentive pay into Plaintiffs' and class members' regular rate of pay and, as a result, paid them
12 at incorrect and lower rates of pay for overtime hours worked. Specifically, Defendants paid
13 Plaintiffs and class members 1.5 times their hourly rate of pay instead of 1.5 times their regular
14 rate of pay. Defendants' failure to properly calculate the overtime rates of pay based on all
15 remuneration paid has resulted in an underpayment of overtime wages to Plaintiffs and class
16 members on a company-wide basis.

17 69. Defendants' failure to pay Plaintiffs and class members the balance of overtime
18 compensation as required by California law, violates the provisions of California Labor Code
19 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiffs and class
20 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
21 and attorneys' fees.

22 **SECOND CAUSE OF ACTION**

23 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 24 **Minimum Wages** 25 **(Against all Defendants)**

26 70. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
27 every allegation set forth above.

28 ///

1 71. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
2 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
3 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
4 fixed is unlawful. Compensable work time is defined in Wage Order No. 4 as “the time during
5 which an employee is subject to the control of an employer, and includes all the time the
6 employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs.
7 tit. 8, § 11040(2)(K) (defining “Hours Worked”).

8 72. As set forth above, during the relevant time period, as a result of Defendants’
9 policy of limiting the amount of overtime employees could accrue and time-shaving, Plaintiffs
10 and class members were required to work off-the-clock before and after their scheduled shift
11 start and end times to complete assigned job duties. In addition, as set forth above, Defendants
12 required Plaintiffs and class members to perform work off-the-clock, responding to phone
13 communications from supervisors and/or customers, traveling to attend mandatory meetings
14 and training, and waiting to leave Defendants’ premises in pairs, but did not compensate them
15 for this time.

16 73. Also, as stated above, due to Defendants’ company-wide practice of utilizing
17 labor budgets, assignment of heavy workloads and loan quotas, failure to schedule meal periods,
18 and subsequent lack of meal period coverage, Plaintiffs and class members were impeded from
19 taking all uninterrupted meal periods to which they were entitled and were required to work off-
20 the-clock. Additionally, as set forth above, Defendants systematically failed to pay Plaintiffs
21 and class members for actual hours worked during unpaid meal periods, because these hours
22 were not always correctly recorded and because Defendants’ timekeeping system locked out
23 Plaintiffs and class members for an allotted time when they clocked out for a meal period.

24 74. Defendants did not pay minimum wages for off-the-clock hours that Plaintiffs
25 and class members worked through that qualified for overtime premium payment. To the extent
26 that these off-the-clock hours did not qualify for overtime premium payment, Defendants did
27 not pay at least minimum wages for those hours worked off-the-clock in violation of California
28 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

75. Defendants' failure to pay Plaintiffs and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiffs and class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

THIRD CAUSE OF ACTION

Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period

Violations

(Against all Defendants)

76. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

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

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

79. At all relevant times herein set forth, 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.

80. First, as stated above, upon information and belief, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing their locations due to labor

1 budgeting, assigning heavy workloads and loan quotas, and failing to schedule meal periods,
2 which resulted in a lack of meal period coverage and prevented Plaintiffs and class members
3 from taking all timely, uninterrupted meal periods to which they were entitled. As a result,
4 Plaintiffs and class members were forced to work in excess of five (5) hours before taking a
5 meal period, had their meal periods cut short and interrupted, and/or had to forgo their meal
6 periods altogether. For example, once or twice per month, Plaintiff Villanueva would take her
7 meal periods after her fifth hour of work when her branch was trying to meet its quotas at the
8 end of the month.

9 81. Second, as stated, because Defendants frowned upon employees accruing meal
10 period penalties, Defendants' management would adjust Plaintiffs' and class members' time
11 records and/or pressured employees to clock out for meal periods to reflect compliant meal
12 periods, regardless of whether they had received a compliant meal period, in order to strictly
13 limit meal penalties that would need to be paid by Defendants. For example, Plaintiff Maxwell
14 was explicitly instructed by her supervisor to clock out and continue working during some of
15 her meal periods, and would be written up if she failed to do so. Similarly, Plaintiff Villanueva
16 was instructed to clock out and continue working by Defendants' management, and would have
17 her time modified to reflect compliant meal periods if she failed to clock herself out. Thus,
18 Plaintiffs and class members worked through meal periods or had their meal periods interrupted,
19 because there were not enough employees on duty to handle the workload.

20 82. Third, during the relevant period, Defendants had, and continue to have, a
21 company-wide policy and/or practice of requiring employees to complete work-related tasks
22 while off-the-clock during meal periods. For example, Plaintiffs' meal periods were interrupted
23 at least twice per week by management, who asked them to spend several minutes per instance
24 unlocking their cash registers for other employees to use. As a further example, Plaintiff
25 Villanueva was regularly interrupted by phone calls from her supervisor during meal periods to
26 answer questions regarding clients' files. Moreover, as described above, Defendants
27 implemented an electronic timekeeping system that locked Plaintiffs and class members out and
28 prevented them from clocking in early before the end of their meal period. As a result of

Defendants' timekeeping system, Plaintiffs and class members were prevented from accurately recording meal period start and stop times on days when they had meal periods that were cut short and/or interrupted.

83. As a result of Defendants' practices and/or policies, Plaintiffs and class members 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, as stated, Plaintiff Maxwell worked through her meal periods three (3) times per week in order to attend to customers; similarly, Plaintiff Villanueva continued working through her meal periods 1-2 times per month in order to travel to and conduct off-site collections. Defendants further knew or should have known that Defendants did not pay Plaintiffs and class members meal period premium wages when meal periods were late, interrupted, shortened, or missed because Defendants adjusted employee time records to reflect compliant meal periods, even if none were taken. Plaintiffs and class members did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

84. Moreover, Defendants 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 Defendants' practices and/or policies, Plaintiffs and class members have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that Defendants did pay Plaintiffs and class members premium pay for missed, late, and interrupted meal periods, Defendants did not pay Plaintiffs and class members at the correct rate of pay for premium wages because Defendants systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. As a result, Defendants failed to provide Plaintiffs and class members compliant meal periods in violation of California Labor Code sections 226.7, 512, and 516 and failed to pay the full meal period premiums due.

85. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiffs and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular

1 rate of compensation for each work day that the meal period was not provided.

2 **FOURTH CAUSE OF ACTION**

3 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations**
4 **(Against all Defendants)**

5 86. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
6 every allegation set forth above.

7 87. At all relevant times herein set forth, the applicable IWC Wage Order and
8 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs and class
9 members' employment by Defendants.

10 88. At all relevant times, the applicable IWC Wage Order provides that "[e]very
11 employer shall authorize and permit all employees to take rest periods, which insofar as
12 practicable shall be in the middle of each work period" and that the "rest period time shall be
13 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
14 hours or major fraction thereof" unless the total daily work time is less than three and one-half
15 (3½) hours.

16 89. At all relevant times, California Labor Code section 226.7 provides that no
17 employer shall require an employee to work during any rest period mandated by an applicable
18 order of the California IWC. To comply with its obligation to authorize and permit rest periods
19 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
20 must "relinquish any control over how employees spend their break time, and relieve their
21 employees of all duties—including the obligation that an employee remain on call. A rest
22 period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
23 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code
24 section 226.7(c), Plaintiffs and class members are entitled to recover from Defendants one (1)
25 additional hour of pay at their regular rates of pay for each work day that a required rest period
26 was not authorized and permitted.

27 90. During the relevant time period, Defendants regularly failed to authorize and
28 permit Plaintiffs and class members to take a ten (10) minute rest period per each four (4) hour

1 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
2 practices, including utilizing labor budgets and assigning heavy workloads and loan quotas,
3 prevented Plaintiffs and class members from being relieved of all duty to take rest periods. For
4 example, Plaintiff Maxwell had to forego rest periods 3-4 times per week to complete all of the
5 work-related duties Defendants assigned to her. Similarly, Plaintiff Villanueva missed her rest
6 periods 4-5 times per week to process all incoming client payments. Additionally, Defendants
7 failed schedule rest periods, which, coupled with Defendants' failure to provide adequate rest
8 period coverage, further led to Plaintiffs and class members not being authorized and permitted
9 to take compliant rest periods.

10 91. Also, during the relevant period, Defendants had, and continue to have, a
11 company-wide policy and/or practice of requiring employees to complete work-related tasks
12 during rest periods. As with meal periods, Plaintiffs and class members were regularly
13 interrupted during rest periods to respond to requests from Defendants' management. For
14 example, even when Plaintiff Maxwell was able to take her rest periods, she was interrupted 2-
15 3 times per week by management's requests to unlock the cash register so that it could be
16 utilized by another employee; Plaintiff Villanueva had her rest periods interrupted 1-3 times per
17 week for this same reason and was further required to respond to phone calls from clients during
18 her rest periods.

19 92. Furthermore, upon information and belief, during the relevant time period,
20 Defendants maintained and implemented a company-wide on-premises rest period policy,
21 which mandated that Plaintiffs and class members remain on the work premises during their
22 rest periods. Upon information and belief, Defendants' company-wide on-premises rest period
23 policy prevented Plaintiffs and class members from being relieved of all duties for rest periods
24 and caused them to perform work during rest periods.

25 93. As a result of Defendants' practices and policies, Plaintiffs and class members
26 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
27 receiving all uninterrupted 10-minute rest periods to which they were entitled.

28 ///

94. Defendants have also engaged in a company-wide policy and/ or practice of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Alternatively, to the extent that Defendants did pay Plaintiffs and class members one (1) additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiffs and class members at the correct rate of pay for premium wages because Defendants failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. As a result, Defendants denied Plaintiffs and class members rest periods and failed to pay them rest period premium wages due, in violation of Labor Code sections 226.7, 516, and the applicable IWC Wage Order.

95. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiffs and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period was not authorized and permitted.

FIFTH CAUSE OF ACTION

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

96. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

97. At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

98. At all relevant times, Defendants have knowingly and intentionally provided Plaintiffs and Subclass members with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiffs and Subclass members that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all

1 applicable hourly rates in effect during the pay period, including overtime rates of pay, and the
2 corresponding number of hours worked at each hourly rate. Specifically, Defendants violated
3 sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

4 99. Because Defendants did not record the time Plaintiffs and Subclass members
5 spent working off the clock, underreported their hourly clock-in and clock-out times in their
6 timekeeping system, and deducted time from their records for meal periods that were missed
7 (and therefore time for which they should have been paid), Defendants did not list the correct
8 amount of gross wages and net wages earned by Plaintiffs and Subclass members in compliance
9 with section 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list
10 the total number of hours worked by Plaintiffs and Subclass members in violation of section
11 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and
12 corresponding accurate number of work hours worked at each hourly rate in violation of section
13 226(a)(9).

14 100. Additionally, because Defendants did not calculate Plaintiffs' and Subclass
15 members' regular rate of pay correctly for purposes of paying overtime, Defendants did not list
16 the correct amount of gross wages earned by Plaintiffs and Subclass members in compliance
17 with section 226(a)(1). For the same reason, Defendants failed to list the correct amount of net
18 wages earned by Plaintiffs and Subclass members in violation of section 226(a)(5). Defendants
19 also failed to correctly list all applicable hourly rates in effect during the pay period, namely,
20 correct overtime rates of pay and correct rates of pay for premium wages, in violation of section
21 226(a)(9).

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

1 the-clock.

2 102. California Labor Code section 1198 provides that the maximum hours of work
3 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
4 forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment
5 of any employees for longer hours than those fixed by the order or under conditions of labor
6 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
7 are required to keep accurate time records showing when the employee begins and ends each
8 work period and meal period. During the relevant time period, Defendants failed, on a
9 company-wide basis, to keep accurate records of work period and meal period start and stop
10 times for Plaintiffs and Subclass members, in violation of section 1198. Also, as stated,
11 Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiffs’ and
12 Subclass members’ time records by recording that compliant meal periods were taken regardless
13 of if or when meal periods were actually taken, and thereby failed to keep accurate records of
14 meal start and end times for Plaintiffs and Subclass members.

15 103. California Labor Code section 1174(d) provides that “[e]very person employing
16 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
17 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
18 plants or establishments at which employees are employed, payroll records showing the hours
19 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
20 applicable piece rate paid to, employees employed at the respective plants or
21 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
22 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and Subclass
23 members showing the daily hours they worked and the wages paid thereto as a result of failing
24 to record the off-the-clock hours that they worked and underreporting Plaintiffs’ and Subclass
25 members’ hourly clock-in and clock-out duration times in their timekeeping system.

26 104. Plaintiffs and Subclass members are entitled to recover from Defendants the
27 greater of their actual damages caused by Defendants’ failure to comply with California Labor
28 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per

1 employee.

2 **SIXTH CAUSE OF ACTION**

3 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon**
4 **Termination**
5 **(Against all Defendants)**

6 105. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
7 every allegation set forth above.

8 106. This cause of action is dependent upon, and wholly derivative of, the overtime
9 wages, minimum wages, and/or meal and rest period premium wages, that were not timely paid
10 to Plaintiffs and those class members no longer employed by Defendants upon their termination.

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

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

22 109. Defendants' failure to pay Plaintiffs and class members who are no longer
23 employed by Defendants their wages earned and unpaid at the time of discharge, or within
24 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
25 and 202. Plaintiffs and class members are therefore entitled to recover from Defendants the
26 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
27 thirty (30) day maximum pursuant to California Labor Code section 203.

28 ///

SEVENTH CAUSE OF ACTION
Violation of California Labor Code § 204—Failure to Timely Pay Wages During
Employment
(Against all Defendants)

110. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

111. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premium wages, that were not timely paid to Plaintiffs and class members during their employment.

112. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

113. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (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 first (1st) and the tenth (10th) day of the following month.

114. At all times relevant herein, Labor Code section 204 provides 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, at all times relevant herein, 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.

115. During the relevant time period, Defendants willfully failed to pay Plaintiffs and class members all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within the time periods specified by California Labor Code section 204.

116. Defendants’ failure to pay Plaintiffs and class members all wages due violates Labor Code section 204. Plaintiffs and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses (Against all Defendants)

117. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

118. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees 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.”

119. First, during the relevant time period, Defendants had a company-wide policy of requiring Plaintiffs and class members to utilize their own personal cellular phones and cellular data to carry out their job duties, but Defendants failed to reimburse them for the costs of their work-related cellular phone expenses. For example, Plaintiff Maxwell was required to utilize her personal cellular phone for three (3) hours per day to communicate with her supervisor during trips to the bank or to court, send picture messages to her supervisor upon request, and navigate to clients’ homes and places of employment for collections. Similarly, Plaintiff Villanueva was required to use her personal cellular phone for up to eight (8) hours per day to contact clients, both while she was on the road and because her office duties required the use of a mobile phone. Plaintiffs and class members were required to use their personal cellular phones

1 to complete their work-related tasks, such as providing updates to supervisors and
2 communicating with clients. Although Defendants required Plaintiffs and class members to
3 utilize their personal cellular phones to carry out their work-related responsibilities, Defendants
4 failed to reimburse them for this cost.

5 120. Second, Defendants had a company-wide policy of requiring Plaintiffs and other
6 class members to utilize their own personal vehicles or obtain alternate transportation to carry
7 out company business and attend mandatory meetings and/or training, but failed to fully
8 reimburse them for all costs of travel, including mileage. For example, Plaintiff Maxwell was
9 required to utilize her own personal vehicle to travel to conduct collections, perform bank
10 deposits, post and distribute flyers, and appear in court on behalf of Defendants. Similarly,
11 Plaintiff Villanueva was also required to use her personal vehicle to travel to clients' homes to
12 conduct collections and file collection claims with the courts. Furthermore, as stated, Plaintiff
13 Maxwell drove approximately 300 miles roundtrip to and from a mandatory company-wide
14 conference in Montclair, California. Similarly, Plaintiff Villanueva was required to drive
15 approximately 200 miles to and from Defendants' mandatory training in Walnut Creek,
16 California. Although Defendants required Plaintiffs and class members to use their own
17 personal vehicles or obtain alternate transportation to carry out company business and attend
18 mandatory meetings and/or training, Defendants never fully reimbursed them for all of their
19 travel expenses.

20 121. Third, Defendants, on a company-wide basis, required Plaintiff Maxwell and
21 class members to report to work wearing clean and presentable uniforms, which forced Plaintiff
22 Maxwell and class members to clean their uniforms frequently and incur expenses for doing so.
23 In addition, Defendants failed to provide Plaintiff Maxwell and class members with an adequate
24 number of uniforms, which further caused employees to incur regular laundering expenses. For
25 example, Plaintiff Maxwell was given only two (2) uniform shirts, which were embroidered
26 with Defendants' logo, when scheduled to work five (5) or more days per week, and was
27 therefore required to wash these uniforms at least three (3) times per week to ensure that they
28 were clean prior to each shift.

1 122. Fourth, during the relevant time period, Defendants, on a company-wide basis,
2 forced Plaintiff Villanueva and class members to purchase basic office supplies and equipment
3 that were necessary for completion of their work-related duties. For example, Plaintiff
4 Villanueva was required to spend over \$600 on office supplies and equipment, such as headsets,
5 computer mice, keyboards, office chairs, staplers, pens, notepads, and tape, because she was
6 told that these items were not in the company's budget. Although Defendants required Plaintiff
7 Villanueva and class members to purchase and use their own office supplies and equipment for
8 work, Defendants did not reimburse them for these expenses.

9 123. Defendants could have provided Plaintiffs and class members with the actual
10 tools for use on the job, such as company phones, company vehicles, adequate number of
11 uniforms and/or laundering services, and office supplies and equipment. Or, Defendants could
12 have reimbursed employees for the costs of their cellular phone, mileage, travel expenses,
13 laundering expenses, and office supplies and equipment. Instead, Defendants passed these
14 operating costs off onto Plaintiffs and class members. At all relevant times, Plaintiffs did not
15 earn at least two (2) times the minimum wage.

16 124. Defendants' company-wide policy and/or practice of passing on their operating
17 costs to Plaintiffs and class members violates California Labor Code section 2802. Defendants
18 have intentionally and willfully failed to reimburse Plaintiffs and other class members for
19 necessary business-related expenses and costs.

20 125. Plaintiffs and class members are entitled to recover from Defendants their
21 business-related expenses incurred during the course and scope of their employment, plus
22 interest.

23 **NINTH CAUSE OF ACTION**

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

25 **(Against all Defendants)**

26 126. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
27 every allegation set forth above.

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127. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a), 221, 223, 224, 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

128. 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 Plaintiffs and other aggrieved employees with all required overtime pay and failure to properly calculate the overtime rates paid to Plaintiffs and other aggrieved employees, as alleged herein;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC wage order for Defendants’ failure to compensate Plaintiffs and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;
- (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the applicable IWC wage order for Defendants’ failure to provide Plaintiffs and other aggrieved employees with meal periods, as alleged herein;
- (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC wage order for Defendants’ failure to authorize and permit Plaintiffs and other aggrieved employees to take rest periods, as alleged herein;
- (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiffs and other aggrieved employees, as alleged herein;
- (f) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC

- 1 wage order for failure to maintain payroll records, as alleged herein;
- 2 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
- 3 earned wages upon termination, as alleged herein;
- 4 (h) Violation of Labor Code section 204 for failure to pay all earned wages
- 5 during employment, as alleged herein;
- 6 (i) Violation of Labor Code sections 221 and 224 for unlawfully deducting
- 7 a portion of wages previously paid to Plaintiff Villanueva and other
- 8 aggrieved employees, as set forth below;
- 9 (j) Violation of Labor Code section 223 for secretly paying Plaintiff
- 10 Villanueva and other aggrieved employees lower wages than required by
- 11 statute, while purporting to pay the proper wages, as set forth below;
- 12 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs
- 13 and other aggrieved employees for all business expenses necessarily
- 14 incurred, as alleged herein; and
- 15 (l) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
- 16 provide written notice of information material to Plaintiffs' and other
- 17 aggrieved employees' employment with Defendants, as set forth below.

18 129. At all times relevant herein, California Labor Code section 221 provides that it

19 shall be unlawful for any employer to collect or receive from an employee any part of wages

20 theretofore paid by said employer to said employee. California Labor Code section 224 also

21 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a

22 deduction is expressly authorized in writing by the employee."

23 130. During the relevant time period, Defendants systematically, and on a company-

24 wide basis, maintained a loss prevention policy that allowed them to improperly deduct wages

25 from Plaintiff Villanueva's and other aggrieved employees' pay, in violation of California

26 Labor Code section 221. Specifically, Defendants required employees to pay cash out-of-

27 pocket to cover any shortages in the cash register(s) that arose at the close of business, on threat

28 of discipline, even though such shortages occurred in the usual course of business, as a result

1 of a mistake, accident, or simple negligence rather than dishonesty, willfulness, or gross
2 negligence. For example, on a weekly basis, Plaintiff Villanueva and other aggrieved
3 employees were instructed by Defendants' management to chip in and help cover branch-wide
4 cash register shortages of up to \$500. When Plaintiff Villanueva complained to Defendants'
5 management about this policy, she was verbally reprimanded and told that she could be
6 terminated if she did not assist in resolving these discrepancies. On information and belief,
7 such deductions were not expressly authorized in writing by Plaintiff Villanueva and other
8 aggrieved employees. Thus, Defendants' company-wide policy and/or practice of deducting
9 money from Plaintiff Villanueva's and other aggrieved employees' paychecks without their
10 written authorization constitutes an unlawful deduction of wages, in violation of California
11 Labor Code sections 221 and 224.

12 131. Defendants' conduct as alleged herein violates California Labor Code sections
13 221 and 224. Plaintiff Villanueva and other aggrieved employees are therefore entitled to
14 recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

15 132. At all times, California Labor Code section 223 makes it unlawful for an
16 employer to secretly pay wages lower than required by statute while purporting to pay legal
17 wages.

18 133. During the relevant time period, on information and belief, Defendants willfully
19 and systematically deducted money from Plaintiff Villanueva's and other aggrieved employees'
20 wages without their express written authorization, which resulted in a discount in their wages.
21 Defendants' deduction from their employees' wages resulted in the payment of less than
22 statutorily required wages to Plaintiff Villanueva and other aggrieved employees. In doing so,
23 Defendants acted with the intent to deprive Plaintiff Villanueva and other aggrieved employees
24 of statutory wages, including, but not limited to, overtime wages, minimum wages, and/or meal
25 and rest period premiums, to which they were entitled to under California law. Thus,
26 Defendants paid Plaintiff Villanueva and other aggrieved employees lower wages than those
27 they were entitled to, while purporting that Plaintiff Villanueva and other aggrieved employees
28 were properly paid.

134. Defendants' failure to pay Plaintiff Villanueva and other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Plaintiff Villanueva and other aggrieved employees are therefore entitled to recover civil penalties pursuant to sections 225.5 and/or 2699(a), (f), and (g).

135. California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees containing basic and material payroll information, including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

136. During the relevant time period, Defendants failed to provide Plaintiffs and other aggrieved employees with written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiffs and other aggrieved employees with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5. Plaintiffs and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

TENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unlawful Business Practices

(Against all Defendants)

137. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

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1 138. Defendants are “persons” as defined by California Business & Professions Code
2 sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
3 associations.

4 139. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
5 unlawful and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have
6 suffered injury in fact and have lost money as a result of Defendants’ unlawful business
7 practices. Plaintiffs seek to enforce important rights affecting the public interest within the
8 meaning of Code of Civil Procedure section 1021.5.

9 140. Defendants’ activities, as alleged herein, are violations of California law, and
10 constitute unlawful business acts and practices in violation of California Business & Professions
11 Code sections 17200, *et seq.*

12 141. A violation of California Business & Professions Code sections 17200, *et seq.*
13 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
14 policies and practices have violated state law in at least the following respects:

- 15 (a) Requiring non-exempt, hourly paid employees, including Plaintiffs and
16 class members, to work overtime without paying them proper
17 compensation in violation of California Labor Code sections 510 and
18 1198 and the applicable IWC Order, and paying Plaintiffs and class
19 members overtime at a lower rate than required by law by failing to
20 properly calculate the regular rate of pay for purposes of overtime, as
21 alleged herein;
- 22 (b) Failing to pay at least minimum wage to Plaintiffs and class members in
23 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,
24 and 1198 and the applicable IWC Order, as alleged herein;
- 25 (c) Failing to provide uninterrupted meal periods to Plaintiffs and class
26 members in violation of California Labor Code sections 226.7, 512(a),
27 516, 1198, and the applicable IWC Order, as alleged herein;
- 28 (d) Failing to authorize and permit Plaintiffs and class members to take

uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;

(e) Failing to provide Plaintiffs and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), 1198, and the applicable IWC Order, as alleged herein;

(f) Failing timely to pay all earned wages to Plaintiffs and class members in violation of California Labor Code section 204 and the applicable IWC Order, as alleged herein;

(g) Collecting or receiving wages already paid from Plaintiff Villanueva and class members in violation of California Labor Code sections 221 and 224, as set forth below;

(h) Failing to pay the statutorily designated wage scale in violation of California Labor Code section 223, as set forth below;

(i) Failing to reimburse Plaintiffs and class members for all business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein; and

(j) Failing to provide written notice of information material to Plaintiffs' and class members' employment with Defendants in violation of Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

142. At all times relevant herein, California Labor Code section 221 provides that it is unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

143. During the relevant time period, Defendants unlawfully deducted a portion of wages previously paid to Plaintiff Villanueva and class members in violation of California Labor Code section 221. Defendants systematically, and on a company-wide basis, maintained

1 a loss prevention policy that allowed them to improperly deduct wages from Plaintiff Villanueva
2 and class members. Specifically, Defendants required employees to pay cash out-of-pocket to
3 cover any shortages in the cash register(s) that arose at the close of business, on threat of
4 discipline, even though such shortages occurred in the usual course of business, as a result of a
5 mistake, accident, or simple negligence rather than dishonesty, willfulness, or gross negligence.
6 For example, on a weekly basis, Plaintiff Villanueva was instructed by Defendants'
7 management to chip in and help cover branch-wide cash register shortages of up to \$500. When
8 Plaintiff Villanueva complained to Defendants' management about this policy, she was verbally
9 reprimanded and told that she could be terminated if she did not assist in resolving these
10 discrepancies.

11 144. On information and belief, such deductions were not expressly authorized in
12 writing by Plaintiff Villanueva and class members. Thus, Defendants' company-wide policy
13 and/or practice of deducting money from Plaintiff's and class members' paychecks without their
14 written authorization constitutes an unlawful deduction of wages, in violation of California
15 Labor Code sections 221 and 224.

16 145. At all times relevant herein, California Labor Code section 223 makes it unlawful
17 for an employer to secretly pay wages lower than required by statute while purporting to pay
18 legal wages.

19 146. During the relevant time period, on information and belief, Defendants willfully
20 and systematically deducted money from Plaintiff Villanueva's and class members' wages
21 without their express written authorization, pursuant to their loss prevention policy.
22 Defendants' policy resulted in the payment of less than statutorily required wages to Plaintiff
23 Villanueva and class members. In doing so, Defendants acted with the intent to deprive Plaintiff
24 Villanueva and class members of statutory wages, including, but not limited to, overtime wages,
25 minimum wages, and/or meal and rest period premiums, to which they were entitled to under
26 California law. Thus, Defendants paid Plaintiff Villanueva and class members lower wages
27 than those they were entitled to, while purporting that Plaintiff Villanueva and class members
28 were properly paid.

1 147. Defendants' failure to pay Plaintiff Villanueva and class members the correct
2 designated wage, while purporting to pay legal wages, is a violation of California Labor Code
3 section 223.

4 148. At all relevant times herein, California's Wage Theft Prevention Act was enacted
5 to ensure that employers provide employees with basic information material to their
6 employment relationship at the time of hiring, and to ensure that employees are given written
7 and timely notice of any changes to basic information material to their employment. Codified
8 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
9 time of hiring, an employer must provide written notice to employees containing basic and
10 material payroll information, including, among other things, the rate(s) of pay and basis thereof,
11 whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including
12 any rates for overtime, the regular payday designated by the employer, and any allowances
13 claims as part of the minimum wage, including meal or lodging allowances. Labor Code §
14 2810.5(a)(1)(A)-(C).

15 149. At all relevant times, on information and belief, Defendants failed, on a
16 company-wide basis, to provide written notice to Plaintiffs and class members that lists the
17 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
18 to provide Plaintiffs and class members with written notice of basic information regarding their
19 employment with Defendants is in violation of Labor Code section 2810.5.

20 150. As a result of the violations of California law herein described, Defendants
21 unlawfully gained an unfair advantage over other businesses. Plaintiffs and class members have
22 suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

23 151. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
24 Plaintiffs and class members are entitled to restitution of the wages withheld and retained by
25 Defendants during a period that commences four years prior to the filing of this complaint; a
26 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and
27 class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure
28 section 1021.5 and other applicable laws; and an award of costs.

1 **ELEVENTH CAUSE OF ACTION**

2 **Violation of California Business & Professions Code §§ 17200, et seq. –**

3 **Unfair Business Practices**

4 **(Against all Defendants)**

5 152. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
6 every allegation set forth above.

7 153. Defendants are “persons” as defined by California Business & Professions Code
8 sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
9 associations.

10 154. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, and
11 harmful to Plaintiffs, class members, and to the general public. Plaintiffs have suffered injury
12 in fact and have lost money as a result of Defendants’ unfair business practices. Plaintiffs seek
13 to enforce important rights affecting the public interest within the meaning of Code of Civil
14 Procedure section 1021.5.

15 155. Defendants’ activities, namely Defendants’ company-wide practice and/or policy
16 of not paying Plaintiffs and class members all meal and rest period premium wages due to them
17 under Labor Code section 226.7, deprived Plaintiffs and class members of the compensation
18 guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy
19 provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate
20 employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior Court*, 238
21 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to
22 Plaintiffs and class members as part of their employment with Defendants, and thus Defendants’
23 practice and/or policy of denying these statutory benefits constitutes an unfair business practice
24 in violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

25 156. A violation of California Business & Professions Code sections 17200, *et seq.*
26 may be predicated on any unfair business practice. In the instant case, Defendants’ policies and
27 practices have violated the spirit of California’s meal and rest period laws and constitute acts
28 against the public policy behind these laws.

157. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiffs and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiffs and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiffs request a trial by jury.

PRAYER FOR RELIEF

Plaintiffs, on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiffs reserve the right to amend their prayer for relief to seek a different amount.

Class Certification

2. That this case be certified as a class action;
3. That Plaintiffs be appointed as the representatives of the Class and Subclass;
4. That counsel for Plaintiffs be appointed as class counsel.

As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiffs and class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;

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1 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
2 California Labor Code section 1194(a); and

3 9. For such other and further relief as the Court may deem equitable and
4 appropriate.

5 **As to the Second Cause of Action**

6 10. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay
8 minimum wages to Plaintiffs and class members;

9 11. For general unpaid wages and such general and special damages as may be
10 appropriate;

11 12. For pre-judgment interest on any unpaid compensation from the date such
12 amounts were due, or as otherwise provided by law;

13 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
14 California Labor Code section 1194(a);

15 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

16 15. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 **As to the Third Cause of Action**

19 16. That the Court declare, adjudge, and decree that Defendants violated California
20 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by
21 willfully failing to provide all meal periods to Plaintiffs and class members;

22 17. That the Court make an award to the Plaintiffs and class members of one (1) hour
23 of pay at each employee's regular rate of pay for each workday that a meal period was not
24 provided;

25 18. For all actual, consequential, and incidental losses and damages, according to
26 proof;

27 19. For premiums pursuant to California Labor Code section 226.7(c);

28 ///

1 20. For pre-judgment interest on any unpaid meal period premiums from the date
2 such amounts were due, or as otherwise provided by law;

3 21. For attorneys' fees pursuant to California Code of Civil Procedure section
4 1021.5, or as otherwise provided by law; and

5 22. For such other and further relief as the Court may deem equitable and
6 appropriate.

7 **As to the Fourth Cause of Action**

8 23. That the Court declare, adjudge and decree that Defendants violated California
9 Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully failing
10 to authorize and permit Plaintiffs and class members to take all rest periods;

11 24. That the Court make an award to the Plaintiffs and class members of one (1) hour
12 of pay at each employee's regular rate of pay for each workday that a rest period was not
13 authorized and permitted;

14 25. For all actual, consequential, and incidental losses and damages, according to
15 proof;

16 26. For premiums pursuant to California Labor Code section 226.7(c);

17 27. For pre-judgment interest on any unpaid rest period premiums from the date such
18 amounts were due, or as otherwise provided by law;

19 28. For attorneys' fees pursuant to California Code of Civil Procedure section
20 1021.5, or as otherwise provided by law; and

21 29. For such other and further relief as the Court may deem equitable and
22 appropriate.

23 **As to the Fifth Cause of Action**

24 30. That the Court declare, adjudge and decree that Defendants violated the
25 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage
26 Orders as to Plaintiffs and Subclass members, and willfully failed to provide accurate itemized
27 wage statements thereto;

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1 31. For all actual, consequential, and incidental losses and damages, according to
2 proof;

3 32. For injunctive relief pursuant to California Labor Code section 226(h);

4 33. For statutory penalties pursuant to California Labor Code section 226(e);

5 34. For attorneys' fees and costs pursuant to California Labor Code section
6 226(e)(1); and

7 35. For such other and further relief as the Court may deem equitable and
8 appropriate.

9 **As to the Sixth Cause of Action**

10 36. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
12 and/or meal and rest period premiums, owed at the time of termination of the employment of
13 Plaintiffs and other terminated class members;

14 37. For all actual, consequential and incidental losses and damages, according to
15 proof;

16 38. For waiting time penalties according to proof pursuant to California Labor Code
17 section 203 for all employees who have left Defendants' employ;

18 39. For pre-judgment interest on any unpaid wages from the date such amounts were
19 due, or as otherwise provided by law;

20 40. For attorneys' fees pursuant to California Code of Civil Procedure section
21 1021.5, or as otherwise provided by law; and

22 41. For such other and further relief as the Court may deem equitable and
23 appropriate.

24 **As to the Seventh Cause of Action**

25 42. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code section 204 by willfully failing to timely pay Plaintiffs and class members overtime
27 wages, minimum wages, and/or meal and rest period premiums, during their employment;

28 ///

1 43. For all actual, consequential and incidental losses and damages, according to
2 proof;

3 44. For statutory penalties according to proof pursuant to California Labor Code
4 section 210;

5 45. For pre-judgment interest on any unpaid wages from the date such amounts were
6 due, or as otherwise provided by law;

7 46. For attorneys' fees pursuant to California Code of Civil Procedure section
8 1021.5, or as otherwise provided by law; and

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

11 **As to the Eighth Cause of Action**

12 48. That the Court declare, adjudge and decree that Defendants violated California
13 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related
14 expenses and costs incurred by Plaintiffs and class members;

15 49. For unpaid business-related expenses and such general and special damages as
16 may be appropriate;

17 50. For pre-judgment interest on any unpaid business-related expenses from the date
18 such amounts were due, or as otherwise provided by law;

19 51. For all actual, consequential, and incidental losses and damages, according to
20 proof;

21 52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c),
22 or as otherwise provided by law; and

23 53. For such other and further relief as the Court may deem equitable and
24 appropriate.

25 **As to the Ninth Cause of Action**

26 54. That the Court declare, adjudge and decree that Defendants violated the
27 following California Labor Code provisions as to Plaintiffs and/or other aggrieved employees:
28 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and

1 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and
2 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
3 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
4 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
5 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
6 employment); 221 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly
7 paying wages lower than required by statute); 2802 (by failing to reimburse business expenses);
8 and 2810.5 (by failing to provide written notice of information material to employment);

9 55. For civil penalties pursuant to California Labor Code sections 210, 225.5, 226.3,
10 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code
11 sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
12 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

13 56. For attorneys' fees and costs pursuant to California Labor Code section
14 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
15 Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d),
16 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

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

18 58. For such other and further relief as the Court may deem equitable and
19 appropriate.

20 **As to the Tenth Cause of Action**

21 59. That the Court declare, adjudge and decree that Defendants' conduct of failing
22 to provide Plaintiffs and class members all overtime wages due to them, failing to provide
23 Plaintiffs and class members all minimum wages due to them, failing to provide Plaintiffs and
24 class members all meal periods, failing to authorize and permit Plaintiffs and class members to
25 take all rest periods, failing to provide Plaintiffs and class members accurate and complete wage
26 statements, failing to maintain accurate payroll records for Plaintiffs and class members, failing
27 timely to pay Plaintiffs and class members all earned wages during employment, collecting or
28 receiving wages already paid to Plaintiff Villanueva and class members, secretly paying a lower

1 wage to Plaintiff Villanueva and class members, failing to reimburse Plaintiffs and class
2 members for business-related expenses, and failing to provide written notice of information
3 material to employment to Plaintiffs and class members, constitutes an unlawful business
4 practice in violation of California Business and Professions Code sections 17200, *et seq.*;

5 60. For restitution of unpaid wages to Plaintiffs and all class members and
6 prejudgment interest from the day such amounts were due and payable;

7 61. For the appointment of a receiver to receive, manage and distribute any and all
8 funds disgorged from Defendants and determined to have been wrongfully acquired by
9 Defendants as a result of violations of California Business & Professions Code sections 17200,
10 *et seq.*;

11 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
12 California Code of Civil Procedure section 1021.5; and

13 63. For such other and further relief as the Court may deem equitable and
14 appropriate.

15 **As to the Eleventh Cause of Action**

16 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
17 Plaintiffs and class members the statutory benefits guaranteed under section 226.7 constitutes
18 an unfair business practice in violation of California Business and Professions Code sections
19 17200, *et seq.*;

20 65. For restitution of the statutory benefits under section 226.7 unfairly withheld
21 from Plaintiffs and class members and prejudgment interest from the day such amounts were
22 due and payable;

23 66. For the appointment of a receiver to receive, manage and distribute any and all
24 funds disgorged from Defendants and determined to have been wrongfully acquired by
25 Defendants as a result of violations of California Business & Professions Code sections 17200,
26 *et seq.*;

27 67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
28 California Code of Civil Procedure section 1021.5;

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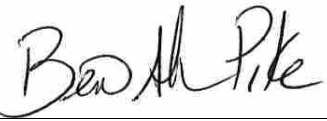
68. For pre-judgment and post-judgment interest as provided by law; and

69. For such other and further relief as the Court may deem equitable and appropriate.

Dated: February 15, 2021

Respectfully submitted,

Capstone Law APC

By: 

Bevin Allen Pike
Orlando Villalba
Daniel Jonathan
Trisha K. Monesi

Attorneys for Plaintiffs Lilly Maxwell
and Maria Villanueva

EXHIBIT “1”



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

December 2, 2020

VIA ONLINE SUBMISSION

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

Subject: *Lilly Maxwell v. Apoyo Financiero, Inc.*

Dear PAGA Administrator:

This office represents Lilly Maxwell in connection with her claims under the California Labor Code. Ms. Maxwell was an employee of APOYO FINANCIERO, INC. ("APOYO").

The employer may be contacted directly at the address below:

APOYO FINANCIERO, INC.
3100 OAK ROAD, SUITE 210
WALNUT CREEK CA 94597

Ms. Maxwell intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Maxwell seeks relief on behalf of herself, the State of California, and other persons who are or were employed by APOYO 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.

APOYO employed Ms. Maxwell as a non-exempt, hourly paid Customer Service Representative from approximately August 2019 to December 2019, and as a Senior Customer Service Representative from approximately December 2019 to August 2020. Ms. Maxwell worked for APOYO out of its branch location in Bakersfield, California. She typically worked eight (8) or more hours per day, five (5) days per week, from 10:00 a.m. to 7:00 p.m. At the time her employment ended, Ms. Maxwell was compensated approximately \$16.50 per hour. Her job duties included, without limitation, conducting phone calls with clients, counting and managing funds, processing loan applications, conducting onsite collections, depositing funds at the bank, and appearing in court for debt collection matters.

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

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

APOYO FINANCIERO, INC. is a California corporation and a microfinance company serving underbanked Spanish-speaking communities. APOYO operates approximately 28 branch locations in California. Upon information and belief, APOYO maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Walnut Creek, California, for all non-exempt, hourly paid employees working for APOYO in California, including Ms. Maxwell and other aggrieved employees. At all relevant times, APOYO issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Maxwell and other aggrieved employees, regardless of their location or position.

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

APOYO willfully failed to pay all overtime wages owed to Ms. Maxwell and other aggrieved employees. During the relevant time period, Ms. Maxwell and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

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

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 period, APOYO had a policy and/or practice of discouraging and impeding Ms. Maxwell and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, upon threat of discipline, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with APOYO's use of labor budgets and assignment of heavy workloads and loan quotas (*see infra*), led Ms. Maxwell and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. For example, Ms. Maxwell would arrive to work early three (3) times per week and spend 15 minutes off-the-clock prior to the start of her scheduled shift processing checks and creating folders for customers, tasks that she did not have time to complete during her scheduled shift. As a further example, Ms. Maxwell was also required to continue working after clocking out at the end of her shift, twice per week, for 10-15 minutes, to resolve any register discrepancies or finish processing client payments.

Moreover, on information and belief, APOYO had a policy of improperly adjusting Ms. Maxwell's and other aggrieved employees' clock-in and clock-out duration times in its timekeeping system. APOYO's time-shaving policy resulted in the failure to compensate Ms. Maxwell and other aggrieved employees fully for all hours worked, causing Ms. Maxwell and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. Consequently, Ms. Maxwell and other aggrieved employees performed work before and after their shifts for which they were not paid.

Second, APOYO had, and continues to have, a company-wide policy and/or practice of requiring Ms. Maxwell and other aggrieved employees to perform tasks off-the-clock, such as responding to phone communications from supervisors and/or customers and traveling to attend mandatory meetings and training. Ms. Maxwell and other aggrieved employees were required to use their personal cellular phones to complete their work-related duties, such as discussing upcoming tasks with APOYO's management and responding to clients. For example, APOYO required Ms. Maxwell to attend mandatory conference calls and respond to phone communications from her supervisor outside of her scheduled shifts and on her days off. Furthermore, Ms. Maxwell and other aggrieved employees were required to travel to mandatory meetings and training throughout California, but were not paid for their travel time. For example, Ms. Maxwell spent approximately 4.5 hours driving to and from a mandatory company-wide conference in Montclair, California, while other aggrieved employees were similarly required to drive approximately four (4) hours off-the-clock to and from a mandatory training in Walnut Creek, California. APOYO failed to track this time Ms. Maxwell and other aggrieved employees spent responding to phone communications and traveling to mandatory meetings and training, and thus, Ms. Maxwell and other aggrieved employees received no compensation for this time.

Third, APOYO had, and continues to have, a company-wide security policy requiring employees to leave the branch premises in pairs. Thus, after clocking out at the end of their shifts, other aggrieved employees were required to wait for another employee to become available before they could leave APOYO's premises. For example, 1-2 times per week, other aggrieved employees were required to clock out at the end of their shifts and wait for 10-30 minutes for their fellow employee to finish assisting a client before they were permitted to exit the branch with the co-worker. As a result of this security policy and/or practice, other aggrieved employees were subject to APOYO's control after they had completed their scheduled shifts, but were not compensated for this time.

Fourth, upon information and belief, APOYO had, and continues to have, a company-wide policy and/or practice of strictly staffing its branch locations based on the labor hours allocated by corporate for each location. APOYO's uniform use of labor budgets resulted in chronic understaffing, such that there were too few employees on duty to handle the heavy workload and meet loan quotas, such as branch-wide and individual quotas for monthly and daily loans issued and amounts collected from customers. Because APOYO did not employ or staff an adequate number of employees to meet its productivity expectations and failed to provide employees with adequate meal period coverage, Ms. Maxwell and other aggrieved employees were assigned heavy workloads, which APOYO knew or should have known could only be met by working additional hours. Ms. Maxwell and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads and address client demand. For example, Ms. Maxwell was required to clock out and continue working through her meal periods three (3) times per week in order to attend to customers. In addition, Ms. Maxwell and other aggrieved employees were regularly interrupted by management during meal periods and asked to spend several minutes per instance unlocking their cash registers for other employees' use.

Moreover, APOYO had a practice of failing to schedule meal periods, which further caused Ms. Maxwell and other aggrieved employees to not be relieved of their duties for compliant meal periods. Additionally, on information and belief, because APOYO frowned upon employees accruing meal period penalties, APOYO pressured Ms. Maxwell 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, in order to strictly limit meal penalties that APOYO would otherwise owe. Further, APOYO'S company-wide timekeeping system also prevented Ms. Maxwell and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Maxwell and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before the allotted time had elapsed. APOYO's timekeeping system prevented Ms. Maxwell and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted. Thus, Ms. Maxwell and other aggrieved employees performed work during meal periods for which they were not paid.

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

Because Ms. Maxwell and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Maxwell and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. APOYO's failure to pay Ms. Maxwell 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, APOYO did not pay Ms. Maxwell and other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, APOYO paid Ms. Maxwell and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, APOYO failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the

calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when Ms. Maxwell and other aggrieved employees worked overtime and received these other forms of pay, APOYO failed to pay all overtime wages by paying a lower overtime rate than required.

Specifically, APOYO paid Ms. Maxwell and other aggrieved employees nondiscretionary bonuses when they exceeded certain branch-wide and individual quotas. On information and belief, some of these nondiscretionary bonuses were listed on Ms. Maxwell's and other aggrieved employees' wage statements as "Bonus w/ 401lk." During pay periods that Ms. Maxwell and other aggrieved employees were paid overtime wages, APOYO did not incorporate the nondiscretionary bonuses and/or incentive pay into Ms. Maxwell's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, APOYO paid Ms. Maxwell and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. APOYO's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. Maxwell and other aggrieved employees on a company-wide basis.

Ms. Maxwell 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, during the relevant time period, as a result of APOYO's policy of limiting the amount of overtime employees could accrue and time-shaving, Ms. Maxwell and other aggrieved employees were required to work off-the-clock before and after their scheduled shift start and end times to complete assigned job duties. In addition, as set forth above, APOYO required Ms. Maxwell and other aggrieved employees to perform work off-the-clock, responding to phone communications from supervisors and/or customers, traveling to attend mandatory meetings and training, and/or waiting to leave APOYO's premises in pairs, but did not compensate them for this time.

Also, as stated above, due to APOYO's company-wide practice of utilizing labor budgets, assignment of heavy workloads and loan quotas, failure to schedule meal periods, and subsequent lack of meal period coverage, Ms. Maxwell 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. Additionally, as set forth above, APOYO systematically failed to pay Ms. Maxwell and other aggrieved employees for actual hours worked during unpaid meal periods, because these hours were not always correctly recorded and because APOYO's timekeeping system locked out employees for an allotted time when they clocked out for a meal period.

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

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

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

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

First, as stated, upon information and belief, APOYO had, and continues to have, a company-wide policy and/or practice of understaffing pursuant to its labor budget practices, assigning heavy workloads and loan quotas, and failing to schedule meal periods, which resulted in a lack of meal period coverage and prevented Ms. Maxwell and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Ms. Maxwell and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods cut short and interrupted, and/or had to forgo their meal periods altogether.

Second, as stated, because APOYO frowned upon employees accruing meal period penalties, APOYO's management would adjust Ms. Maxwell's and other aggrieved employees' time records and/or pressured employees to clock out for meal periods and continue working in order to strictly limit meal penalties that would need to be paid by APOYO. For example, Ms. Maxwell was explicitly instructed by her supervisor to clock out and continue working during some of her meal periods, and would be written up if she failed to do so. Thus, Ms. Maxwell 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.

Third, during the relevant period, APOYO had, and continues to have, a company-wide policy and/or practice of requiring employees to complete work-related tasks while off-the-clock during meal periods. For example, Ms. Maxwell's meal periods were interrupted at least twice per week by management, who asked her to spend several minutes per instance unlocking their cash registers for other employees to use. As a further example, other aggrieved employees were regularly interrupted by phone calls from their supervisors during meal periods to answer questions regarding clients' files.

Moreover, as described above, APOYO implemented an electronic timekeeping system that locked Ms. Maxwell and other aggrieved employees out and prevented them from clocking in early before the end of their meal period. As a result of APOYO's timekeeping system, Ms. Maxwell and other aggrieved employees were prevented from accurately recording meal period start and stop times on days when they had meal periods that were cut short and/or interrupted.

Moreover, APOYO 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 worked shifts in excess of ten (10) hours or more per day, but were not provided second 30-minute meal periods. Ms. Maxwell and 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.

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

APOYO also has engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Maxwell and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that APOYO did pay Ms. Maxwell and other aggrieved employees premium pay for missed, late, and interrupted meal periods, APOYO did not pay Ms. Maxwell and other aggrieved employees at the correct rate of pay for premium wages because APOYO systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time

per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

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

During the relevant time period, APOYO regularly failed to authorize and permit Ms. Maxwell and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, APOYO’s company-wide practices, including utilizing labor budgets and assigning heavy workloads and loan quotas, prevented Ms. Maxwell and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. For example, Ms. Maxwell had to forego rest periods 3-4 times per week to complete all of the work-related duties APOYO assigned to her. APOYO also failed to schedule rest periods, which, coupled with APOYO’s failure to provide adequate rest period coverage, further led to Ms. Maxwell and other aggrieved employees not being authorized and permitted to take rest periods.

Also, during the relevant period, APOYO had, and continues to have, a company-wide policy and/or practice of requiring employees to complete work-related tasks during rest periods. As with meal periods, Ms. Maxwell and other aggrieved employees were regularly interrupted during rest periods to respond to requests from APOYO’s management. For example, even when Ms. Maxwell was able to take her rest periods, she was interrupted 2-3 times per week by management’s requests to unlock the cash register so that it could be utilized by another employee.

Furthermore, on information and belief, APOYO maintained and implemented a company-wide on-premises rest period policy, which mandated that Ms. Maxwell and/or other aggrieved employees remain on the work premises during their rest periods. Upon information and belief, APOYO’s company-wide on-premises rest period policy prevented Ms. Maxwell and/or other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

As a result of APOYO’s practices and policies, Ms. Maxwell 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.

APOYO also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Ms. Maxwell and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that APOYO did pay Ms. Maxwell and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, APOYO did not pay Ms. Maxwell and other aggrieved employees at the correct rate of pay for premium wages because APOYO failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, APOYO failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Maxwell 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. APOYO has not provided Ms. Maxwell 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, APOYO has knowingly and intentionally provided Ms. Maxwell and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, APOYO issued uniform wage statements to Ms. Maxwell 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, APOYO violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because APOYO did not record the time Ms. Maxwell and other aggrieved employees spent working off-the-clock, underreported their hourly clock-in and clock-out times in its timekeeping system, and deducted time from their records for meal periods that were interrupted or missed (and therefore time for which they should have been paid), APOYO did not list the correct amount of gross wages and net wages earned by Ms. Maxwell and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, APOYO failed to accurately list the total number of the hours worked by Ms. Maxwell 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).

Furthermore, because APOYO did not calculate Ms. Maxwell's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, APOYO did not list the correct amount of gross wages earned by Ms. Maxwell and other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by Ms. Maxwell and other aggrieved employees in violation of section 226(a)(5). APOYO 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 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), APOYO willfully failed to maintain accurate payroll records for Ms. Maxwell and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and underreporting Ms. Maxwell’s and other aggrieved employees’ hourly clock-in and clock-out duration times in its timekeeping system.

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, APOYO engaged in company-wide practices and/or policies of falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Maxwell and other aggrieved employees in violation of section 1198. Furthermore, in light of APOYO’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, APOYO kept no records of meal start and end times for second meal periods.

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

Ms. Maxwell 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, APOYO failed to pay Ms. Maxwell and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Ms. Maxwell 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.

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

Ms. Maxwell 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 §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee." During the relevant time period, APOYO unlawfully deducted a portion of wages previously paid to other aggrieved employees in violation of California Labor Code section 221.

APOYO systematically, and on a company-wide basis, maintained a loss prevention policy that allowed them to improperly deduct wages from other aggrieved employees' pay. Specifically, APOYO required employees to pay cash out-of-pocket to cover any shortages in the cash register(s) that arose at the close of business, on threat of discipline, even though such shortages occurred in the usual course of business, as a result of a mistake, accident, or simple negligence rather than dishonesty, willfulness, or gross negligence. For example, on a weekly basis, other aggrieved employees were instructed by APOYO's management to chip in and help cover branch-wide cash

register shortages of up to \$500. When other aggrieved employees complained to APOYO's management about this policy, other aggrieved employees were verbally reprimanded and told that they could be terminated if they did not assist in resolving these discrepancies. On information and belief, such deductions were not expressly authorized in writing by other aggrieved employees.

APOYO's policy of deducting money from other aggrieved employees' paychecks without their written authorization constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, as stated above, APOYO willfully and systematically deducted money from other aggrieved employees' wages without their express written authorization, pursuant to its loss prevention policy, which resulted in a discount in their wages. APOYO's deduction from its employees' wages resulted in the payment of less than statutorily required wages to other aggrieved employees. In doing so, APOYO acted with the intent to deprive other aggrieved employees of statutory wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, to which they were entitled to under California law. Thus, APOYO paid other aggrieved employees lower wages than those they were entitled to while purporting that other aggrieved employees were properly paid.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 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."

First, during the relevant time period, APOYO, on a company-wide basis, required that Ms. Maxwell and other aggrieved employees use their own personal cellular phones and cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. For example, Ms. Maxwell was required to use her personal cellular phone for three (3) hours per day to communicate with her supervisor during trips to the bank or to court, send picture messages to her supervisor upon request, and navigate to clients' homes and places of employment for collections. As such, Ms. Maxwell and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as providing updates to supervisors and communicating with clients. Although APOYO required Ms. Maxwell and other

aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, APOYO failed to reimburse them for this cost.

Second, APOYO had a company-wide policy of requiring Ms. Maxwell and other aggrieved employees to utilize their own personal vehicles or obtain alternate transportation to carry out company business and attend mandatory meetings and/or training, but failed to reimburse them for all costs of travel, including mileage. For example, Ms. Maxwell was required to utilize her own personal vehicle to travel to conduct collections, perform bank deposits, post and distribute flyers, and appear in court on behalf of APOYO. Furthermore, as stated, Ms. Maxwell drove approximately 300 miles roundtrip to and from a mandatory company-wide conference in Montclair, California. Although APOYO required Ms. Maxwell and other aggrieved employees to utilize their own vehicles or obtain alternate transportation to carry out company business and attend mandatory meetings and/or training, APOYO did not reimburse them for all of their travel expenses.

Third, APOYO, on a company-wide basis, required Ms. Maxwell and other aggrieved employees to report to work wearing clean and presentable uniforms, which forced Ms. Maxwell and other aggrieved employees to clean their uniforms frequently and incur expenses in doing so. In addition, APOYO failed to provide Ms. Maxwell and other aggrieved employees with an adequate number of uniforms, which further caused employees to incur regular laundering expenses. For example, Ms. Maxwell was given only two (2) uniform shirts, which were embroidered with APOYO's logo, when scheduled to work five (5) or more days per week, and was therefore required to wash these uniforms at least three (3) times per week to ensure that they were clean prior to each shift.

Fourth, during the relevant time period, APOYO, on a company-wide basis, forced other aggrieved employees to purchase basic office supplies and equipment that were necessary for the completion of their work-related duties. Other aggrieved employees were required to spend over \$600 on office supplies and equipment, such as headsets, computer mice, keyboards, office chairs, staplers, pens, notepads, and tape, because they were told that these supplies and items were not in the company's budget. Although APOYO required other aggrieved employees to purchase and use their own office supplies and equipment for work, APOYO did not reimburse them for these expenses.

APOYO could have provided Ms. Maxwell and/or other aggrieved employees with the actual tools for use on the job, such as company vehicles or company phones to be used for fulfilling work-related tasks, an adequate number of uniforms and/or laundering services, and office supplies and equipment. Or, APOYO could have reimbursed employees for the costs of their cellular phone usage, mileage, travel expenses, laundering fees, and office supplies and equipment. Instead, APOYO passed these operating costs off onto Ms. Maxwell and other aggrieved employees. At all relevant times, Ms. Maxwell did not earn at least two (2) times the minimum wage.

Thus, APOYO had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Maxwell 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).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure

that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

APOYO failed to provide Ms. Maxwell and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). APOYO's failure to provide Ms. Maxwell and other aggrieved employees with written notice of basic information regarding their employment with APOYO is in violation of Labor Code section 2810.5.

Ms. Maxwell and other aggrieved employees are therefore entitled to recover 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." APOYO, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Maxwell's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Maxwell seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Maxwell, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against APOYO for violations of California Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7, 510, 512, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

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

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: APOYO FINANCIERO, INC. (via U.S. Certified Mail)

CERTIFIED MAIL®



7020 1290 0000 3958 7863

tone
LAW APC
ury Park East, Ste 1000
s, CA 90067

APOYO FINANCIERO, INC.
3100 OAK ROAD, SUITE 210
WALNUT CREEK CA 94597



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3100 OAK ROAD, SUITE 210
WALNUT CREEK CA 94597



9590 9402 5816 0034 8468 78

2. Article Number (Transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

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- ☐ Agent
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C. Date of Delivery

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City, State, ZIP+4® WALNUT CREEK CA 94597

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2. Article Number (<i>Transfer from service label</i>) 7020 1290 0000 3958 7863		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☒ No																	
9590 9402 5816 0034 8468 78		3. Service Type <table border="0"> <tr> <td>☐ Adult Signature</td> <td>☐ Priority Mail Express®</td> </tr> <tr> <td>☐ Adult Signature Restricted Delivery</td> <td>☐ Registered Mail™</td> </tr> <tr> <td>☒ Certified Mail®</td> <td>☐ Registered Mail Restricted Delivery</td> </tr> <tr> <td>☐ Certified Mail Restricted Delivery</td> <td>☒ Return Receipt for Merchandise</td> </tr> <tr> <td>☐ Collect on Delivery</td> <td>☐ Signature Confirmation™</td> </tr> <tr> <td>☐ Collect on Delivery Restricted Delivery</td> <td>☐ Signature Confirmation Restricted Delivery</td> </tr> <tr> <td>☐ Insured Mail</td> <td></td> </tr> <tr> <td>☐ Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>		☐ Adult Signature	☐ Priority Mail Express®	☐ Adult Signature Restricted Delivery	☐ Registered Mail™	☒ Certified Mail®	☐ Registered Mail Restricted Delivery	☐ Certified Mail Restricted Delivery	☒ Return Receipt for Merchandise	☐ Collect on Delivery	☐ Signature Confirmation™	☐ Collect on Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery	☐ Insured Mail		☐ Insured Mail Restricted Delivery (over \$500)	
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PS Form 3811, July 2015 PSN 7530-02-000-9053		Domestic Return Receipt																	

EXHIBIT “2”

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

December 2, 2020

VIA ONLINE SUBMISSION

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

Subject: *Maria Villanueva v. Apoyo Financiero, Inc.*

Dear PAGA Administrator:

This office represents Maria Villanueva in connection with her claims under the California Labor Code. Ms. Villanueva was an employee of APOYO FINANCIERO, INC. (“APOYO”).

The employer may be contacted directly at the address below:

APOYO FINANCIERO, INC.
3100 OAK ROAD, SUITE 210
WALNUT CREEK CA 94597

Ms. Villanueva intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Ms. Villanueva seeks relief on behalf of herself, the State of California, and other persons who are or were employed by APOYO 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.

APOYO employed Ms. Villanueva as a non-exempt, hourly paid Customer Service Representative from approximately September 2018 to May 2020. Ms. Villanueva worked for APOYO out of its branch location in Modesto, California. She typically worked eight (8) or more hours per day, five (5) days per week, from 9:00 a.m. to 7:00 p.m. At the time her employment ended, Ms. Villanueva was compensated approximately \$16.50 per hour. Her job duties included, without limitation, processing loan applications, responding to client phone calls, verifying client credit and employment, conducting collections, processing payments, and filing collections claims.

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

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

APOYO FINANCIERO, INC. is a California corporation and a microfinance company serving underbanked Spanish-speaking communities. APOYO operates approximately 28 branch locations in California. Upon information and belief, APOYO maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Walnut Creek, California, for all non-exempt, hourly paid employees working for APOYO in California, including Ms. Villanueva and other aggrieved employees. At all relevant times, APOYO issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Villanueva and other aggrieved employees, regardless of their location or position.

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

APOYO willfully failed to pay all overtime wages owed to Ms. Villanueva and other aggrieved employees. During the relevant time period, Ms. Villanueva and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

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

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 period, APOYO had a policy and/or practice of discouraging and impeding Ms. Villanueva and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, upon threat of discipline, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with APOYO's use of labor budgets and assignment of heavy workloads and loan quotas (*see infra*), led Ms. Villanueva and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. For example, Ms. Villanueva would arrive to work early five (5) times per week and spend 30-40 minutes off-the-clock scanning files and completing paperwork in preparation of her shift. Ms. Villanueva was also required to clock out and continue working 2-3 times per month, for 15-30 minutes, to process payments or continue assisting clients.

Moreover, on information and belief, APOYO had a policy of improperly adjusting Ms. Villanueva's and other aggrieved employees' clock-in and clock-out duration times in its timekeeping system. APOYO's time-shaving policy resulted in the failure to compensate Ms. Villanueva and other aggrieved employees fully for all hours worked, causing Ms. Villanueva and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. Consequently, Ms. Villanueva and other aggrieved employees performed work before and after their shifts for which they were not paid.

Second, APOYO had, and continues to have, a company-wide policy and/or practice of requiring Ms. Villanueva and/or other aggrieved employees to perform tasks off-the-clock, such as responding to phone communications from supervisors and/or customers and traveling to attend mandatory meetings and training. Ms. Villanueva and other aggrieved employees were required to use their personal cellular phones to complete their work-related duties, such as discussing upcoming tasks with APOYO's management and responding to clients. For example, Ms. Villanueva spent one (1) hour each week off-the-clock responding to phone calls and text messages from clients. Furthermore, other aggrieved employees were required to travel to mandatory meetings and training throughout California, but were not paid for their travel time. For example, other aggrieved employees were required to drive approximately four (4) hours off-the-clock to and from a mandatory training in Walnut Creek, California, or spent approximately 4.5 hours driving to and from a mandatory company-wide conference in Montclair, California. APOYO failed to track this time Ms. Villanueva and other aggrieved employees spent responding to phone communications and/or traveling to mandatory meetings and training, and thus, Ms. Villanueva and other aggrieved employees received no compensation for this time.

Third, APOYO had, and continues to have, a company-wide security policy requiring employees to leave the branch premises in pairs. Thus, after clocking out at the end of their shifts, Ms. Villanueva and other aggrieved employees were required to wait for another employee to become available before they could leave APOYO's premises. For example, 1-2 times per week, Ms. Villanueva was required to clock out at the end of her shift and wait for 10-30 minutes for her fellow employee to finish assisting a client before she was permitted to exit the branch with the co-worker. As a result of this security policy and/or practice, Ms. Villanueva and other aggrieved employees were subject to APOYO's control after they had completed their scheduled shifts, but were not compensated for this time.

Fourth, upon information and belief, APOYO had, and continues to have, a company-wide policy and/or practice of strictly staffing its branch locations based on the labor hours allocated by corporate for each location. APOYO's uniform use of labor budgets resulted in chronic understaffing, such that there were too few employees on duty to handle the heavy workload and meet loan quotas, such as branch-wide and individual quotas for monthly and daily loans issued and amounts collected from customers. Because APOYO did not employ or staff an adequate number of employees to meet its productivity expectations and failed to provide employees with adequate meal period coverage, Ms. Villanueva and other aggrieved employees were assigned heavy workloads, which APOYO knew or should have known could only be met by working additional hours. Ms. Villanueva and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads and address client demand. For example, Ms. Villanueva was instructed by APOYO to clock out and continue working through her meal periods 1-2 times per month in order to travel to and conduct off-site collections. In addition, Ms. Villanueva and other aggrieved employees were regularly interrupted by management during meal periods and asked to spend several minutes per instance unlocking their cash registers for other employees' use.

Moreover, APOYO had a practice of failing to schedule meal periods, which further caused Ms. Villanueva and other aggrieved employees to not be relieved of their duties for compliant meal periods. Additionally, on information and belief, because APOYO frowned upon employees accruing meal period penalties, APOYO pressured Ms. Villanueva 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, in order to strictly limit meal penalties that APOYO would otherwise owe. Further, APOYO'S company-wide timekeeping system also prevented Ms. Villanueva and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Villanueva and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before the allotted time had elapsed. APOYO's timekeeping system prevented Ms. Villanueva and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted. Thus, Ms. Villanueva and other aggrieved employees performed work during meal periods for which they were not paid.

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

Because Ms. Villanueva and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Villanueva and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. APOYO's failure to pay Ms. Villanueva 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, APOYO did not pay Ms. Villanueva and other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, APOYO paid Ms. Villanueva and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, APOYO failed to incorporate all remunerations, including incentive pay and/or nondiscretionary

bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when Ms. Villanueva and other aggrieved employees worked overtime and received these other forms of pay, APOYO failed to pay all overtime wages by paying a lower overtime rate than required.

Specifically, APOYO paid Ms. Villanueva and other aggrieved employees nondiscretionary bonuses when they exceeded certain branch-wide and individual quotas. On information and belief, some of these nondiscretionary bonuses were listed on Ms. Villanueva's and other aggrieved employees' wage statements as "Bonus w/ 401lk." During pay periods that Ms. Villanueva and other aggrieved employees were paid overtime wages, APOYO did not incorporate the nondiscretionary bonuses and/or incentive pay into Ms. Villanueva's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, APOYO paid Ms. Villanueva and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. APOYO's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. Villanueva and other aggrieved employees on a company-wide basis.

Ms. Villanueva 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, during the relevant time period, as a result of APOYO's policy of limiting the amount of overtime employees could accrue and time-shaving, Ms. Villanueva and other aggrieved employees were required to work off-the-clock before and after their scheduled shift start and end times to complete assigned job duties. In addition, as set forth above, APOYO required Ms. Villanueva and other aggrieved employees to perform work off-the-clock, responding to phone communications from supervisors and/or customers, traveling to attend mandatory meetings and trainings, and waiting to leave APOYO's premises in pairs, but did not compensate them for this time.

Also, as stated above, due to APOYO's company-wide practice of utilizing labor budgets, assignment of heavy workloads and loan quotas, failure to schedule meal periods, and subsequent lack of meal period coverage, Ms. Villanueva 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. Additionally, as set forth above, APOYO systematically failed to pay Ms. Villanueva and other aggrieved employees for actual hours worked during unpaid meal periods, because these hours were not always correctly recorded and because APOYO's timekeeping system locked out employees for an allotted time when they clocked out for a meal period.

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

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

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

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

First, as stated, upon information and belief, APOYO had, and continues to have, a company-wide policy and/or practice of understaffing pursuant to its labor budget practices, assigning heavy workloads and loan quotas, and failing to schedule meal periods, which resulted in a lack of meal period coverage and prevented Ms. Villanueva and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Ms. Villanueva and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods cut short and interrupted, and/or had to forgo their meal periods altogether. For example, once or twice per month, Ms. Villanueva would take her meal periods after her fifth hour of work when her branch was trying to meet its quotas at the end of the month.

Second, as stated, because APOYO frowned upon employees accruing meal period penalties, APOYO's management would adjust Ms. Villanueva's and other aggrieved employees' time records and/or pressured employees to clock out for meal periods and continue working in order to strictly limit meal penalties that would need to be paid by APOYO. For example, Ms. Villanueva was instructed to clock out and continue working by APOYO's management, and would have her time modified to reflect compliant meal periods if she failed to clock herself out. Thus, Ms. Villanueva

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.

Third, during the relevant period, APOYO had, and continues to have, a company-wide policy and/or practice of requiring employees to complete work-related tasks while off-the-clock during meal periods. For example, Ms. Villanueva was regularly interrupted by phone calls from her supervisor during meal periods to answer questions regarding clients' files. As a further example, Ms. Villanueva and other aggrieved employees were interrupted at least twice per week by management, who asked them to spend several minutes per instance unlocking their cash registers for other employees to use.

Moreover, as described above, APOYO implemented an electronic timekeeping system that locked Ms. Villanueva and other aggrieved employees out and prevented them from clocking in early before the end of their meal period. As a result of APOYO's timekeeping system, Ms. Villanueva and other aggrieved employees were prevented from accurately recording meal period start and stop times on days when they had meal periods that were cut short and/or interrupted.

Moreover, APOYO 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 worked shifts in excess of ten (10) hours or more per day, but were not provided second 30-minute meal periods. Ms. Villanueva and 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.

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

APOYO also has engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Villanueva and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that APOYO did pay Ms. Villanueva and other aggrieved employees premium pay for missed, late, and interrupted meal periods, APOYO did not pay Ms. Villanueva and other aggrieved employees at the correct rate of pay for premium wages because APOYO systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC

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

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

During the relevant time period, APOYO regularly failed to authorize and permit Ms. Villanueva and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, APOYO’s company-wide practices, including utilizing labor budgets and assigning heavy workloads and loan quotas, prevented Ms. Villanueva and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. For example, Ms. Villanueva missed her rest periods 4-5 times per week to process all incoming client payments. APOYO also failed to schedule rest periods, which, coupled with APOYO’s failure to provide adequate rest period coverage, further led to Ms. Villanueva and other aggrieved employees not being authorized and permitted to take rest periods.

Also, during the relevant period, APOYO had, and continues to have, a company-wide policy and/or practice of requiring employees to complete work-related tasks during rest periods. As with meal periods, Ms. Villanueva and other aggrieved employees were regularly interrupted during rest periods to respond to requests from APOYO’s management. For example, Ms. Villanueva had her rest periods interrupted 1-3 times per week by management’s requests to unlock the cash register so that it could be utilized by another employee, and was further required to respond to phone calls from clients during her rest periods.

Furthermore, on information and belief, APOYO maintained and implemented a company-wide on-premises rest period policy, which mandated that Ms. Villanueva and/or other aggrieved employees remain on the work premises during their rest periods. Upon information and belief, APOYO’s company-wide on-premises rest period policy prevented Ms. Villanueva and/or other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

As a result of APOYO’s practices and policies, Ms. Villanueva 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.

APOYO also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Ms. Villanueva and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that APOYO did pay Ms. Villanueva and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, APOYO did not pay Ms. Villanueva and other aggrieved employees at the correct rate of pay for premium wages because APOYO failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, APOYO failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Villanueva 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. APOYO has not provided Ms. Villanueva 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, APOYO has knowingly and intentionally provided Ms. Villanueva and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, APOYO issued uniform wage statements to Ms. Villanueva 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, APOYO violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because APOYO did not record the time Ms. Villanueva and other aggrieved employees spent working off-the-clock, underreported their hourly clock-in and clock-out times in its timekeeping system, and deducted time from their records for meal periods that were interrupted or missed (and therefore time for which they should have been paid), APOYO did not list the correct amount of gross wages and net wages earned by Ms. Villanueva and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, APOYO failed to accurately list the total number of the hours worked by Ms. Villanueva 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).

Furthermore, because APOYO did not calculate Ms. Villanueva's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, APOYO did not list the correct amount of gross wages earned by Ms. Villanueva and other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by Ms. Villanueva and other aggrieved employees in violation of section 226(a)(5). APOYO 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 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 “[keep, 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), APOYO willfully failed to maintain accurate payroll records for Ms. Villanueva and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and underreporting Ms. Villanueva’s and other aggrieved employees’ hourly clock-in and clock-out duration times in its timekeeping system.

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, APOYO engaged in company-wide practices and/or policies of falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Villanueva and other aggrieved employees in violation of section 1198. Furthermore, in light of APOYO’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, APOYO kept no records of meal start and end times for second meal periods.

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

Ms. Villanueva 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, APOYO failed to pay Ms. Villanueva and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Ms. Villanueva 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.

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

Ms. Villanueva 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 §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee." During the relevant time period, APOYO unlawfully deducted a portion of wages previously paid to Ms. Villanueva and other aggrieved employees in violation of California Labor Code section 221.

APOYO systematically, and on a company-wide basis, maintained a loss prevention policy that allowed them to improperly deduct wages from Ms. Villanueva's and other aggrieved employees' pay. Specifically, APOYO required employees to pay cash out-of-pocket to cover any shortages in the cash register(s) that arose at the close of business, on threat of discipline, even though such

shortages occurred in the usual course of business, as a result of a mistake, accident, or simple negligence rather than dishonesty, willfulness, or gross negligence. For example, on a weekly basis, Ms. Villanueva and other aggrieved employees were instructed by APOYO's management to chip in and help cover branch-wide cash register shortages of up to \$500. When Ms. Villanueva complained to APOYO's management about this policy, she was verbally reprimanded and told that she could be terminated if she did not assist in resolving these discrepancies. On information and belief, such deductions were not expressly authorized in writing by Ms. Villanueva and other aggrieved employees.

APOYO's policy of deducting money from Ms. Villanueva's and other aggrieved employees' paychecks without their written authorization constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Ms. Villanueva and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, as stated above, APOYO willfully and systematically deducted money from Ms. Villanueva's and other aggrieved employees' wages without their express written authorization, pursuant to its loss prevention policy, which resulted in a discount in their wages. APOYO's deduction from its employees' wages resulted in the payment of less than statutorily required wages to Ms. Villanueva and other aggrieved employees. In doing so, APOYO acted with the intent to deprive Ms. Villanueva and other aggrieved employees of statutory wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, to which they were entitled to under California law. Thus, APOYO paid Ms. Villanueva and other aggrieved employees lower wages than those they were entitled to while purporting that Ms. Villanueva and other aggrieved employees were properly paid.

Ms. Villanueva and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 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."

First, during the relevant time period, APOYO, on a company-wide basis, required that Ms. Villanueva and other aggrieved employees use their own personal cellular phones and cellular data to

carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. For example, Ms. Villanueva was required to use her personal cellular phone for up to eight (8) hours per day to contact clients, both while she was on the road and because her office duties required the use of a mobile phone. As such, Ms. Villanueva and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as providing updates to supervisors and communicating with clients. Although APOYO required Ms. Villanueva and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, APOYO failed to reimburse them for this cost.

Second, APOYO had a company-wide policy of requiring Ms. Villanueva and other aggrieved employees to utilize their own personal vehicles or obtain alternate transportation to carry out company business and/or attend mandatory meetings and training, but failed to reimburse them for all costs of travel, including mileage. For example, Ms. Villanueva was required to use her personal vehicle to travel to clients' homes to conduct collections and file collection claims with the courts. Furthermore, as stated, other aggrieved employees were required to drive approximately 200 miles to and from APOYO's mandatory training in Walnut Creek, California, or approximately 300 miles roundtrip to and from a mandatory company-wide conference in Montclair, California. Although APOYO required Ms. Villanueva and other aggrieved employees to utilize their own vehicles or obtain alternate transportation to carry out company business and/or attend mandatory meetings and training, APOYO did not reimburse them for all of their travel expenses.

Third, APOYO, on a company-wide basis, required other aggrieved employees to report to work wearing clean and presentable uniforms, which forced other aggrieved employees to clean their uniforms frequently and incur expenses in doing so. In addition, APOYO failed to provide other aggrieved employees with an adequate number of uniforms, which further caused employees to incur regular laundering expenses. For example, other aggrieved employees were given only two (2) uniform shirts, which were embroidered with APOYO's logo, when scheduled to work five (5) or more days per week, and were therefore required to wash these uniforms at least three (3) times per week to ensure that they were clean prior to each shift.

Fourth, during the relevant time period, APOYO, on a company-wide basis, forced Ms. Villanueva and other aggrieved employees to purchase basic office supplies and equipment that were necessary for the completion of their work-related duties. For example, Ms. Villanueva was required to spend over \$600 on office supplies and equipment, such as headsets, computer mice, keyboards, office chairs, staplers, pens, notepads, and tape, because she was told that these supplies and items were not in the company's budget. Although APOYO required Ms. Villanueva and other aggrieved employees to purchase and use their own office supplies and equipment for work, APOYO did not reimburse them for these expenses.

APOYO could have provided Ms. Villanueva and/or other aggrieved employees with the actual tools for use on the job, such as company vehicles or company phones to be used for fulfilling work-related tasks, an adequate number of uniforms and/or laundering services, and office supplies and equipment. Or, APOYO could have reimbursed employees for the costs of their cellular phone usage, mileage, travel expenses, laundering fees, and office supplies and equipment. Instead, APOYO passed these operating costs off onto Ms. Villanueva and other aggrieved employees. At all relevant times, Ms. Villanueva did not earn at least two (2) times the minimum wage.

Thus, APOYO had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms.

Villanueva 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).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

APOYO failed to provide Ms. Villanueva and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). APOYO's failure to provide Ms. Villanueva and other aggrieved employees with written notice of basic information regarding their employment with APOYO is in violation of Labor Code section 2810.5.

Ms. Villanueva and other aggrieved employees are therefore entitled to recover 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." APOYO, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Villanueva's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Villanueva seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Villanueva, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against APOYO for violations of California Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7, 510, 512, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

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

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: APOYO FINANCIERO, INC. (via U.S. Certified Mail)

CERTIFIED MAIL®



7020 1290 0000 3958 7214

APOYO FINANCIERO, INC.
3100 OAK ROAD, SUITE 210
WALNUT CREEK CA 94597

tone

LAW APC

1000 Park East, Ste 1000
Walnut Creek, CA 94597



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- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

APOYO FINANCIERO, INC.
3100 OAK ROAD, SUITE 210
WALNUT CREEK CA 94597



9590 9402 5816 0034 8469 08

2. Article Number (Transfer from service label)

7020 1290 0000 3958 7214

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

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- ☐ Registered Mail™
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- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.43

Sent To

APOYO FINANCIERO, INC.

Street and Apt. No., 3100 OAK ROAD, SUITE 210

City, State, ZIP+4® WALNUT CREEK CA 94597

Postmark

Here

Villanueva v. Apoyo
Financiero, Inc.

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

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- Complete items 1, 2, and 3.
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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

APOYO FINANCIERO, INC.
3100 OAK ROAD, SUITE 210
WALNUT CREEK CA 94597



9590 9402 5816 0034 8469 08

2. Article Number (Transfer from service label)

7020 1290 0000 3958 7214

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

X-1

☒ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

12/9

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery

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er \$500)

☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☒ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **February 15, 2021**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Alexander M. Medina (SBN 222015)
alex@medinamckelvey.com
Rabindra M. David (SBN 274504)
rabi@medinackelvey.com
MEDINA McKELVEY LLP
925 Highland Pointe Drive, Suite 300
Roseville, California 95678
Tel.: (916) 960-2211
Fax: (916) 742-5488

Attorneys for Defendant
APOYO FINANCIERO, INC.

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

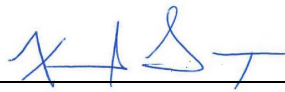
☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **February 15, 2021**, at Los Angeles, California.

Xochitl Tapia

Type/Print Name



Signature