

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 4/12/2021 2:36 PM
Reviewed By: R. Walker
Case #21CV375646
Envelope: 6222271**

Robert Drexler (SBN 119119)
Robert.Drexler@CapstoneLawyers.com
Molly DeSario (SBN 230763)
Molly.DeSario@CapstoneLawyers.com
Jonathan Lee (SBN 267146)
Jonathan.Lee@CapstoneLawyers.com
Helga Hakimi (SBN 257381)
Helga.Hakimi@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 Plaintiff Teresa Zapata

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

TERESA ZAPATA, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

vs.

KEYPOINT CREDIT UNION, a California
state chartered credit union; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 21CV375646

**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, 515(d), 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 § 227.3 (Failure to Pay Vested Vacation Time and Paid Time Off Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (8) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Teresa Zapata, individually and on behalf of all other members of the public
2 similarly situated and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges 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 Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt
9 employees and received at least one wage statement and against whom one or more violations
10 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
11 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
12 Order were committed, as set forth in this complaint. The monetary damages, penalties, and
13 restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and
14 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. Plaintiff’s 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
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

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

4 3. Venue is proper in this Court, because Defendants filed Statement of
5 Information forms with the California Secretary of State designating a principal place of
6 business in Santa Clara, County of Santa Clara, in accordance with California Corporations
7 Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Further, venue is proper in this Court
8 because Defendants employ persons in this county, and employed Plaintiff in this county, and
9 thus a substantial portion of the transactions and occurrences related to this action occurred in
10 this county.

11 **THE PARTIES**

12 4. Plaintiff TERESA ZAPATA is a resident of Palo Alto, in Santa Clara county,
13 California. Defendants employed Plaintiff as a salary-paid, non-exempt Financial Services
14 Representative II from approximately July 2019 to June 2020. Plaintiff worked for
15 Defendants at their branch locations in San Jose, California and Santa Clara, California.
16 During her employment, Plaintiff typically worked seven (7) to eight (8) hours or more per
17 day, and five (5) or more days per week. Plaintiff's primary job duties included, without
18 limitation, performing teller transactions, opening and closing customer accounts, sending
19 referrals to loan officers, adhering to branch sales goals, and balancing the cash drawer.

20 5. KEYPOINT CREDIT UNION was and is, upon information and belief, a
21 California state chartered credit union, and at all times hereinafter mentioned, an employer
22 whose employees are engaged throughout this county, the State of California, or the various
23 states of the United States of America.

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

28 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10

1 were the partners, agents, owners, or managers of KEYPOINT CREDIT UNION at all
2 relevant times.

3 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
4 acts and omissions alleged herein was performed by, or is attributable to, KEYPOINT
5 CREDIT UNION; and/or DOES 1 through 10 (collectively, “Defendants” or “KEYPOINT”),
6 each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert
7 with, each of the other co-Defendants and was acting within the course and scope of such
8 agency, employment, joint venture, or concerted activity with legal authority to act on the
9 others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the
10 official policy of Defendants.

11 9. At all relevant times, Defendants, and each of them, ratified each and every act
12 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
13 and abetted the acts and omissions of each and all the other Defendants in proximately causing
14 the damages herein alleged.

15 10. Plaintiff is informed and believes, and thereon alleges, that each of said
16 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
17 omissions, occurrences, and transactions alleged herein.

18 **GENERAL ALLEGATIONS**

19 11. Defendants provide retail banking services and own and operate six (6) credit
20 union branch locations in California. Upon information and belief, Defendants maintain a
21 single, centralized Human Resources (“HR”) department at their company headquarters in
22 Santa Clara, California, which is responsible for the recruiting and hiring of new employees,
23 and communicating and implementing Defendants’ company-wide policies, including
24 timekeeping policies and meal and rest period policies, to employees throughout California.

25 12. In particular, Plaintiff and class members, on information and belief, received
26 the same standardized documents and/or written policies. Upon information and belief, the
27 usage of standardized documents and/or written policies, including new-hire documents,
28 indicate that Defendants dictated policies at the corporate level and implemented them

1 company-wide, regardless of their employees' assigned locations or positions. Upon
2 information and belief, Defendants set forth uniform policies and procedures in several
3 documents provided at an employee's time of hire.

4 13. Upon information and belief, Defendants maintain a centralized Payroll
5 department at their company headquarters in Santa Clara, California, which processes payroll
6 for all non-exempt employees working for Defendants at their various locations and jobsites in
7 California, including Plaintiff and class members. Based upon information and belief,
8 Defendants issue the same formatted wage statements to all non-exempt employees in
9 California, irrespective of their work locations. Upon information and belief, Defendants
10 process payroll for departing employees in the same manner throughout the State of
11 California, regardless of the manner in which each employee's employment ends.

12 14. Defendants continue to employ non-exempt employees in California.

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

17 16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
18 members were not paid for all hours worked because all hours worked were not recorded.

19 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to receive certain wages for
21 overtime compensation and that they were not receiving certain wages for overtime
22 compensation.

23 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to be paid at a regular rate
25 of pay, and corresponding overtime rates of pay, that included as eligible income all
26 remuneration required by law, including but not limited to, all income derived from incentive
27 pay, nondiscretionary bonuses, and/or other forms of compensation.

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

1 should have known that Plaintiff and class members were entitled to receive at least minimum
2 wages for compensation and that they were not receiving at least minimum wages for work
3 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
4 and class members were not paid at least minimum wages for work done off-the-clock.

5 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to meal periods in
7 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
8 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
9 periods and that Plaintiff and class members were not provided with all meal periods or
10 payment of one (1) additional hour of pay at their regular rates of pay when they did not
11 receive a timely, uninterrupted, thirty (30) minute meal period.

12 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to rest periods in
14 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
15 additional hour of pay at their regular rates of pay when they were not authorized and
16 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
17 and class members were not authorized and permitted to take compliant rest periods, nor did
18 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
19 pay at their regular rates of pay when they were not authorized and permitted to take a
20 compliant rest period.

21 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to receive complete and
23 accurate wage statements in accordance with California law. In violation of the California
24 Labor Code, Plaintiff and class members were not provided complete and accurate wage
25 statements.

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

1 and intentionally failed to do so.

2 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to payment of all vested
4 vacation wages upon termination of employment. In violation of the California Labor Code,
5 Plaintiff and class members did not receive payment of all vested vacation wages due.

6 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to timely payment of all
8 wages earned upon termination of employment. In violation of the California Labor Code,
9 Plaintiff and class members did not receive payment of all wages due, including, but not
10 limited to, overtime wages, minimum wages, vested vacation wages, sick leave pay, and/or
11 meal and rest period premiums, within permissible time periods.

12 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to timely payment of wages
14 during their employment. In violation of the California Labor Code, Plaintiff and class
15 members did not receive payment of all wages, including, but not limited to, overtime wages,
16 minimum wages, sick leave pay, and/or meal and rest period premiums, within permissible
17 time periods.

18 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to receive sick leave
20 benefits to be paid at a regular rate of pay, that included, as eligible income, all income
21 derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation.

22 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to receive full
24 reimbursement for all business-related expenses and costs they incurred during the course and
25 scope of their employment and that they did not receive full reimbursement of applicable
26 business-related expenses and costs incurred.

27 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants knew or should have known that they had a duty to compensate

1 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
2 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
3 falsely represented to Plaintiff and class members that they were properly denied wages, all in
4 order to increase Defendants' profits.

5 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

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

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

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

26 (b) An aggrieved employee's notice filed with the LWDA pursuant to
27 2699.3(a) and any employer response to that notice shall be
28 accompanied by a filing fee of seventy-five dollars (\$75).

1 (c) The LWDA shall notify the employer and the aggrieved employee or
2 representative by certified mail that it does not intend to investigate the
3 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
4 the postmark date of the aggrieved employee’s notice. Upon receipt of
5 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
6 (65) calendar days of the postmark date of the aggrieved employee’s
7 notice, the aggrieved employee may commence a civil action pursuant
8 to California Labor Code section 2699 to recover civil penalties.

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

- 13 (a) The aggrieved employee or representative shall give written notice by
14 online filing with the LWDA and by certified mail to the employer of
15 the specific provisions of the California Labor Code alleged to have
16 been violated (other than those listed in Section 2699.5), including the
17 facts and theories to support the alleged violation.
- 18 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
19 2699.3(c) and any employer response to that notice shall be
20 accompanied by a filing fee of seventy-five dollars (\$75).
- 21 (c) The employer may cure the alleged violation within thirty-three (33)
22 calendar days of the postmark date of the notice sent by the aggrieved
23 employee or representative. The employer shall give written notice
24 within that period of time by certified mail to the aggrieved employee or
25 representative and by online filing with the LWDA if the alleged
26 violation is cured, including a description of actions taken, and no civil
27 action pursuant to Section 2699 may commence. If the alleged violation
28 is not cured within the 33-day period, the aggrieved employee may

1 commence a civil action pursuant to Section 2699.

2 35. On February 4, 2021, Plaintiff provided written notice by online filing to the
3 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
4 Code alleged to have been violated, including facts and theories to support the alleged
5 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
6 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
7 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
8 Plaintiff PAGA Case Number LWDA-CM-820735-21. A true and correct copy of Plaintiff's
9 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

13 37. Thus, Plaintiff has satisfied the administrative prerequisites under California
14 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
15 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 246,
16 510, 512(a), 515(d), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

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

4 41. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
5 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
6 private attorney general, seeks assessment and collection of civil penalties for herself, all other
7 aggrieved employees, and the State of California against Defendants for violations of
8 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 246, 510, 512(a),
9 515(d), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

10 **CLASS ACTION ALLEGATIONS**

11 42. Plaintiff brings this action on her own behalf, as well as on behalf of each and
12 all other persons similarly situated, and thus seeks class certification under California Code of
13 Civil Procedure section 382.

14 43. All claims alleged herein arise under California law for which Plaintiff seeks
15 relief authorized by California law.

16 44. Plaintiff's proposed class consists of and is defined as follows:

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

19 45. Plaintiff's proposed subclass consists of and is defined as follows:

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

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

24 47. Plaintiff reserves the right to redefine the Class and Subclass and to add
25 additional subclasses as appropriate based on further investigation, discovery, and specific
26 theories of liability.

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

- 1 (a) Whether Defendants required Plaintiff and class members to work over
2 eight (8) hours per day, over twelve (12) hours per day, or over forty
3 (40) hours per week and failed to pay all legally required overtime
4 compensation to Plaintiff and class members;
- 5 (b) Whether Defendants failed to properly calculate “regular rate” of pay
6 which Plaintiff’s and class members’ overtime rate of pay was based;
- 7 (c) Whether Defendants failed to pay Plaintiff and class members at least
8 minimum wages for all hours worked;
- 9 (d) Whether Defendants failed to provide Plaintiff and class members with
10 meal periods;
- 11 (e) Whether Defendants failed to authorize and permit Plaintiff and class
12 members to take rest periods;
- 13 (f) Whether Defendants provided Plaintiff and class members with
14 complete and accurate wage statements as required by California Labor
15 Code section 226(a);
- 16 (g) Whether Defendants maintained accurate payroll records as required by
17 California Labor Code section 1174(d);
- 18 (h) Whether Defendants failed to pay Plaintiff and class members all vested
19 vacation time as wages at their final rate in accordance with the terms
20 and conditions of Defendants’ employment contract and/or policy;
- 21 (i) Whether Defendants failed to pay earned overtime wages, minimum
22 wages, vested vacation wages, sick leave pay, and/or meal and rest
23 period premiums due to Plaintiff and class members upon their
24 discharge;
- 25 (j) Whether Defendants failed timely to pay overtime wages, minimum
26 wages, sick leave pay, and/or meal and rest period premiums due to
27 Plaintiff and class members during their employment;
- 28 (k) Whether Defendants failed to properly calculate the “regular rate” of

1 pay upon which Plaintiff's and class members' sick leave rate of pay
2 was based;

- 3 (l) Whether Defendants failed to reimburse Plaintiff and class members for
4 necessary and required business-related expenditures and/or losses
5 incurred by them in the scope of their employment;
- 6 (m) Whether Defendants engaged in unlawful and unfair business practices
7 in violation of California Business & Professions Code sections 17200,
8 *et seq.*; and
- 9 (n) The appropriate amount of damages, restitution, or monetary penalties
10 resulting from Defendants' violations of California law.

11 49. There is a well-defined community of interest in the litigation and the class
12 members are readily ascertainable:

- 13 (a) Numerosity: The class members are so numerous that joinder of all
14 members would be unfeasible and impractical. The membership of the
15 entire class is unknown to Plaintiff at this time; however, the class is
16 estimated to be greater than one hundred (100) individuals and the
17 identity of such membership is readily ascertainable by inspection of
18 Defendants' employment records.
- 19 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
20 protect the interests of each class member with whom she has a well-
21 defined community of interest, and Plaintiff's claims (or defenses, if
22 any) are typical of all class members as demonstrated herein.
- 23 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
24 protect the interests of each class member with whom she has a well-
25 defined community of interest and typicality of claims, as demonstrated
26 herein. Plaintiff acknowledges that she has an obligation to make
27 known to the Court any relationship, conflicts or differences with any
28 class member. Plaintiff's attorneys, the proposed class counsel, are

versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

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

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

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510, 515(d) and 1198—Unpaid Overtime (Against all Defendants)

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

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

1 be the . . . standard conditions of labor for employees. The employment of any employee . . .
2 under conditions of labor prohibited by the order is unlawful.”

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

7 53. Specifically, the applicable IWC Wage Order provides that Defendants are and
8 were required to pay Plaintiff and class members working more than eight (8) hours in a day
9 or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all
10 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
11 workweek.

12 54. The applicable IWC Wage Order further provides that Defendants are and were
13 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
14 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
15 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
16 employee, including nondiscretionary bonuses and incentive pay.

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

23 56. In addition, California Labor Code section 515(d) provides that for the purpose
24 of computing the overtime rate of pay for a nonexempt full-time salaried employee, the
25 regular hourly rate is 1/40th the employee’s weekly salary.

26 57. During the relevant time period, Defendants willfully failed to pay all overtime
27 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
28 class members were not paid overtime premiums for all of the hours they worked in excess of

1 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
2 hours in a week, because all hours worked were not recorded.

3 58. First, Defendants had, and continue to have, a company-wide policy and/or
4 practice of discouraging and impeding Plaintiff and class members from recording hours
5 worked that were outside of their scheduled shifts in order to limit the amount of overtime
6 employees could accrue. On information and belief, this policy of limiting overtime, coupled
7 with Defendants' assignment of heavy workloads and sales goals (*see infra*), led Plaintiff and
8 class members to work off-the-clock outside of their scheduled shift times in order to
9 complete their assigned tasks. Defendants had a practice of requiring employees who worked
10 closing shifts to leave the branch premises together as a group, once all employee registers
11 had been accurately balanced, which caused Plaintiff and class members to remain under
12 Defendants' control while off-the-clock. After clocking out at the end of their scheduled
13 shifts, Plaintiff and class members were required to wait and/or assist other employees with
14 branch closing duties before they could leave Defendants' premises. For example, once every
15 two weeks, Plaintiff was required to clock out at the end of her shift and wait for 5-20 minutes
16 for all fellow employees to resolve any balance discrepancies they had with their registers
17 before she was permitted to exit the branch with all of her co-workers. As a result of this
18 policy and/or practice, Plaintiff and class members were subject to Defendants' control after
19 they had clocked out the end of their scheduled shifts, but were not compensated for this time.

20 59. Moreover, on information and belief, Defendants engaged in a policy and/or
21 practice of altering time records at the discretion of management. For example, Defendants'
22 management would adjust Plaintiff's and class members' time records and delete time
23 recorded past their scheduled shifts to avoid having to pay overtime wages. As a result of
24 Defendants' policy and/or practice, Plaintiff and class members were not paid overtime for all
25 overtime hours incurred.

26 60. Second, Defendants had, and continue to have, a company-wide policy and/or
27 practice of understaffing their locations while assigning heavy workloads and implementing
28 quarterly sales goals for new accounts at each branch, which resulted in a failure to provide

1 Plaintiff and class members with adequate meal period coverage. As a result, Plaintiff and
2 class members were not afforded timely, uninterrupted thirty (30) minute meal periods during
3 shifts in which they were entitled to receive meal periods. For example, approximately every
4 two months, Plaintiff would miss her meal periods entirely in order to keep up with high
5 customer traffic due to a lack of coverage. Thus, Plaintiff and class members missed meal
6 periods and/or had meal periods cut short or interrupted in order to handle their workloads.

7 61. Further, because Defendants frowned upon employees accruing meal period
8 penalties, Defendants pressured Plaintiff and class members to clock out for meal periods
9 and/or adjusted employee time records to reflect compliant meal periods, regardless of
10 whether they had received a compliant meal period or not, in order to strictly limit meal
11 penalties that Defendants would otherwise owe. For example, at least on five (5) occasions,
12 Plaintiff was pressured by Defendants' management to record compliant meal periods on
13 shifts when she had not in fact, received a compliant meal period. Thus, Plaintiff and class
14 members performed work during meal periods for which they were not paid.

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

22 63. Furthermore, Defendants did not pay Plaintiff and class members the correct
23 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
24 wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses,
25 and/or other forms of remuneration. However, in violation of the California Labor Code,
26 Defendants failed to incorporate all compensation, including incentive pay, nondiscretionary
27 bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for
28 purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff and

1 class members worked overtime and received these other forms of pay, Defendants failed to
2 pay all overtime wages by paying a lower overtime rate than required.

3 64. Specifically, Defendants paid Plaintiff and class members incentive pay and/or
4 nondiscretionary bonuses which were listed on Plaintiff's and class members' wage
5 statements as "GU SPOTBNS," "NEW MBR," and "SAVINGS." On information and belief,
6 "GU SPOTBNS" was a nondiscretionary bonus for employees working during the COVID-19
7 pandemic. Additionally, on information and belief, "NEW MBR" denoted a nondiscretionary
8 bonus for employees who signed up a new credit union member and "SAVINGS" denoted a
9 nondiscretionary bonus for employees who opened a new savings account for an existing
10 customer. During pay periods that Plaintiff and class members were paid overtime wages,
11 Defendants did not incorporate the nondiscretionary bonuses and/or incentive pay into
12 Plaintiff's and class members' regular rate of pay and, as a result, paid them at incorrect and
13 lower rates of pay for overtime hours worked. Specifically, Defendants paid Plaintiff and
14 class members 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay.
15 Defendants' failure to properly calculate the overtime rates of pay based on all remuneration
16 paid has resulted in an underpayment of overtime wages to Plaintiff and class members on a
17 company-wide basis.

18 65. Defendants' failure to pay Plaintiff and class members the balance of overtime
19 compensation as required by California law, violates the provisions of California Labor Code
20 sections 510, 515, and 1198. Pursuant to California Labor Code section 1194, Plaintiff and
21 class members are entitled to recover their unpaid overtime compensation, as well as interest,
22 costs, and attorneys' fees.

23 **SECOND CAUSE OF ACTION**

24 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 25 **Minimum Wages** 26 **(Against all Defendants)**

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

1 67. 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. 4-2001 as “the time
5 during which an employee is subject to the control of an employer, and includes all the time
6 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
7 Regs. tit. 8, § 11040(2)(K) (defining “Hours Worked”).

8 68. As stated, due to Defendants’ restrictions on overtime accrual, Defendants
9 systematically failed to pay Plaintiff and class members for actual hours worked before and
10 after scheduled shifts, because these hours were not accurately recorded. Additionally, as set
11 forth above, due to Defendants’ uniform practice of understaffing their locations while
12 assigning of heavy workloads and sales goals, Plaintiff and class members were impeded from
13 taking all uninterrupted meal periods to which they were entitled and were required to work
14 off-the-clock. In addition, Defendants systematically failed to pay Plaintiff and class
15 members for actual hours worked during unpaid meal periods because these hours were not
16 always correctly recorded. As set forth above, Defendants’ policies required Plaintiff and
17 class members to clock out for meal periods even though Plaintiff and class members
18 performed work duties, such as assisting customers, and were subject to Defendants’ control
19 during this time.

20 69. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
21 and class members. To the extent that these off-the-clock hours did not qualify for overtime
22 premium payment, Defendants did not pay at least minimum wages for those hours worked
23 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
24 1198.

25 70. Defendants’ failure to pay Plaintiff and class members minimum wages violates
26 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
27 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
28 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

1 **THIRD CAUSE OF ACTION**

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

3 **Violations**

4 **(Against all Defendants)**

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

7 72. At all relevant times herein set forth, California Labor Code section 512(a)
8 provides that an employer may not require, cause, or permit an employee to work for a period
9 of more than five (5) hours per day without providing the employee with a meal period of not
10 less than thirty (30) minutes, except that if the total work period per day of the employee is
11 not more than six (6) hours, the meal period may be waived by mutual consent of both the
12 employer and the employee. Under California law, first meal periods must start after no more
13 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
14 2012).

15 73. At all relevant times herein set forth, California Labor Code sections 226.7,
16 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
17 meal period mandated by an applicable order of the IWC.

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

24 75. As stated, Defendants had, and continue to have, a company-wide policy and/or
25 practice of understaffing locations while simultaneously assigning heavy workloads and sales
26 goals, and discouraging employees from incurring overtime, which has resulted in a lack of
27 meal period coverage and prevented Plaintiff and class members from taking all timely meal
28 periods to which they were entitled. Additionally, Defendants had a company-wide policy of

1 scheduling meal periods in such a way that prevented Plaintiff and class members from taking
2 all timely, uninterrupted thirty (30) minute meal periods. For example, Defendants'
3 management required at least one (1) employee to monitor the registers at any given moment,
4 necessitating that Plaintiff and class members take their meal periods one-at-a-time. When
5 Defendants' business was busy, there were not enough employees to provide coverage for
6 meal periods and the meal period schedule would fall behind, which would often prevent
7 Plaintiff and class members from taking all timely meal periods.

8 76. As a result, Plaintiff and class members were forced to work in excess of five
9 (5) hours before taking a meal period and/or had to forgo their meal periods altogether. For
10 example, at least 13 times during her employment, Plaintiff had to forgo her meal periods
11 altogether. Specifically, Plaintiff's time-punch records reflect that on September 2, 2019;
12 October 26, 2019; November 11, 2019; November 28, 2019; November 29, 2019; December
13 2, 2019; January 9, 2020; January 20, 2020; January 22, 2020; January 24, 2020; February 17,
14 2020; February 29, 2020; and March 25, 2020, Plaintiff did not take a meal period, but
15 Defendants did not pay her any meal period premiums. As a further example, at least once or
16 twice per week, Plaintiff would take her meal periods after her fifth hour of work when her
17 branch was trying to meet its sales goals or keep up with customer traffic. Specifically,
18 Plaintiff's time-punch records reflect that on October 31, 2019; January 12, 2020; January 16,
19 2020; January 30, 2020; February 6, 2020; and March 5, 2020, Plaintiff took her meal periods
20 after her fifth hour of work, but Defendants again failed to pay her any meal period premiums.

21 77. Moreover, as stated, because Defendants frowned upon employees accruing
22 meal period penalties, Defendants' management would adjust Plaintiff's and class members'
23 time records and/or pressured employees to clock out for meal periods to reflect compliant
24 meal periods, regardless of whether they had received a compliant meal period, in order to
25 strictly limit meal penalties that would need to be paid by Defendants. For example, on at
26 least five (5) occasions, Plaintiff was pressured by Defendants' management to record
27 compliant meal periods on shifts when she had not, in fact, received a compliant meal period.
28 Plaintiff and class members did not sign valid meal period waivers on days that they were

1 entitled to meal periods and were not relieved of all duties.

2 78. At all times herein mentioned, Defendants knew or should have known that, as
3 a result of these policies, Plaintiff and class members were prevented from being relieved of
4 all duties and required to perform some of their assigned duties during meal periods.
5 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
6 members meal period premium wages when meal periods were late, interrupted, shortened, or
7 missed.

8 79. Moreover, Defendants engaged in a company-wide practice and/or policy of
9 not paying all meal period premiums owed when compliant meal periods are not provided.
10 Because of Defendants' practices and/or policies, Plaintiff and class members have not
11 received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the
12 extent that Defendants did pay Plaintiff and class members premium pay for missed, late, and
13 interrupted meal periods, Defendants did not pay Plaintiff and class members at the correct
14 rate of pay for premiums because Defendants systematically failed to include all forms of
15 compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
16 remuneration, in the regular rate of pay. As a result, Defendants failed to provide Plaintiff and
17 class members compliant meal periods in violation of California Labor Code sections 226.7,
18 512, and 516 and failed to pay the full meal period premiums due.

19 80. Defendants' conduct violates the applicable IWC Wage Order, and California
20 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
21 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
22 rate of compensation for each work day that the meal period was not provided.

23 **FOURTH CAUSE OF ACTION**

24 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 25 **(Against all Defendants)**

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

28 82. At all relevant times herein set forth, the applicable IWC Wage Order and

1 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
2 members' employment by Defendants.

3 83. At all relevant times, the applicable IWC Wage Order provides that "[e]very
4 employer shall authorize and permit all employees to take rest periods, which insofar as
5 practicable shall be in the middle of each work period" and that the "rest period time shall be
6 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
7 hours or major fraction thereof" unless the total daily work time is less than three and one-half
8 (3½) hours.

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

20 85. During the relevant time period, Defendants regularly failed to authorize and
21 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
22 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
23 practices, including understaffing while assigning heavy workloads and sales goals, prevented
24 Plaintiff and class members from being relieved of all duty to take rest periods.

25 86. Additionally, on information and belief, during the relevant time period,
26 Defendants maintained and implemented a company-wide on-premises rest period policy,
27 which mandated that Plaintiff and class members remain on the work premises during their
28 rest periods. Because Plaintiff and class members were restricted from leaving the premises

1 during rest periods, they were denied the ability to use their rest periods freely for their own
2 purposes, such as running personal errands. Thus, Defendants effectively maintained control
3 over Plaintiff and class members during rest periods.

4 87. As a result of Defendants' practices and policies, Plaintiff and class members
5 worked shifts in excess of 3.5 hours and in excess of 6 hours without receiving all
6 uninterrupted 10-minute rest periods to which they were entitled. For example, Plaintiff
7 missed her rest periods approximately four (4) times per week, usually in the afternoons when
8 customer traffic increased, in order to complete all of the work-related duties Defendants
9 assigned to her.

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

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

24 **FIFTH CAUSE OF ACTION**

25 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 26 **Statements and Failure to Maintain Accurate Payroll Records** 27 **(Against all Defendants)**

28 90. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

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

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

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

23 94. Further, because Defendants did not calculate Plaintiff's and Subclass
24 members' regular rate of pay correctly for purposes of paying overtime and paid sick leave,
25 Defendants did not list the correct amount of gross wages earned by Plaintiff and Subclass
26 members in compliance with section 226(a)(1). For the same reason, Defendants failed to list
27 the correct amount of net wages earned by Plaintiff and Subclass members in violation of
28 section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect

1 during the pay period, namely, correct overtime rates of pay and correct rates of pay for paid
2 sick leave, in violation of section 226(a)(9).

3 95. The wage statement deficiencies also include, among other things, failing to list
4 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
5 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
6 only the last four digits of his or her social security number or an employee identification
7 number other than a social security number; failing to list the name and address of the legal
8 entity that is the employer; failing to list the inclusive dates of the period for which class
9 members were paid; and/or failing to state all hours worked as a result of not recording or
10 stating the hours they worked off-the-clock.

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

24 97. California Labor Code section 1174(d) provides that “[e]very person employing
25 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
26 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
27 plants or establishments at which employees are employed, payroll records showing the hours
28 worked daily by and the wages paid to, and the number of piece-rate units earned by and any

1 applicable piece rate paid to, employees employed at the respective plants or
2 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
3 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
4 members showing the daily hours they worked and the wages paid thereto as a result of failing
5 to record the off-the-clock hours that they worked.

6 98. Plaintiff and Subclass members are entitled to recover from Defendants the
7 greater of their actual damages caused by Defendants’ failure to comply with California Labor
8 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
9 employee.

10 **SIXTH CAUSE OF ACTION**

11 **Violation of California Labor Code § 227.3—Failure to Pay All Vested Vacation Time** 12 **and Paid Time Off Upon Termination** 13 **(Against all Defendants)**

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

16 100. At all relevant times herein set forth, California Labor Code section 227.3
17 provides that whenever a contract of employment or employer policy provides for paid
18 vacations, and an employee is terminated without having taken his or her vested vacation
19 time, all vested vacation shall be paid to him or her as wages at his or her final rate in
20 accordance with such contract of employment or employer policy respecting eligibility or time
21 served.

22 101. During the relevant time period, Defendants had a company-wide policy and
23 practice of failing to pay Plaintiff and class members vested vacation wages that were owed to
24 them at the end of their employment, in violation of California Labor Code section 227.3. For
25 example, Defendants failed to pay Plaintiff the balance of her accrued and unused vacation
26 wages, which was 6.67 hours at the time of her termination.

27 102. Specifically, Plaintiff had earned vested vacation pay until her employment
28 with Defendants ended on June 30, 2020. However, Defendants only paid Plaintiff the

1 balance of her accrued and unused vacation wages as of June 15, 2020, or the end of her prior
2 pay period. Defendants willfully and improperly paid Plaintiff and class members their
3 unused and vested vacation wages through their second to last pay period worked.

4 Defendants' failure to pay Plaintiff and class members all vested vacation wages at the end of
5 their employment has caused a forfeiture of vested vacation wages, in violation of California
6 Labor Code section 227.3.

7 103. Defendants' failure to pay Plaintiff and class members who are no longer
8 employed by Defendants all vested vacation wages at the end of their employment caused a
9 forfeiture of vested vacation wages in violation of California Labor Code section 227.3.
10 Accordingly, Plaintiff and class members are entitled to recover from Defendants their unpaid
11 vested vacation wages due to them, plus interest.

12 SEVENTH CAUSE OF ACTION

13 Violation of California Labor Code § 204—Failure to Timely Pay Wages During 14 Employment 15 (Against all Defendants)

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

18 105. This cause of action is dependent upon, and wholly derivative of, the overtime
19 wages, minimum wages, sick leave pay, and/or meal and rest period premiums, that were not
20 timely paid to Plaintiff and those class members.

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

26 107. At all times relevant herein, Labor Code section 204 provides that all wages
27 earned by any person in any employment between the sixteenth (16th) and the last day,
28 inclusive, of any calendar month, other than those wages due upon termination of an

1 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
2 month.

3 108. At all times relevant herein, Labor Code section 204 provides that all wages
4 earned for labor in excess of the normal work period shall be paid no later than the payday for
5 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
6 204 provides that the requirements of this section are deemed satisfied by the payment of
7 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
8 seven (7) calendar days following the close of the payroll period.

9 109. During the relevant time period, Defendants willfully failed to pay Plaintiff and
10 class members all wages due including, but not limited to, overtime wages, minimum wages,
11 sick leave pay, and/or meal and rest period premiums, within the time periods specified by
12 California Labor Code section 204.

13 110. Defendants' failure to pay Plaintiff and class members all wages due violates
14 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
15 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

16 **EIGHTH CAUSE OF ACTION**

17 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 18 **Termination** 19 **(Against all Defendants)**

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

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

113. For example, Plaintiff was terminated on June 30, 2020, but Plaintiff did not receive her final wages, including all incentive pay and nondiscretionary bonuses, from Defendants until a month later, on July 31, 2020. Thus, Defendants failed to pay Plaintiff her final wages immediately, in violation of Labor Code section 201.

114. Additionally, Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, all vested vacation wages, sick leave pay, and/or meal and rest period premiums either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

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

NINTH CAUSE OF ACTION

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

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

117. 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

1 employee whose wages are at least two (2) times the minimum wage provided herein may be
2 required to provide and maintain hand tools and equipment customarily required by the trade
3 or craft.”

4 118. During the relevant time period, Defendants had a company-wide policy of
5 requiring Plaintiff and class members to utilize their own personal vehicles to carry out
6 company business, such as attending mandatory company meetings at Defendants’ main
7 office, but failed to reimburse them for all costs of travel, including mileage. For example,
8 approximately every two weeks, Plaintiff was forced to drive her personal vehicle to attend
9 mandatory company meetings at Defendants’ headquarters, prior to reporting to work at her
10 assigned branch. Following these meetings, Plaintiff drove 3-7 miles from Defendants’
11 headquarters in Santa Clara, California, to her assigned branch (Rivermark or San Jose,
12 respectively), but was not reimbursed for her mileage or travel expenses. Thus, although
13 Defendants required Plaintiff and class members to use their own personal vehicles to fulfill
14 their job duties, Defendants did not reimburse them for their mileage and travel expenses.

15 119. Defendants could have provided Plaintiff and class members with the actual
16 tools for use on the job, such as company vehicles, or could have reimbursed employees for
17 the costs of their mileage and travel. Instead, Defendants passed these operating costs off
18 onto Plaintiff and class members.

19 120. Defendants’ company-wide policy and/or practice of passing on their operating
20 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
21 have intentionally and willfully failed to reimburse Plaintiff and other class members for
22 necessary business-related expenses and costs.

23 121. Plaintiff and class members are entitled to recover from Defendants their
24 business-related expenses incurred during the course and scope of their employment, plus
25 interest.

26 //

27 //

28 //

1 **TENTH CAUSE OF ACTION**

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

3 **(Against all Defendants)**

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

6 123. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
7 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
8 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
9 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section
10 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
11 violations of those Labor Code sections not found in section 2699.5, including sections 246,
12 515(d), 516, and 1182.12.

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

- 15 (a) Violation of Labor Code sections 510, 515(d), 1198, and the applicable
16 IWC Wage Order for Defendants’ failure to compensate Plaintiff and
17 other aggrieved employees with all required overtime pay and failure to
18 properly calculate the overtime rates paid to Plaintiff and other
19 aggrieved employees, as alleged herein;
- 20 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
21 and the applicable IWC Wage Order for Defendants’ failure to
22 compensate Plaintiff and other aggrieved employees with at least
23 minimum wages for all hours worked, as alleged herein;
- 24 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
25 applicable IWC Wage Order for Defendants’ failure to provide Plaintiff
26 and other aggrieved employees with meal periods, as alleged herein;
- 27 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
28 IWC Wage Order for Defendants’ failure to authorize and permit

1 Plaintiff and other aggrieved employees to take rest periods, as alleged
2 herein;

3 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
4 Wage Order for failure to provide accurate and complete wage
5 statements to Plaintiff and other aggrieved employees, as alleged herein;

6 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
7 IWC Wage Order for failure to maintain payroll records, as alleged
8 herein;

9 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
10 earned wages upon termination, as alleged herein;

11 (h) Violation of Labor Code section 204 for failure to pay all earned wages
12 during employment, as alleged herein;

13 (i) Violation of Labor Code section 227.3 for failure to pay Plaintiff and
14 other aggrieved employees all vested vacation time upon termination, as
15 alleged herein;

16 (j) Violation of Labor Code section 246 for failure to properly calculate the
17 sick leave paid to Plaintiff and other aggrieved employees, as set forth
18 below; and

19 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
20 and other aggrieved employees for all business expenses necessarily
21 incurred, as alleged herein.

22 125. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
23 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
24 days from the commencement of employment with paid sick days, to be accrued at least one
25 hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4),
26 employers must provide no less than 24 hours or three (3) days of paid sick leave (or
27 equivalent paid leave or paid time off) in each year of the employee's employment. Further,
28 Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using

one of two calculations: 1) “[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]” or 2) “[p]aid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

126. During the relevant time period, Defendants did not pay Plaintiff and other aggrieved employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, Defendants paid Plaintiff and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, Defendants 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 sick leave rate. Therefore, during times when Plaintiff and other aggrieved employees took sick leave and received these other forms of pay, Defendants failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, Defendants paid Plaintiff and other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

127. For example, during the pay period ending May 31, 2020, Plaintiff took 8.00 hours of sick leave and earned \$30.00 in incentive pay or nondiscretionary bonuses during the same pay period. However, Defendants paid Plaintiff’s sick leave rate based on her hourly rate of approximately \$23.00 instead of her regular rate of pay. Defendants’ failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and other aggrieved employees on a company-wide basis in violation of Labor Code 246(l). Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

//

//

1 **ELEVENTH CAUSE OF ACTION**

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

3 **Unlawful Business Practices**

4 **(Against all Defendants)**

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

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

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

15 131. Defendants’ activities, as alleged herein, are violations of California law, and
16 constitute unlawful business acts and practices in violation of California Business &
17 Professions Code sections 17200, *et seq.*

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

- 21 (a) Requiring non-exempt employees, including Plaintiff and class
22 members, to work overtime without paying them proper compensation
23 in violation of California Labor Code sections 510, 515(d), 1198, and
24 the applicable IWC Order, and paying Plaintiff and class members
25 overtime at a lower rate than required by law by failing to properly
26 calculate the regular rate of pay for purposes of overtime, as alleged
27 herein;
- 28 (b) Failing to pay at least minimum wage to Plaintiff and class members in

violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC Order, as alleged herein;

- (c) Failing to provide uninterrupted meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC Order, as alleged herein;
- (d) Failing to authorize and permit Plaintiff 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 Plaintiff 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 to pay all vested vacation wages to Plaintiff and class members in violation of California Labor Code 227.3, as alleged herein;
- (g) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204 and the applicable IWC Order, as alleged herein;
- (h) Failing to properly calculate the sick leave paid to Plaintiff and class members in violation of Labor Code section 246(l), as set forth below; and
- (i) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein.

133. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or

1 equivalent paid leave or paid time off) in each year of the employee's employment. Further,
2 Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using
3 one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in
4 the same manner as the regular rate of pay for the workweek in which the employee uses paid
5 sick time, whether or not the employee actually works overtime in that workweek[;]" or 2)
6 "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's
7 total wages, not including overtime premium pay, by the employee's total hours worked in the
8 full pay periods of the prior 90 days of employment."

9 134. During the relevant time period, Defendants did not pay Plaintiff and class
10 members the correct sick leave rates of pay. As stated, in addition to an hourly wage,
11 Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses, and/or
12 other forms of remuneration. However, in violation of the California Labor Code, Defendants
13 failed to incorporate all remunerations, including incentive pay and/or nondiscretionary
14 bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick
15 leave rate. Therefore, during times when Plaintiff and class members took sick leave and
16 received these other forms of pay, Defendants failed to pay all sick leave benefits by paying a
17 lower sick leave rate than required. Specifically, Defendants paid Plaintiff and class members
18 sick leave based on their hourly rate of pay instead of their regular rate of pay.

19 135. For example, during the pay period ending May 31, 2020, Plaintiff took 8.00
20 hours of sick leave and earned \$30.00 in incentive pay or nondiscretionary bonuses during the
21 same pay period. However, Defendants paid Plaintiff's sick leave rate based on her hourly
22 rate of approximately \$23.00 instead of her regular rate of pay. Defendants' failure to
23 properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an
24 underpayment of sick leave benefits to Plaintiff and class members on a company-wide basis
25 in violation of Labor Code 246(l).

26 136. As a result of the violations of California law herein described, Defendants
27 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
28 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged

1 herein.

2 137. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
3 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
4 Defendants during a period that commences four years prior to the filing of this complaint; a
5 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
6 class members; and an award of attorneys' fees pursuant to California Code of Civil
7 Procedure section 1021.5 and other applicable laws; and an award of costs.

8 **TWELFTH CAUSE OF ACTION**

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

10 **Unfair Business Practices**

11 **(Against all Defendants)**

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

14 139. Defendants are “persons” as defined by California Business & Professions
15 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
16 and/or associations.

17 140. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
18 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
19 injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff
20 seeks to enforce important rights affecting the public interest within the meaning of Code of
21 Civil Procedure section 1021.5.

22 141. Defendants’ activities, namely Defendants’ company-wide practice and/or
23 policy of not paying Plaintiff and class members meal and rest period premiums due to them
24 under Labor Code section 226.7, deprived Plaintiff and class members of the compensation
25 guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy
26 provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate
27 employees, and secondarily to shape employer conduct.” *Safeway, Inc. v. Superior Court*, 238
28 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to

1 Plaintiff and class members as part of their employment with Defendants, and thus
2 Defendants' practice and/or policy of denying these statutory benefits constitutes an unfair
3 business practice in violation of California Business & Professions Code sections 17200, *et*
4 *seq. (Id.)*

5 142. A violation of California Business & Professions Code sections 17200, *et seq.*
6 may be predicated on any unfair business practice. In the instant case, Defendants' policies
7 and practices have violated the spirit of California's meal and rest period laws and constitute
8 acts against the public policy behind these laws.

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

16 **REQUEST FOR JURY TRIAL**

17 Plaintiff requests a trial by jury.

18 **PRAYER FOR RELIEF**

19 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
20 against Defendants, jointly and severally, as follows:

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

24 **Class Certification**

- 25 2. That this case be certified as a class action;
26 3. That Plaintiff be appointed as the representative of the Class and Subclass;
27 4. That counsel for Plaintiff be appointed as class counsel.

28 //

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 2
- 3
- 4

5
6

7
89
1011
12

13

14
15
1617
1819
2021
22

23

24
25

26

27
28

1 willfully failing to provide all meal periods to Plaintiff and class members;

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

5 18. For all actual, consequential, and incidental losses and damages, according to
6 proof;

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

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

10 21. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

12 22. For such other and further relief as the Court may deem equitable and
13 appropriate.

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

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

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

21 25. For all actual, consequential, and incidental losses and damages, according to
22 proof;

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

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

26 28. For attorneys' fees pursuant to California Code of Civil Procedure section
27 1021.5, or as otherwise provided by law; and

28 29. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Fifth Cause of Action

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

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

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

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

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

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

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 227.3 by willfully failing to pay vested vacation wages owed at the time of termination of the employment of Plaintiff and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proofs;

38. For prejudgment interest on any unpaid wages from the date of such amounts were due, or as otherwise provided by law

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

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

As to the Seventh Cause of Action

41. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
2 overtime wages, minimum wages, sick leave pay, and/or meal and rest period premiums
3 during their employment;

4 42. For all actual, consequential and incidental losses and damages, according to
5 proof;

6 43. For statutory penalties according to proof pursuant to California Labor Code
7 section 210;

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

10 45. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

12 46. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 **As to the Eight Cause of Action**

15 47. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
17 vested vacation wages, sick leave pay, and/or meal and rest period premiums, owed at the
18 time of termination of the employment of Plaintiff and other terminated class members;

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

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

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

25 51. For attorneys' fees pursuant to California Code of Civil Procedure section
26 1021.5, or as otherwise provided by law; and

27 52. For such other and further relief as the Court may deem equitable and
28 appropriate.

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

2 53. That the Court declare, adjudge and decree that Defendants violated California
3 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
4 related expenses and costs incurred by Plaintiff and class members;

5 54. For unpaid business-related expenses and such general and special damages as
6 may be appropriate;

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

9 56. For all actual, consequential, and incidental losses and damages, according to
10 proof;

11 57. For attorneys' fees and costs pursuant to California Labor Code section
12 2802(c), or as otherwise provided by law; and

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

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

16 59. That the Court declare, adjudge and decree that Defendants violated the
17 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
18 510, 515(d), and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
19 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7,
20 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by
21 failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to
22 provide accurate wage statements and maintain accurate payroll records); 227.3 (by failing to
23 pay all vested vacation days upon termination); 201, 202, and 203 (by failing to timely pay all
24 earned wages upon termination); 204 (by failing to timely pay all earned wages during
25 employment); 246 (by failing to properly calculate sick leave pay); and 2802 (by failing to
26 reimburse business expenses);

27 60. For civil penalties pursuant to California Labor Code sections 210, 226.3,
28 248.5, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor

Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 246, 510, 512(a), 515(d), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

61. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 246, 510, 512(a), 515(d), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

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

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

As to the Eleventh Cause of Action

64. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to pay Plaintiff and class members all vested vacation wages, failing to timely pay Plaintiff and class members all earned wages during employment, failing to properly calculate Plaintiff's and class members' sick leave, and failing to reimburse Plaintiff and class members for business-related expenses, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

65. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

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

67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to

1 California Code of Civil Procedure section 1021.5; and

2 68. For such other and further relief as the Court may deem equitable and
3 appropriate.

4 **As to the Twelfth Cause of Action**

5 69. That the Court declare, adjudge and decree that Defendants' conduct of denying
6 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
7 an unfair business practice in violation of California Business and Professions Code sections
8 17200, *et seq.*;

9 70. For restitution of the statutory benefits under section 226.7 unfairly withheld
10 from Plaintiff and class members and prejudgment interest from the day such amounts were
11 due and payable;

12 71. For the appointment of a receiver to receive, manage and distribute any and all
13 funds disgorged from Defendants and determined to have been wrongfully acquired by
14 Defendants as a result of violations of California Business & Professions Code sections
15 17200, *et seq.*;

16 72. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
17 California Code of Civil Procedure section 1021.5;

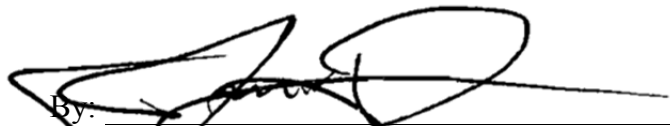
18 73. For pre-judgment and post-judgment interest as provided by law; and

19 74. For such other and further relief as the Court may deem equitable and
20 appropriate.

21
22 Dated: April 12, 2021

Respectfully submitted,

23 Capstone Law APC

24
25 

26 Robert Drexler
27 Molly DeSario
28 Jonathan Lee
Helga Hakimi

Attorneys for Plaintiff Teresa Zapata

Exhibit 1

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

February 4, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Teresa Zapata v. KeyPoint Credit Union*

Dear PAGA Administrator:

This office represents Teresa Zapata in connection with her claims under the California Labor Code. Ms. Zapata was an employee of KEYPOINT CREDIT UNION (“KEYPOINT”).

The employer may be contacted directly at the address below:

KEYPOINT CREDIT UNION
2805 BOWERS AVE
SANTA CLARA CA 95051

Ms. Zapata 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. Zapata seeks relief on behalf of herself, the State of California, and other persons who are or were employed by KEYPOINT in California as a non-exempt 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.

KEYPOINT employed Ms. Zapata as a non-exempt, salary-paid Financial Services Representative II from approximately July 2019 to June 2020. Ms. Zapata worked for KEYPOINT at its branch locations in San Jose and Santa Clara, California. She typically worked seven (7) to eight (8) hours or more per day, and five (5) or more days per week. Her primary job duties included, without limitation, performing teller transactions, opening and closing customer accounts, sending referrals to loan officers, adhering to branch sales goals, and balancing the cash drawer.

KEYPOINT has committed one or more of the following Labor Code violations against Ms. Zapata, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California

Labor Code section 2699(c):¹

KEYPOINT's Company-Wide and Uniform Payroll and HR Practices

KEYPOINT is a California state chartered credit union headquartered in Santa Clara, California. KEYPOINT provides retail banking services and owns and operates six (6) credit union branch locations in California. Upon information and belief, KEYPOINT maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Santa Clara, California, for all non-exempt employees working for KEYPOINT in California, including Ms. Zapata and other aggrieved employees. At all relevant times, KEYPOINT issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt employees in California, including Ms. Zapata and other aggrieved employees, regardless of their location or position.

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

Violation of California Labor Code §§ 510, 515(d), 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. In addition, California Labor Code section 515(d) provides that for the purpose of computing the overtime rate of pay for a nonexempt full-time salaried employee, the regular hourly rate is 1/40th the employee's weekly salary. 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.

KEYPOINT willfully failed to pay all overtime wages owed to Ms. Zapata and other aggrieved employees. During the relevant time period, Ms. Zapata 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. Zapata's experience and counsel's review of those records currently available relating to Ms. Zapata'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. Zapata 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, KEYPOINT had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Zapata and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with KEYPOINT's assignment of heavy workloads and sales goals (*see infra*), led Ms. Zapata and other aggrieved employees to work off-the-clock outside of their scheduled shift times in order to complete their assigned tasks. KEYPOINT had a practice of requiring employees who worked closing shifts to leave the branch premises together as a group, once all employees' registers had been accurately balanced, which caused Ms. Zapata and other aggrieved employees to remain under KEYPOINT's control while off-the-clock. After clocking out at the end of their scheduled shifts, Ms. Zapata and other aggrieved employees were required to wait and/or assist other employees with branch closing duties before they could leave KEYPOINT's premises. For example, once every two weeks, Ms. Zapata was required to clock out at the end of her shift and wait for 5-20 minutes for all fellow employees to resolve any balance discrepancies they had at their registers before she was permitted to exit the branch with all her co-workers. As a result of this policy and/or practice, Ms. Zapata and other aggrieved employees were subject to KEYPOINT's control after they had clocked out the end of their scheduled shifts, but were not compensated for this time.

Moreover, on information and belief, KEYPOINT engaged in a policy and/or practice of altering time records at the discretion of management. For example, KEYPOINT's management would adjust Ms. Zapata's and other aggrieved employees' time records and delete time recorded past their scheduled shifts to avoid having to pay overtime wages. As a result of KEYPOINT's policy and/or practice, Ms. Zapata and other aggrieved employees were not paid overtime for all overtime hours incurred.

Second, KEYPOINT had, and continues to have, a company-wide policy and/or practice of understaffing its locations while assigning heavy workloads and implementing quarterly sales goals for new accounts at each branch, which resulted in a failure to provide Ms. Zapata and other aggrieved employees with adequate meal period coverage. As a result, Ms. Zapata and other aggrieved employees were not afforded timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods. For example, approximately every two months, Ms. Zapata would miss her meal periods entirely in order to keep up with high customer traffic due to a lack of coverage. Thus, Ms. Zapata and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads.

Further, because KEYPOINT frowned upon employees accruing meal period penalties, KEYPOINT pressured Ms. Zapata and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that KEYPOINT would otherwise owe. For example, on at least five (5) occasions, Ms. Zapata was pressured by KEYPOINT's management to record compliant meal periods on shifts when she had not in fact, received a compliant meal period. Thus, Ms. Zapata and other aggrieved employees performed work during meal periods for which they were not paid.

KEYPOINT knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Zapata 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. Because Ms. Zapata 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. Zapata and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

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

Specifically, KEYPOINT paid Ms. Zapata and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Ms. Zapata's and other aggrieved employees' wage statements as "GU SPOTBNS," "NEW MBR," and "SAVINGS." On information and belief, "GU SPOTBNS" was a nondiscretionary bonus for employees working during the COVID-19 pandemic. Additionally, on information and belief, "NEW MBR" denoted a nondiscretionary bonus for employees who signed up a new credit union member, and "SAVINGS" denoted a nondiscretionary bonus for employees who opened a new savings account for an existing customer. During pay periods that Ms. Zapata and other aggrieved employees were paid overtime wages, KEYPOINT did not incorporate the nondiscretionary bonuses and/or incentive pay into Ms. Zapata'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, KEYPOINT paid Ms. Zapata and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. KEYPOINT'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. Zapata and other aggrieved employees on a company-wide basis.

KEYPOINT's failure to pay Ms. Zapata and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510, 515(d), and 1198. Ms. Zapata 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, due to KEYPOINT's restrictions on overtime accrual, KEYPOINT systematically failed to pay Ms. Zapata and other aggrieved employees for actual hours worked before and after scheduled shifts, because these hours were not accurately recorded. Additionally, as set forth above, due to KEYPOINT's uniform practice of understaffing its locations while assigning of heavy workloads and sales goals, Ms. Zapata and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. In addition, KEYPOINT systematically failed to pay Ms. Zapata and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded. As set forth above, KEYPOINT's policies required Ms. Zapata and other aggrieved employees to clock out for meal periods even though Ms. Zapata and other aggrieved employees performed work duties, such as assisting customers, and were subject to KEYPOINT's control during this time.

Thus, KEYPOINT did not pay minimum wages for all hours worked by Ms. Zapata and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, KEYPOINT 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, KEYPOINT regularly failed to pay at least minimum wages to Ms. Zapata 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. Zapata and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

As stated, KEYPOINT had, and continues to have, a company-wide policy and/or practice of understaffing locations while simultaneously assigning heavy workloads and sales goals, and discouraging employees from incurring overtime, which has resulted in a lack of meal period coverage and prevented Ms. Zapata and other aggrieved employees from taking all timely meal periods to which they were entitled. Additionally, KEYPOINT had a company-wide policy of scheduling meal periods in such a way that prevented Ms. Zapata and other aggrieved employees

from taking all timely, uninterrupted thirty (30) minute meal periods. For example, KEYPOINT's management required at least one (1) employee to monitor the registers at any given moment, necessitating that Ms. Zapata and other aggrieved employees take their meal periods one-at-a-time. When KEYPOINT's business was busy, there were not enough employees to provide coverage for meal periods and the meal period schedule would fall behind, which would often prevent Ms. Zapata and other aggrieved employees from taking all timely meal periods.

As a result, Ms. Zapata and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and/or had to forgo their meal periods altogether. For example, at least 13 times during her employment, Ms. Zapata had to forgo her meal periods altogether. Specifically, Ms. Zapata's time-punch records reflect that on January 9, 2020; January 20, 2020; January 22, 2020; January 24, 2020; February 17, 2020; February 29, 2020; and March 25, 2020, Ms. Zapata did not take a meal period, but KEYPOINT did not pay her any meal period premiums. As a further example, at least once or twice per week, Ms. Zapata would take her meal periods after her fifth hour of work when her branch was trying to meet its sales goals or keep up with customer traffic. Specifically, Ms. Zapata's time-punch records reflect that on January 12, 2020; January 16, 2020; January 30, 2020; February 6, 2020; and March 5, 2020, Ms. Zapata took her meal periods after her fifth hour of work, but KEYPOINT again failed to pay her any meal period premiums.

Moreover, as stated, because KEYPOINT frowned upon employees accruing meal period penalties, KEYPOINT's management would adjust Ms. Zapata's and other aggrieved employees' time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by KEYPOINT. For example, on at least five (5) occasions, Ms. Zapata was pressured by KEYPOINT's management to record compliant meal periods on shifts when she had not, in fact, received a compliant meal period.

In addition, during the relevant time period, other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Ms. Zapata and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

KEYPOINT 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. Zapata and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that KEYPOINT did pay Ms. Zapata and other aggrieved employees premium pay for missed, late, and interrupted meal periods, KEYPOINT did not pay Ms. Zapata and other aggrieved employees at the correct rate of pay for premium wages because KEYPOINT 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, KEYPOINT failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, 516, and 1198. Ms. Zapata and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

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

During the relevant time period, KEYPOINT regularly failed to authorize and permit Ms. Zapata 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, KEYPOINT's company-wide practices, including understaffing while assigning heavy workloads and sales goals, prevented Ms. Zapata and other aggrieved employees from being relieved of all duty to take rest periods.

Additionally, on information and belief, during the relevant time period, KEYPOINT maintained and implemented a company-wide on-premises rest period policy, which mandated that Ms. Zapata and other aggrieved employees remain on the work premises during their rest periods. Because Ms. Zapata and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, KEYPOINT effectively maintained control over Ms. Zapata and other aggrieved employees during rest periods.

As a result of KEYPOINT's practices and policies, Ms. Zapata and other aggrieved employees worked shifts in excess of 3.5 hours and in excess of 6 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Zapata missed her rest periods approximately four (4) times per week, usually in the afternoons when customer traffic increased, in order to complete all of the work-related duties KEYPOINT assigned to her.

KEYPOINT 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. Zapata and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that KEYPOINT did pay Ms. Zapata and

other aggrieved employees one (1) additional hour of premium pay for missed rest periods, KEYPOINT did not pay Ms. Zapata and other aggrieved employees at the correct rate of pay for premium wages because KEYPOINT 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, KEYPOINT failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Zapata 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. KEYPOINT has not provided Ms. Zapata 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 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, KEYPOINT has knowingly and intentionally provided Ms. Zapata and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, KEYPOINT issued uniform wage statements to Ms. Zapata 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, KEYPOINT violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

Further, because KEYPOINT did not calculate Ms. Zapata's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and paid sick leave, KEYPOINT did not list the correct amount of gross wages earned by Ms. Zapata and other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by Ms. Zapata and other aggrieved employees in violation of section 226(a)(5). KEYPOINT also failed to

correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

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

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

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

Because KEYPOINT failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Zapata 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. Zapata 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. Zapata 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 § 227.3 – Failure to Pay Vested Vacation Wages

California Labor Code section 227.3 provides that if a contract of employment or employer policy provides for paid vacations and an employer terminates an employee, all vested vacation shall be paid to the employee at the employee's final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served. Vacation time vests on a pro-rata basis and, upon termination, an employee is entitled to a pro rata share of vested vacation pay. An employer may not require an employee to forfeit earned but unused vacation pay.

During the relevant time period, KEYPOINT had a company-wide policy and practice of failing to pay Ms. Zapata and other aggrieved employees vested vacation wages that were owed to them at the end of their employment, in violation of California Labor Code section 227.3. For example, KEYPOINT failed to pay Ms. Zapata the balance of her accrued and unused vacation wages, which was 6.67 hours at the time of her termination.

Specifically, Ms. Zapata had earned vested vacation pay until her employment with KEYPOINT ended on June 30, 2020. However, KEYPOINT only paid Ms. Zapata the balance of her accrued and unused vacation wages as of June 15, 2020, or the end of her prior pay period. KEYPOINT willfully and improperly paid Ms. Zapata and other aggrieved employees their unused and vested vacation wages through their second to last pay period worked. KEYPOINT's failure to pay Ms. Zapata and other aggrieved employees all vested vacation wages at the end of their employment has caused a forfeiture of vested vacation wages, in violation of California Labor Code section 227.3.

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

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

Ms. Zapata 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.

For example, Ms. Zapata was terminated on June 30, 2020, but Ms. Zapata did not receive her final wages, including all incentive pay and nondiscretionary bonuses, from KEYPOINT until a month later, on July 31, 2020. Thus, KEYPOINT failed to pay Ms. Zapata her final wages immediately, in violation of Labor Code section 201.

Additionally, KEYPOINT willfully failed to pay Ms. Zapata and other aggrieved employees who are no longer employed by KEYPOINT the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, all vested vacation wages, sick leave pay, and/or meal and rest period premium wages either at the time of discharge, or within seventy-two (72) hours of their leaving KEYPOINT's employ.

Ms. Zapata 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 § 246 – Unpaid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, KEYPOINT did not pay Ms. Zapata and other aggrieved employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, KEYPOINT paid Ms. Zapata and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, KEYPOINT 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 sick leave rate. Therefore, during times when Ms. Zapata and other aggrieved employees took sick leave and received these other forms of pay, KEYPOINT failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, KEYPOINT paid Ms. Zapata and other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

For example, during the pay period ending May 31, 2020, Ms. Zapata took 8.00 hours of sick leave and earned \$30.00 in incentive pay or nondiscretionary bonuses during the same pay period. However, KEYPOINT paid Ms. Zapata's sick leave rate based on her hourly rate of approximately \$23.00 instead of her regular rate of pay.

KEYPOINT's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Ms. Zapata and other aggrieved employees on a company-wide basis in violation of Labor Code 246(l). Ms. Zapata and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, KEYPOINT had a company-wide policy of requiring Ms. Zapata and other aggrieved employees to utilize their own personal vehicles to carry out company business, such as attending mandatory company meetings at KEYPOINT's main office, but failed to reimburse them for all costs of travel, including mileage. For example, approximately every two weeks, Ms. Zapata was forced to drive her personal vehicle to attend mandatory company meetings at KEYPOINT's headquarters, prior to reporting to work at her assigned branch. Following these meetings, Ms. Zapata drove 3-7 miles from KEYPOINT's headquarters in Santa Clara, California, to her assigned branch (Rivermark or San Jose, respectively), but was not reimbursed for her mileage or travel expenses. Thus, although KEYPOINT required Ms. Zapata and other aggrieved employees to use their own personal vehicles to fulfill their job duties, KEYPOINT did not reimburse them for their mileage and travel expenses.

KEYPOINT could have provided Ms. Zapata and other aggrieved employees with the actual tools for use on the job, such as company vehicles, or could have reimbursed employees for the costs of their mileage and travel. Instead, KEYPOINT passed these operating costs off onto Ms. Zapata and other aggrieved employees.

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

California Labor Code § 558(a)

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

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

Accordingly, Ms. Zapata 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. Zapata, 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 KEYPOINT for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 246, 510, 512, 515(d), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

Best Regards,


Anthony Castillo

Copy: KEYPOINT CREDIT UNION (via U.S. Certified Mail)



SENDER: COMPLETE THIS SECTION

- 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:

KEYPOINT CREDIT UNION
2805 BOWERS AVE
SANTA CLARA CA 95051



9590 9402 1512 5362 2722 51

2. Article Number (Transfer from service label)

7020 1290 0001 8879 1067

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

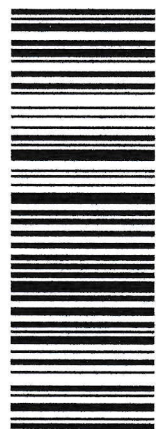
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

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
- ☐ Registered Mail Restricted Delivery (over \$500)

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

Domestic Return Receipt



7020 1290 0001 8879 1067

KEYPOINT CREDIT UNION
2805 BOWERS AVE
SANTA CLARA CA 95051

Stone

LAW APC

1000
Park East, Ste 1000
San Jose, CA 95067

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 8.80

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

KEYPOINT CREDIT UNION

Street and Apt. No., 2805 BOWERS AVE

City, State, ZIP+4® SANTA CLARA CA 95051

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

See Reverse for Instructions

Postmark
Here

Zapata V. Keypoint
Credit Union

SENDER: COMPLETE THIS SECTION

- 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:

KEYPOINT CREDIT UNION
2805 BOWERS AVE
SANTA CLARA CA 95051



9590 9402 1512 5362 2722 51

2. Article Number (Transfer from service label)

7020 1290 0001 8879 1067

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x E. Medina

☐ Agent☐ Addressee

B. Received by (Printed Name)

E. Medina

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 | ☐ 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) | |

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

Domestic Return Receipt

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Capstone Law APC, 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

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

Derek S. Sachs
Anthony C. Ocegvera
Lewis Brisbois Bisgaard & Smith LLP
2020 West El Camino Avenue, Suite 700
Sacramento, California 95833
Derek.Sachs@lewisbrisbois.com
Anthony.Ocegvera@lewisbrisbois.com

- (X) **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).
- () **MESSENGER:** I caused such envelope to be delivered by hand to the individuals at the address listed above via a messenger service (Prolegal).
- () **PERSONAL:** I personally delivered by hand the envelope to the individuals at the address listed above.
- () **OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered via overnight courier service (FedEx) to the individuals at the address listed above.
- () **BY E-MAIL:** Due to the National Emergency and public health orders in California related to the coronavirus and COVID-19 pandemic, Capstone Law APC attorneys and staff are working remotely and therefore have limited capabilities to send physical mail in the normal course of business. On this date, I personally transmitted the foregoing document(s) using electronic mail to the e-mail address(es) of the person(s) listed above.
- (X) **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Sandy S. Acevedo