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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/25/2021 at 10:53:00 AM
Clerk of the Superior Court
By Elizabeth Reyes, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

MARIO CEJA, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

vs.

SILVERGATE BANK, a California
Corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 37-2020-00016207-CU-OE-CTL

**SECOND AMENDED CLASS ACTION
COMPLAINT**

- (1) Violation of California Labor Code 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512 (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages)
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800, 2802; (Unreimbursed Business Expenses);
- (8) Violation of Labor Code §§ 2698, *et seq.* (California Labor Code Private Attorneys General Act of 2004); and
- (9) Violation of California Business and Professions Code §§ 17200, *et seq.*

COMES NOW, Plaintiff Mario Ceja (“Plaintiff”), individually, and on behalf of members of the general public similarly situated alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The damages sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over all Defendants because, upon information and belief, each party is either a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and transact business in the County of San Diego.

PARTIES

5. Plaintiff MARIO CEJA (“Plaintiff”) is an individual residing in the State of California.

6. Defendant SILVERGATE BANK, at all times herein mentioned, was and is, upon information and belief, a corporation organized and existing under the laws of the State of California, and transacts business throughout the State of California, including the County of San Diego.

7. At all relevant times, Defendant SILVERGATE BANK was the “employer” of Plaintiff within the meaning of all applicable state laws and statutes.

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1 8. At all times herein relevant, SILVERGATE BANK and DOES 1 through 100,
2 and each of them, were the agents, partners, joint venturers, representatives, servants,
3 employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all
4 times relevant hereto were acting within the course and scope of their authority as such
5 agents, partners, joint venturers, representatives, servants, employees, successors, co-
6 conspirators and assigns, and all acts or omissions alleged herein were duly committed with
7 the ratification, knowledge, permission, encouragement, authorization and consent of each
8 defendant designated herein.

9 9. The true names and capacities, whether corporate, associate, individual or
10 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues
11 said defendants by such fictitious names. Plaintiff is informed and believes, and based on that
12 information and belief alleges, that each of the defendants designated as a DOE is legally
13 responsible for the events and happenings referred to in this Complaint, and unlawfully
14 caused the injuries and damages to Plaintiff as alleged in this Complaint. Plaintiff will seek
15 leave of court to amend this Complaint to show the true names and capacities when the same
16 have been ascertained.

17 10. SILVERGATE BANK and DOES 1 through 100 will hereinafter collectively
18 be referred to as Defendants.

19 11. Plaintiff further alleges that Defendants including the unknown defendants
20 identified as DOES, directly or indirectly controlled or affected the working conditions,
21 wages, working hours, and conditions of employment of Plaintiff and the other class members
22 so as to make each of said Defendants employers and employers liable under the statutory
23 provisions set forth herein.

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1 **FACTUAL ALLEGATIONS**

2 12. The employees who comprise the Class, including Plaintiff, are non-exempt
3 employees pursuant to the applicable Wage Order(s) of the IWC. Defendants hire hourly
4 employees who work in non-exempt positions at the direction of Defendants in the State of
5 California. Plaintiff and the class members were either not paid by Defendants for all hours
6 worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff
7 also contends that Defendants failed to pay Plaintiff and the class members all wages due and
8 owing to their detriment.

9 13. As discussed in detail below, Defendants' employment practices resulted in (i)
10 class members performing off-the-clock pre-shift and post-shift work without compensation;
11 (ii) the under-recording of all hours worked, resulting in failure to pay overtime wages; (iii)
12 failure to provide timely, uninterrupted meal and rest breaks; (iv) failure to pay all premium
13 wages owed for missed, late, and interrupted meal and rest breaks; (v) failure to include non-
14 discretionary bonuses and incentives in employees' regular rates of pay for purposes of
15 calculating overtime compensation; (vi) failure to furnish accurate wage statements; (vii)
16 failure to reimburse all necessarily incurred business expenses; and (viii) failure to timely pay
17 class members upon separation. Defendants' conduct thus violated various provisions of the
18 California Labor Code and applicable Wage Orders.

19 14. Defendants failed to pay Plaintiff and the class members all wages due and
20 owing for pre-shift and post-shift hours worked off-the-clock. Defendants' managers
21 prohibited Plaintiff and the class members from logging any time outside of their scheduled
22 hours on their timecards. However, because of the heavy workloads Defendants imposed upon
23 Plaintiff and the class members, they regularly performed pre-shift and post-shift work off-
24 the-clock, without compensation, to meet Defendants' expectations. Specifically, Plaintiff
25 and the class members typically arrived 15 to 30 minutes prior to the start of their scheduled
26 shifts but were instructed by their supervisor, Kim Barr, that they may not log this time on
27 their timecards. Because Defendant maintained a strict policy that required employees to
28 answer all incoming calls, Plaintiff and the class members were also often required to stay at

1 work past the end of their scheduled shifts to complete calls. However, Plaintiff and the class
2 members were not allowed to log this time either.

3 15. Therefore, from at least four (4) years prior to the filing of this lawsuit and
4 continuing to the present, Defendants had a consistent policy or practice of failing to pay
5 employees for all hours worked, and failing to pay minimum wages, overtime wages, and
6 double time wages for all time worked as required by California Law and in violation of the
7 Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C)
8 of the applicable IWC Wage Orders. Defendants' willful actions resulted in the systematic
9 underpayment of wages to class members.

10 16. As a result of Defendants' unlawful policies and practices, Plaintiff and the
11 class members worked overtime hours for which they were not adequately and completely
12 compensated, in addition to the hours they were required to work off-the-clock pre- and post-
13 shift. To the extent applicable, Defendants also failed to pay Plaintiff and the other class
14 members at the appropriate overtime rate of 1.5x the employee's regular rate, as required
15 under the Labor Code and applicable IWC Wage Orders, and as discussed further in
16 paragraph 20 below.

17 17. Additionally, Defendants failed to provide all legally mandated meal and rest
18 periods to Plaintiff and the other class members as required by Labor Code §§ 226.7 and 512,
19 and paragraphs 11 and 12 of the applicable IWC Wage Orders.

20 18. Defendants did not maintain any meal or rest break policies. Moreover,
21 Defendants failed to provide Plaintiff and the class members with compliant meal and rest
22 breaks in practice. Defendants imposed heavy workloads on Plaintiff and the other class
23 members and pressured them to skip, postpone, or interrupt their meal and rest breaks to
24 ensure efficiency. Plaintiff and the class members attest that Defendants merely made meal
25 and rest breaks available, rather than required, which led many employees to skip or shorten
26 their breaks to complete their workloads. Defendants also instructed Plaintiff and the class
27 members to rely on their work schedules when recording their hours. This meant that Plaintiff
28 and the other class members were required to log out for their meal breaks at their scheduled

1 times, regardless of whether they took their meal breaks at those times, later, or at all.

2 19. Although Defendants did not provide Plaintiff and the class members with
3 compliant meal and rest breaks, as described in detail in paragraph 18 above, Defendants
4 failed to pay any rest period premiums and significantly underpaid meal period premiums.
5 Defendants' meal and rest break practices are in violation of Labor Code §§ 226.7, 512, and
6 the applicable Industrial Welfare Commission Wage Order(s).

7 20. Further, Defendants failed to include non-discretionary bonuses and incentives
8 paid to Plaintiff and the class members when calculating their regular rates of pay for
9 purposes of overtime compensation. Instead, Defendants calculated employees' overtime rates
10 as 1.5x their base hourly rates of pay. This practice contradicts the method for calculating
11 employees' regular rates of pay set out in the DLSE Manual, §§ 49.1-49.1.2.2. Consequently,
12 this claim justifies the full payment of § 203 and § 204 civil penalties.

13 21. Defendants also did not reimburse Plaintiff and the class members for all
14 business expenses necessarily incurred in performance of their job duties. Specifically,
15 Plaintiff and the other class members were required to use their personal cell phones to
16 contact management when they were out of the office. Defendants' managers worked
17 remotely two days per week, and the only way to reach them was via text. As a result,
18 Plaintiff and the class members were required to use their personal cell phones on a regular
19 basis during their scheduled shifts for at least 30 minutes to one (1) hour per week for this
20 purpose. However, Defendants did not reimburse Plaintiff and the other class members for
21 this usage in violation of Labor Code § 2802(a).

22 22. Finally, from at least four (4) years prior to the filing of this lawsuit and
23 continuing to the present, Defendants have had a consistent policy of failing to pay all wages
24 owed to employees at the time of their termination or within seventy-two (72) hours of their
25 resignation, as required by California wage-and-hour laws.

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1 **CLASS ACTION ALLEGATIONS**

2 23. Plaintiff brings this action on his own behalf and on behalf of all other
3 members of the general public similarly situated, and, thus, seeks class certification under
4 Code of Civil Procedure section 382.

5 24. The proposed class is defined as follows:

6 All current and former hourly-paid non-exempt employees of Defendant
7 (excluding those employees who have already signed severance agreements)
8 who worked in California from May 26, 2016 through June 30, 2021.

9 25. Plaintiff reserves the right to establish subclasses as appropriate.

10 26. The class is ascertainable and there is a well-defined community of interest in
11 the litigation:

12 a. Numerosity: The class members are so numerous that joinder of all
13 class members is impracticable. The membership of the entire class is
14 unknown to Plaintiff at this time; however, the class is estimated to be
15 approximately fifty (50) individuals and the identity of such
16 membership is readily ascertainable by inspection of Defendants'
17 records.

18 b. Typicality: Plaintiff's claims are typical of all other class members as
19 demonstrated herein. Plaintiff will fairly and adequately protect the
20 interests of the other class members with whom he has a well-defined
21 community of interest.

22 c. Adequacy: Plaintiff will fairly and adequately protect the interests of
23 each class member, with whom he has a well-defined community of
24 interest and typicality of claims, as demonstrated herein. Plaintiff has
25 no interest that is antagonistic to the other class members. Plaintiff's
26 attorneys, the proposed class counsel, are versed in the rules governing
27 class action discovery, certification, and settlement. Plaintiff has
28 incurred, and during the pendency 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: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.

e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

27. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the class:

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- b. Whether Defendants had a corporate policy and practice of failing to pay their hourly-paid or non-exempt employees within the State of California for all hours worked, missed meal periods and rest breaks in violation of California law;
- c. Whether Defendants time keeping system rounded their hourly-paid or non-exempt employees time to deprive them of wages for all hours worked;

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- 1 d. Whether Defendants required Plaintiff and the other class members to
2 work over eight (8) hours per day and/or over forty (40) hours per week
3 and failed to pay the legally required overtime compensation to Plaintiff
4 and the other class members;
- 5 e. Whether Defendants deprived Plaintiff and the other class members of
6 meal periods or required Plaintiff and the other class members to work
7 during meal periods without compensation;
- 8 f. Whether Defendants deprived Plaintiff and the other class members of
9 rest periods or required Plaintiff and the other class members to work
10 during rest periods without compensation;
- 11 g. Whether Defendants failed to pay minimum wages to Plaintiff and the
12 other class members;
- 13 h. Whether Defendants failed to compensate for travel time to and from
14 jobsites;
- 15 i. Whether Defendants reimbursed Plaintiff and the other class members
16 for business expenses;
- 17 j. Whether Defendants' conduct was willful or reckless; and
- 18 k. Whether Defendants engaged in unfair business practices in violation of
19 California Business & Professions Code section 17200, *et seq.*

20 **GENERAL ALLEGATIONS**

21 28. At all relevant times set forth herein, Defendants employed Plaintiff and other
22 persons as hourly-paid or non-exempt employees.

23 29. Defendants employed Plaintiff as an hourly-paid or non-exempt employee
24 during the statutory period in the State of California.

25 30. Defendants hired Plaintiff and the other class members and classified them as
26 hourly-paid or non-exempt employees and failed to properly calculate and compensate them
27 for all hours worked, missed meal periods and/or rest breaks.

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1 31. Defendants had the authority to hire and terminate Plaintiff and the other class
2 members, to set work rules and conditions governing Plaintiff's and the other class members'
3 employment, and to supervise their daily employment activities.

4 32. Defendants exercised sufficient authority over the terms and conditions of
5 Plaintiff's and the other class members' employment for them to be joint employers of
6 Plaintiff and the other class members.

7 33. Defendants directly hired and paid wages and benefits to Plaintiff and the other
8 class members.

9 34. Defendants continue to employ hourly-paid or non-exempt employees within
10 the State of California, including the County of San Diego.

11 35. Plaintiff is informed and believes, and based thereon alleges, that at all times
12 herein relevant, Defendants were advised by skilled lawyers and other professionals,
13 employees, advisors, and consultants highly knowledgeable about California wage laws,
14 employment and personnel practices.

15 36. Plaintiff is informed and believes, and based thereon alleges, that at all times
16 herein relevant, without any justification, Defendants ignored the employment and personnel
17 policy changes proposed by skilled lawyers and other professionals, employees, advisors, and
18 consultants highly knowledgeable about California wage laws, employment and personnel
19 practices.

20 37. Plaintiff and the other class members worked over eight (8) hours in a day,
21 and/or forty (40) hours in a week during their employment with Defendants.

22 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or
24 non-exempt employees within the State of California. This scheme involved, *inter alia*, failing
25 to properly calculate their overtime pay and pay them for all hours worked, missed meal
26 periods and rest breaks in violation of California law.

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1 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to receive
3 certain wages for overtime compensation and that they were not receiving wages for overtime
4 compensation including drive time.

5 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knew or should have known that Plaintiff and the other class members were entitled to receive
7 overtime at the regular rate of pay that includes all forms of compensation instead of at just
8 hourly rate of pay.

9 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 failed to provide Plaintiff and the other class members the required meal periods and rest
11 breaks during the relevant time period as required under the Industrial Welfare Commission
12 Wage Orders and thus they are entitled to any and all applicable penalties.

13 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knew or should have known that Plaintiff and the other class members were entitled to receive
15 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class
16 member's regular rate of pay when a meal period was missed, and they did not receive all
17 meal periods or payment of one additional hour of pay at Plaintiff's and the other class
18 member's regular rate of pay when a meal period was missed.

19 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that Plaintiff and the other class members were entitled to receive
21 all rest breaks or payment of one additional hour of pay at Plaintiff's regular rate of pay when
22 a rest break was missed, and they did not receive all rest breaks or payment of one additional
23 hour of pay at Plaintiff's and the other class members' regular rate of pay when a rest break
24 was missed.

25 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 knew or should have known that Plaintiff and the other class members were entitled to receive
27 at least minimum wages for compensation and that they were not receiving at least minimum
28 wages for all hours worked.

1 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to receive
3 reimbursements for all business expenses incurred in discharge of his duties.

4 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 knew or should have known that they had a duty to compensate Plaintiff and the other class
6 members pursuant to California law, and that Defendants had the financial ability to pay such
7 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
8 represented to Plaintiff and the other class members that they were properly denied wages, all
9 in order to increase Defendants' profits.

10 47. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 knew or should have known that Plaintiff and other class members were entitled to receive
12 complete and accurate wage statements in accordance with California law, but, in fact,
13 Plaintiff and other class members did not receive complete and accurate wage statements from
14 Defendants. The deficiencies include but are not limited to: the failure to include the total
15 number of hours worked by Plaintiff and other class members.

16 48. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 knew or should have known that Plaintiff and the other class members were entitled to
18 reimbursement for necessary business-related expenses.

19 49. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that Defendants had to keep complete and accurate payroll
21 records for Plaintiff and other class members in accordance with California law, but, in fact,
22 did not keep complete and accurate payroll records for Plaintiff and other class members.

23 50. At all material times set forth herein, Defendants failed to pay overtime wages
24 to Plaintiff and the other class members. Plaintiff and the other class members were required
25 to work more than eight (8) hours per day and/or forty (40) hours per week without overtime
26 compensation.

27 51. At all material times set forth herein, Defendants failed to provide
28 uninterrupted meal periods and rest breaks to Plaintiff and the other class members.

52. At all material times set forth herein, Defendants failed to pay Plaintiff and the other class members at least minimum wages for all hours worked.

53. At all material times set forth herein, Defendants failed to pay Plaintiff and other class members the wages owed to them upon discharge or resignation.

54. At all material times set forth herein, Defendants failed to provide complete or accurate wage statements to Plaintiff and other class members.

55. At all material times set forth herein, Defendants failed to keep complete or accurate payroll records for Plaintiff and other class members.

56. At all material times set forth herein, Defendants failed to properly compensate Plaintiff and the other class members pursuant to California law in order to increase Defendants' profits.

57. California Labor Code section 218 states that noting in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him under this article.”

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against SILVERGATE BANK and Does 1 through 100)

58. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 46, and each and every part thereof with the same force and effect as though fully set forth herein

59. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

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1 60. Specifically, the applicable IWC Wage Order provides that Defendants are and
2 were required to pay Plaintiff and other class members employed by Defendants, who
3 work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at
4 the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more
5 than forty (40) hours in a workweek.

6 61. The applicable IWC Wage Order further provides that Defendants are and were
7 required to pay Plaintiff and other class members overtime compensation at a rate of two
8 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

9 62. California Labor Code section 510 codifies the right to overtime compensation
10 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
11 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
12 day of work, and overtime compensation at twice the regular hourly rate for hours worked in
13 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
14 of work.

15 63. During the relevant time period set forth herein, Plaintiff and other class
16 members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a
17 week

18 64. As a pattern and practice, during the relevant time period set forth herein,
19 Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and
20 other class members.

21 65. Defendants' pattern and practice of failing to pay Plaintiff and other class
22 members the unpaid balance of overtime compensation, as required by California laws,
23 violates the provisions of California Labor Code sections 510 and 1198, and is therefore
24 unlawful.

25 66. Pursuant to California Labor Code section 1194, Plaintiff and other class
26 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
27 attorneys' fees.

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1 72. As a pattern and practice, during the relevant time period set forth herein,
2 Plaintiff and other class members who were scheduled to work for a period of time no longer
3 than six (6) hours, and who did not waive their legally-mandated meal periods by mutual
4 consent, were required to work for periods longer than five (5) hours without an uninterrupted
5 meal period of not less than thirty (30) minutes and/or without a rest period.

6 73. As a pattern and practice, during the relevant time period set forth herein,
7 Plaintiff and other class members who were scheduled to work for a period of time no longer
8 than twelve (12) hours, and who did not waive their legally-mandated meal periods by mutual
9 consent, were required to work for periods longer than ten (10) hours without an uninterrupted
10 meal period of not less than thirty (30) minutes and/or without a rest period.

11 74. As a pattern and practice, during the relevant time period set forth herein,
12 Plaintiff and other class members who were scheduled to work for a period of time in excess
13 of six (6) hours were required to work for periods longer than five (5) hours without an
14 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

15 75. As a pattern and practice, during the relevant time period set forth herein,
16 Plaintiff and other class members who were scheduled to work for a period of time in excess
17 of twelve (12) hours were required to work for periods longer than ten (10) hours without an
18 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

19 76. As a pattern and practice, during the relevant time period set forth herein,
20 Defendants intentionally and willfully required Plaintiff and other class members to work
21 during meal periods and failed to compensate Plaintiff and the other class members the full
22 meal period premium for work performed during meal periods.

23 77. As a pattern and practice, during the relevant time period set forth herein,
24 Defendants failed to pay Plaintiff and other class members the full meal period premium due
25 pursuant to California Labor Code section 226.7.

26 78. Defendants' conduct violates applicable IWC Wage Order and California
27 Labor Code sections 226.7 and 512(a).

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79. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against SILVERGATE BANK and Does 1 through 100)

80. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 68, and each and every part thereof with the same force and effect as though fully set forth herein.

81. During the relevant time period set forth herein, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiff's and other class members' employment by Defendants.

82. During the relevant time period set forth herein, 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.

83. During the relevant time period set forth herein, 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 (3 ½) hours.

84. As a pattern and practice, during the relevant time period set forth herein, Defendants required Plaintiff and other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

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1 85. As a pattern and practice, during the relevant time period set forth herein,
2 Defendants willfully required Plaintiff and other class members to work during rest periods
3 and failed to pay Plaintiff and the other class members the full rest period premium for work
4 performed during rest periods.

5 86. As a pattern and practice, during the relevant time period set forth herein,
6 Defendants failed to pay Plaintiff and the other class members the full rest period premium
7 due pursuant to California Labor Code section 226.7.

8 87. Defendants' conduct violates applicable IWC Wage Orders and California
9 Labor Code section 226.7.

10 88. Pursuant to the applicable IWC Wage Orders and California Labor Code
11 section 226.7(b), Plaintiff and the other class members are entitled to recover from
12 Defendants one additional hour of pay at the employees' regular hourly rate of compensation
13 for each workday that the rest period was not provided.

14 **FOURTH CAUSE OF ACTION**

15 **(Violation of California Labor Code §§ 1194 and 1197)**

16 **(Against SILVERGATE BANK and Does 1 through 100)**

17 89. Plaintiff incorporates by reference the allegations contained in paragraphs 1
18 through 77 and each and every part thereof with the same force and effect as though fully set
19 forth herein.

20 90. During the relevant time period set forth herein, California Labor Code sections
21 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of a
22 lesser wage than the minimum so fixed, is unlawful.

23 91. As a pattern and practice, during the relevant time period set forth herein,
24 Defendants failed to pay minimum wages to Plaintiff and other class members as required,
25 pursuant to California Labor Code sections 1194 and 1197.

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1 92. Defendants' failure to pay Plaintiff and other class members the minimum
2 wage as required violates California Labor Code sections 1194 and 1197. Pursuant to those
3 sections, Plaintiff and other class members are entitled to recover the unpaid balance of their
4 minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated
5 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

6 93. Pursuant to California Labor Code section 1194.2, Plaintiff and other class
7 members are entitled to recover liquidated damages in an amount equal to the wages
8 unlawfully unpaid and interest thereon.

9 **FIFTH CAUSE OF ACTION**

10 **(Violation of California Labor Code §§ 201 and 202)**

11 **(Against SILVERGATE BANK and Does 1 through 100)**

12 94. Plaintiff incorporates by reference the allegations contained in paragraphs 1
13 through 82, and each and every part thereof with the same force and effect as though fully set
14 forth herein.

15 95. During the relevant time period set forth herein, California Labor Code sections
16 201 and 202 provide that if an employer discharges an employee, the wages earned and
17 unpaid at the time of discharge are due and payable immediately, and if an employee quits his
18 or her employment, his or her wages shall become due and payable not later than seventy-two
19 (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or
20 her intention to quit, in which case the employee is entitled to his or her wages at the time of
21 quitting.

22 96. As a pattern and practice, during the relevant time period set forth herein,
23 Defendants intentionally and willfully failed to pay Plaintiff and other class members who are
24 no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72)
25 hours of their leaving Defendants' employ.

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97. Defendants' pattern and practice of failing to pay Plaintiff and other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

98. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

99. Plaintiff and other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum as provided by Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against SILVERGATE BANK and Does 1 through 100)

100. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 88, and each and every part thereof with the same force and effect as though fully set forth herein.

101. During the relevant time period set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form,

properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

102. As a pattern and practice, Defendants have intentionally and willfully failed to provide Plaintiff and other class members with complete and accurate wage statements. The deficiencies include but are not limited to: the failure to include the total number of hours worked by Plaintiff and other class members.

103. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff and other class members have suffered injury and damage to their statutorily protected rights.

104. More specifically, Plaintiff and other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

105. Plaintiff and other class members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

106. Plaintiff and other class members are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g).

SEVENTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against SILVERGATE BANK and Does 1 through 100)

107. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 95, and each and every part thereof with the same force and effect as though fully set forth herein.

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1 108. Pursuant to California Labor Code sections 2800 and 2802, an employer must
2 reimburse its employee for all necessary expenditures incurred by the employee in direct
3 consequence of the discharge of his or her job duties or in direct consequence of his or her
4 obedience to the directions of the employer.

5 109. Defendants have intentionally and willfully failed to reimburse Plaintiff and
6 other class members for all necessary business-related expenses and costs. Plaintiff and other
7 class members are entitled to recover from Defendants their business-related expenses and
8 costs incurred during the course and scope of their employment, plus interest accrued from the
9 date on which the employee incurred the necessary expenditures at the same rate as judgments
10 in civil actions in the State of California.

11 **EIGHTH CAUSE OF ACTION**

12 **(Violation of Labor Code §§ 2698, *et seq.* (“PAGA”))**

13 **(Against SILVERGATE BANK and Does 1 through 100)**

14 110. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 98 as
15 though fully set forth herein.

16 111. PAGA expressly establishes that any provision of the California Labor Code
17 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
18 departments, divisions, commissions, boards, agencies or employees for a violation of the
19 California Labor Code, may be recovered through a civil action brought by an aggrieved
20 employee on behalf of himself or herself, and other current or former employees.

21 112. Plaintiff provided written notice to the LWDA and Defendants of the specific
22 provisions of the Labor Code he contends were violated, and the theories supporting his
23 contentions.

24 113. Plaintiff and the other non-exempt employees are “aggrieved employees” as
25 defined by California Labor Code § 2699(c) in that they are all current or former employees
26 of Defendants within the State of California, and one or more of the alleged violations was
27 committed against them.

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1 **Failure to Pay Minimum and Overtime Wages**

2 114. At all times relevant herein, Defendants were required to compensate their non-
3 exempt employees minimum wages for all hours worked and overtime wages for all hours
4 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
5 mandate of Labor Code §§ 510, 1194, 1197, and 1198.

6 115. As a pattern and practice, Defendants failed to compensate Plaintiff and other
7 aggrieved current and former employees for all hours worked, resulting in a failure to pay all
8 minimum wages and overtime wages, where applicable.

9 **Failure to Provide Meal Periods and Rest Breaks**

10 116. In accordance with the mandates of Labor Code §§ 226.7 and 512, Defendants
11 were required to authorize and permit their non-exempt employees to take a 10-minute rest
12 break for every four (4) hours worked or major fraction thereof, and were further required to
13 provide their non-exempt employees with a 30-minute meal period for every five (5) hours
14 worked.

15 117. As a pattern and practice, Defendants failed to provide Plaintiff and other
16 aggrieved current and former employees with legally-mandated meal periods and rest breaks
17 and failed to pay proper compensation for this failure.

18 **Failure to Timely Pay Wages During Employment**

19 118. At all times relevant herein, Defendants were required to pay their employees
20 within a specified time period pursuant to the mandate of Labor Code § 204.

21 119. As a pattern and practice, Defendants regularly failed to pay Plaintiff and other
22 aggrieved current and former employees all wages due and owing them within the required
23 time period.

24 **Failure to Timely Pay Wages Upon Termination**

25 120. At all times relevant herein, Defendants were required to pay their employees
26 all wages owed in a timely fashion at the end of employment pursuant to California Labor
27 Code §§ 201 to 204.

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1 121. As a result of Defendants' Labor Code violations alleged above, Defendants
2 failed to pay Plaintiff and the other aggrieved former employees their final wages pursuant to
3 Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to Labor
4 Code § 203.

5 **Failure to Provide Complete and Accurate Wage Statements**

6 122. At all times relevant herein, Defendants were required to keep *accurate* records
7 regarding their California employees pursuant to the mandate of Labor Code §§ 226 and 1174.

8 123. As a result of Defendants' various Labor Code violations, Defendants failed to
9 keep accurate records regarding Plaintiff and other aggrieved current and former employees.
10 For example, Defendants failed in their affirmative obligation to keep accurate records
11 regarding Plaintiff and other aggrieved current and former employees' gross wages earned,
12 total hours worked, all deductions, net wages earned, and all applicable hourly rates and the
13 number of hours worked at each hourly rate.

14 **Failure to Reimburse Business Expenses**

15 124. At all times relevant herein, Defendants were required to reimburse their
16 employees for any and all necessary expenditures or losses incurred by the employees in
17 direct consequences of the discharge or his or her duties pursuant to the mandate of Labor
18 Code §§ 2800 and 2802.

19 125. As a pattern and practice, Defendants regularly failed to pay Plaintiff and other
20 aggrieved current and former employees all business expenses incurred and owing them
21 within the required time period.

22 **Penalties**

23 126. Pursuant to California Labor Code § 2699, Plaintiff, individually, and on behalf
24 of other current and former aggrieved employees, requests and is entitled to recover from
25 Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, as
26 well as all statutory penalties against Defendants, and each of them, including but not limited
27 to:

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127. Penalties under California Labor Code § 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

128. Penalties under California Code of Regulations Title 8 § 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

129. Penalties under California Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

130. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

131. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and 2699, and any other applicable statute.

NINTH CAUSE OF ACTION

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

(Against SILVERGATE BANK and Does 1 through 100)

132. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 120, and each and every part thereof with the same force and effect as though fully set forth herein.

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1 133. Defendants' conduct, as alleged in this Complaint, has been, and continues to
2 be, unfair, unlawful and harmful to Plaintiff and the other class members, and Defendants'
3 competitors. Accordingly, Plaintiff and the other class members seek to enforce important
4 rights affecting the public interest within the meaning of Code of Civil Procedure section
5 1021.5.

6 134. Defendants' activities as alleged herein are violations of California law, and
7 constitute unlawful business acts and practices in violation of California Business &
8 Professions Code section 17200, *et seq.*

9 135. A violation of California Business & Professions Code section 17200, *et seq.*
10 may be predicated on the violation of any state or federal law. Additionally, Defendants'
11 pattern and practice of requiring Plaintiff and other class members, to work through their meal
12 and rest periods without paying them proper compensation violate California Labor Code
13 sections 226.7 and 512(a). Moreover, Defendants' pattern and practice of failing to timely pay
14 wages to Plaintiff and other class members violate California Labor Code sections 201 and
15 202. Defendants also violated California Labor Code sections 226(a), 246(l), 1194, 1197,
16 2800 and 2802.

17 136. As a result of the herein described violations of California law, Defendants
18 unlawfully gained an unfair advantage over other businesses.

19 137. Plaintiff and other class members have been personally injured by Defendants'
20 unlawful business acts and practices as alleged herein, including but not necessarily limited to
21 the loss of money and/or property.

22 138. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
23 Plaintiff and other class members are entitled to restitution of the wages withheld and retained
24 by Defendants during a period that commences four years prior to the filing of this Complaint;
25 an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and
26 other applicable laws; and an award of costs.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, individually, and on behalf of members of the general public
3 similarly situated, prays for relief and judgment against Defendants, jointly and severally, as
4 follows:

5 **Class Certification**

- 6 1. That this action be certified as a class action;
7 2. That Plaintiff be appointed as the representative of the Class;
8 3. That counsel for Plaintiff be appointed as Class Counsel; and
9 4. That Defendants provide to Class Counsel, immediately upon its appointment,
10 the names and most current contact information (names, address, telephone numbers and
11 emails) of all class members.

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

13 5. That the Court declare, adjudge and decree that Defendants violated California
14 Labor Code sections 200-203, 226, 500, 510, 558, 558.1 1194, 1198, 1194.2, & IWC Wage
15 Order 4-2001 by willfully failing to pay all overtime wages due to Plaintiff and the other class
16 members;

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

19 7. For pre-judgment interest on any unpaid overtime compensation commencing
20 from the date such amounts were due;

21 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
22 California Labor Code section 1194; and

23 9. For such other and further relief as the court may deem just and proper.

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

25 10. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code sections 200, 226.7, 512(a), 1198, and 8 CCR §11040 by willfully failing to
27 provide all meal periods (including second meal periods) to Plaintiff and the other class
28 members;

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

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

6 13. For premium wages pursuant to California Labor Code section 226.7(b);

7 14. For pre-judgment interest on any unpaid wages from the date such amounts
8 were due;

9 15. For reasonable attorneys' fees and costs of suit incurred herein; and

10 16. For such other and further relief as the court may deem just and proper;

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

12 17. That the Court declare, adjudge and decree that Defendants violated California
13 Labor Code sections 200, 226.7, 1198, and 8 CCR §11040 by willfully failing to provide all
14 rest periods to Plaintiff and the other class members;

15 18. That the Court make an award to Plaintiff and the other class members of one
16 (1) hour of pay at each employee's regular rate of compensation for each workday that a rest
17 period was not provided;

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

20 20. For premium wages pursuant to California Labor Code section 226.7(b);

21 21. For pre-judgment interest on any unpaid wages from the date such amounts
22 were due;

23 22. For such other and further relief as the court may deem just and proper.

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

25 23. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code sections 1182.12, 1194, 1197, 1197.1, 118, 8 CCR §§ 11040 by willfully failing
27 to pay minimum wages to Plaintiff and the other class members

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1 24. For general unpaid wages and such general and special damages as may be
2 appropriate;

3 25. For pre-judgment interest on any unpaid compensation from the date such
4 amounts were due;

5 26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
6 California Labor Code section 1194(a);

7 27. For liquidated damages pursuant to California Labor Code section 1194.2; and

8 28. For such other and further relief as the court may deem just and proper.

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

10 29. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code sections 200-204, 226, 500, 510, 558, 1182.12, 1194, 1197, 1197.1, 1198, and
12 applicable IWC Wage Orders by willfully failing to pay all compensation owed at the time of
13 termination of the employment of the other class members no longer employed by
14 Defendants;

15 30. For all actual, consequential, and incidental losses and damages, according to
16 proof;

17 31. For statutory wage penalties pursuant to California Labor Code section 203 for
18 the other class members who have left Defendants' employ;

19 32. For pre-judgment interest on any unpaid compensation from the date such
20 amounts were due; and

21 33. For such other and further relief as the court may deem just and proper.

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

23 34. That the Court declare, adjudge and decree that Defendants violated the record
24 keeping provisions of California Labor Code section 226(a), California Labor Code sections
25 226, 226.3, 246(i), 558.1, 1174, 1194, 1198, and applicable IWC Wage Orders as to Plaintiff
26 and other class members, and willfully failed to provide accurate itemized wage statements
27 thereto;

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

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

4 37. For injunctive relief to ensure compliance with this section, pursuant to
5 California Labor Code section 226(g); and

6 38. For such other and further relief as the court may deem just and proper.

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

8 39. That the Court declare, adjudge and decree that Defendants violated California
9 Labor Code sections 2800 and 2802 and applicable IWC Wage Orders by willfully failing to
10 reimburse Plaintiff and other class members for all necessary business-related expenses as
11 required by California Labor Code sections 2800 and 2802;

12 40. For actual, consequential and incidental losses and damages, according to
13 proof;

14 41. For the imposition of civil penalties and/or statutory penalties;

15 42. For punitive damages and/or exemplary damages according to proof at trial;

16 43. For reasonable attorneys' fees and costs of suit incurred herein; and

17 44. For such other and further relief as the court may deem just and proper.

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

19 45. Upon the Cause of Action, for civil penalties pursuant to statute as set forth in
20 Labor Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 201, 202, 203, 204,
21 218.5, 221, 226(a), 226.3, 226.7, 246(l), 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198,
22 2800 and 2802

23 46. Upon the Cause of Action, for costs and attorneys' fees pursuant to Labor Code
24 §§ 210, 218.5, 1194, and 2699, and any other applicable statute; and

25 47. For such other and further relief the court may deem just and proper.

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As to the Ninth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Business and Professions Code section 17200, *et seq.* by failing to provide Plaintiff and the other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the other class members, failing to pay for all missed meal and rest periods to Plaintiff and the other class members, failing to pay all minimum wages due to Plaintiff and the other class members, and failing to reimburse Plaintiff and other class members' business expenses as required by California Labor Code section 2802. For all actual, consequential, and incidental losses and damages, according to proof;

49. For restitution of unpaid wages and other monies wrongfully withheld and retained by Defendants to Plaintiff and the other class members and prejudgment interest from the day such amount were due and payable;

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

51. For reasonable attorneys' fees and costs of suit incurred herein that Plaintiff and the other class members are entitled to recover under California Code of Civil Procedure section 1021.5; and

52. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, *et seq.*; and

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

DATED: October 25, 2021

JUSTICE LAW CORPORATION

By: _____


Douglas Han
Shunt Tatavos-Gharajeh
Attorneys for Plaintiff

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is aokada@justicelawcorp.com

On November 4, 2021, I served the foregoing document described as

SECOND AMENDED CLASS ACTION COMPLAINT

for the following case: **Ceja v. Silvergate Bank**
LWDA/Court Case No.: **LWDA Case No.: CM-830809-21**
Court Case No.: 37-2020-00016207-CU-OE-CTL
San Diego County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on November 4, 2021, at Pasadena, California.



Anna Okada