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**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

**FIRST 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 **CLASS ACTION ALLEGATIONS**

2 12. 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 13. The proposed class is defined as follows:

6 All current and former California-based (*i.e.*, currently “residing” in California
7 with the intent to remain in California indefinitely) hourly-paid or non-exempt
8 employees (either directly or through a staffing agency or labor contractor) of
9 Defendants within the State of California at any time during the period from
10 four years preceding the filing of this Complaint to final judgment.

11 14. Plaintiff reserves the right to establish subclasses as appropriate.

12 15. The class is ascertainable and there is a well-defined community of interest in
13 the litigation:

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

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

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- 1 c. Adequacy: Plaintiff will fairly and adequately protect the interests of
2 each class member, with whom he has a well-defined community of
3 interest and typicality of claims, as demonstrated herein. Plaintiff has
4 no interest that is antagonistic to the other class members. Plaintiff's
5 attorneys, the proposed class counsel, are versed in the rules governing
6 class action discovery, certification, and settlement. Plaintiff has
7 incurred, and during the pendency of this action will continue to incur,
8 costs and attorneys' fees, that have been, are, and will be necessarily
9 expended for the prosecution of this action for the substantial benefit of
10 each class member.
- 11 d. Superiority: A class action is superior to other available methods for the
12 fair and efficient adjudication of this litigation because individual
13 joinder of all class members is impractical.
- 14 e. Public Policy Considerations: Certification of this lawsuit as a class
15 action will advance public policy objectives. Employers of this great
16 state violate employment and labor laws every day. Current employees
17 are often afraid to assert their rights out of fear of direct or indirect
18 retaliation. However, class actions provide the class members who are
19 not named in the complaint anonymity that allows for the vindication of
20 their rights.

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

- 24 a. Whether Defendants' failure to pay wages, without abatement or
25 reduction, in accordance with the California Labor Code, was willful;

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

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GENERAL ALLEGATIONS

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

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

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

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

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

22. Defendants directly hired and paid wages and benefits to Plaintiff and the other class members.

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

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

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

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

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

8 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knew or should have known that Plaintiff and the other class members were entitled to receive
10 certain wages for overtime compensation and that they were not receiving wages for overtime
11 compensation including drive time.

12 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knew or should have known that Plaintiff and the other class members were entitled to receive
14 overtime at the regular rate of pay that includes all forms of compensation instead of at just
15 hourly rate of pay.

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

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

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1 32. 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 all rest breaks or payment of one additional hour of pay at Plaintiff's regular rate of pay when
4 a rest break was missed, and they did not receive all rest breaks or payment of one additional
5 hour of pay at Plaintiff's and the other class members' regular rate of pay when a rest break
6 was missed.

7 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knew or should have known that Plaintiff and the other class members were entitled to receive
9 at least minimum wages for compensation and that they were not receiving at least minimum
10 wages for all hours worked.

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

14 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 knew or should have known that they had a duty to compensate Plaintiff and the other class
16 members pursuant to California law, and that Defendants had the financial ability to pay such
17 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
18 represented to Plaintiff and the other class members that they were properly denied wages, all
19 in order to increase Defendants' profits.

20 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 knew or should have known that Plaintiff and other class members were entitled to receive
22 complete and accurate wage statements in accordance with California law, but, in fact,
23 Plaintiff and other class members did not receive complete and accurate wage statements from
24 Defendants. The deficiencies include but are not limited to: the failure to include the total
25 number of hours worked by Plaintiff and other class members.

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1 37. 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
3 reimbursement for necessary business-related expenses.

4 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 knew or should have known that Defendants had to keep complete and accurate payroll
6 records for Plaintiff and other class members in accordance with California law, but, in fact,
7 did not keep complete and accurate payroll records for Plaintiff and other class members.

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

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

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

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

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

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

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

25 46. California Labor Code section 218 states that nothing in Article 1 of the Labor
26 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty
27 due to him under this article."

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1 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

20 51. California Labor Code section 510 codifies the right to overtime compensation
21 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
22 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
23 day of work, and overtime compensation at twice the regular hourly rate for hours worked in
24 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
25 of work.

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

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

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

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

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512)

(Against SILVERGATE BANK and Does 1 through 100)

56. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 55, and each and every part thereof with the same force and effect as though fully set forth herein.

57. During the relevant time period set forth herein, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and other class members' employment by Defendants.

58. 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 meal or rest period mandated by an applicable order of the California IWC.

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1 59. During the relevant time period set forth herein, the applicable IWC Wage
2 Order and California Labor Code section 512(a) provide that an employer may not require,
3 cause or permit an employee to work for a work period of more than five (5) hours per day
4 without providing the employee with a meal period of not less than thirty (30) minutes, except
5 that if the total work period per day of the employee is no more than six (6) hours, the meal
6 period may be waived by mutual consent of both the employer and employee.

7 60. During the relevant time period set forth herein, the applicable IWC Wage
8 Order and California Labor Code section 512(a) further provide that an employer may not
9 require, cause, or permit an employee to work for a work period of more than ten (10) hours
10 per day without providing the employee with a second uninterrupted meal period of not less
11 than thirty (30) minutes, except that if the total hours worked is no more than twelve (12)
12 hours, the second meal period may be waived by mutual consent of the employer and the
13 employee only if the first meal period was not waived.

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

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

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

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1 64. 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 in excess
3 of twelve (12) hours were required to work for periods longer than ten (10) hours without an
4 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

5 65. As a pattern and practice, during the relevant time period set forth herein,
6 Defendants intentionally and willfully required Plaintiff and other class members to work
7 during meal periods and failed to compensate Plaintiff and the other class members the full
8 meal period premium for work performed during meal periods.

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

12 67. Defendants' conduct violates applicable IWC Wage Order and California
13 Labor Code sections 226.7 and 512(a).

14 68. Pursuant to the applicable IWC Wage Order and California Labor Code section
15 226.7(b), Plaintiff and other class members are entitled to recover from Defendants one
16 additional hour of pay at the employee's regular rate of compensation for each workday that
17 the meal or rest period is not provided.

18 **THIRD CAUSE OF ACTION**

19 **(Violation of California Labor Code § 226.7)**

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

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

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

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1 71. During the relevant time period set forth herein, California Labor Code section
2 226.7 provides that no employer shall require an employee to work during any rest period
3 mandated by an applicable order of the California IWC.

4 72. During the relevant time period set forth herein, the applicable IWC Wage
5 Order provides that “[e]very employer shall authorize and permit all employees to take rest
6 periods, which insofar as practicable shall be in the middle of each work period” and that the
7 “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes
8 net rest time per four (4) hours or major fraction thereof” unless the total daily work time is
9 less than three and one-half (3 ½) hours.

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

13 74. As a pattern and practice, during the relevant time period set forth herein,
14 Defendants willfully required Plaintiff and other class members to work during rest periods
15 and failed to pay Plaintiff and the other class members the full rest period premium for work
16 performed during rest periods.

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

20 76. Defendants’ conduct violates applicable IWC Wage Orders and California
21 Labor Code section 226.7.

22 77. Pursuant to the applicable IWC Wage Orders and California Labor Code
23 section 226.7(b), Plaintiff and the other class members are entitled to recover from
24 Defendants one additional hour of pay at the employees’ regular hourly rate of compensation
25 for each workday that the rest period was not provided.

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1 **FOURTH CAUSE OF ACTION**

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

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

4 78. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 77 and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 79. During the relevant time period set forth herein, California Labor Code sections
8 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of a
9 lesser wage than the minimum so fixed, is unlawful.

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

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

18 82. Pursuant to California Labor Code section 1194.2, Plaintiff and other class
19 members are entitled to recover liquidated damages in an amount equal to the wages
20 unlawfully unpaid and interest thereon.

21 **FIFTH CAUSE OF ACTION**

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

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

24 83. Plaintiff incorporates by reference the allegations contained in paragraphs 1
25 through 82, and each and every part thereof with the same force and effect as though fully set
26 forth herein.

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84. During the relevant time period set forth herein, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits 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' 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.

85. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed 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.

86. 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.

87. 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.

88. 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)

89. 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.

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

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

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

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

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

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

7 **SEVENTH CAUSE OF ACTION**

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

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

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

13 97. Pursuant to California Labor Code sections 2800 and 2802, an employer must
14 reimburse its employee for all necessary expenditures incurred by the employee in direct
15 consequence of the discharge of his or her job duties or in direct consequence of his or her
16 obedience to the directions of the employer.

17 98. Defendants have intentionally and willfully failed to reimburse Plaintiff and
18 other class members for all necessary business-related expenses and costs. Plaintiff and other
19 class members are entitled to recover from Defendants their business-related expenses and
20 costs incurred during the course and scope of their employment, plus interest accrued from the
21 date on which the employee incurred the necessary expenditures at the same rate as judgments
22 in civil actions in the State of California.

23 **EIGHTH CAUSE OF ACTION**

24 **(Violation of Labor Code §§ 2698, *et seq.* ("PAGA"))**

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

26 99. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 98 as
27 though fully set forth herein.

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

6 101. Plaintiff provided written notice to the LWDA and Defendants of the specific
7 provisions of the Labor Code he contends were violated, and the theories supporting his
8 contentions.

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

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

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

18 104. As a pattern and practice, Defendants failed to compensate Plaintiff and other
19 aggrieved current and former employees for all hours worked, resulting in a failure to pay all
20 minimum wages and overtime wages, where applicable.

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

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

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1 106. As a pattern and practice, Defendants failed to provide Plaintiff and other
2 aggrieved current and former employees with legally-mandated meal periods and rest breaks
3 and failed to pay proper compensation for this failure.

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

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

7 108. As a pattern and practice, Defendants regularly failed to pay Plaintiff and other
8 aggrieved current and former employees all wages due and owing them within the required
9 time period.

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

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

14 110. As a result of Defendants' Labor Code violations alleged above, Defendants
15 failed to pay Plaintiff and the other aggrieved former employees their final wages pursuant to
16 Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to Labor
17 Code § 203.

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

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

21 112. As a result of Defendants' various Labor Code violations, Defendants failed to
22 keep accurate records regarding Plaintiff and other aggrieved current and former employees.
23 For example, Defendants failed in their affirmative obligation to keep accurate records
24 regarding Plaintiff and other aggrieved current and former employees' gross wages earned,
25 total hours worked, all deductions, net wages earned, and all applicable hourly rates and the
26 number of hours worked at each hourly rate.

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1 **Failure to Reimburse Business Expenses**

2 113. At all times relevant herein, Defendants were required to reimburse their
3 employees for any and all necessary expenditures or losses incurred by the employees in
4 direct consequences of the discharge or his or her duties pursuant to the mandate of Labor
5 Code §§ 2800 and 2802.

6 114. As a pattern and practice, Defendants regularly failed to pay Plaintiff and other
7 aggrieved current and former employees all business expenses incurred and owing them
8 within the required time period.

9 **Penalties**

10 115. Pursuant to California Labor Code § 2699, Plaintiff, individually, and on behalf
11 of other current and former aggrieved employees, requests and is entitled to recover from
12 Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, as
13 well as all statutory penalties against Defendants, and each of them, including but not limited
14 to:

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

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

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

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119. 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;

120. 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)

121. 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.

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

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

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

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

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

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

PRAYER FOR RELIEF

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

Class Certification

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

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 200-203, 226, 500, 510, 558, 558.1 1194, 1198, 1194.2, & IWC Wage Order 4-2001 by willfully failing to pay all overtime wages due to Plaintiff and the other class members;
6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 24. For general unpaid wages and such general and special damages as may be
12 appropriate;

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

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

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

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

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

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

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

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

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

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

As to the Sixth Cause of Action

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

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

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

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

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

As to the Seventh Cause of Action

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

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

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

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

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

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

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

As to the Ninth Cause of Action

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;

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

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

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

5
6 DATED: May 20, 2021

JUSTICE LAW CORPORATION

7
8 By: 

9 Douglas Han

10 Shunt Tatavos-Gharajeh

11 *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, California 91103.

On May 20, 2021, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Travis Jang-Busby (tjang-busby@grsm.com)
Craig D. Nickerson (cnickerson@grsm.com)
William B. Richards, Jr. (wrichards@grsm.com)
GORDON & REES SCULLY MANSUKHANI
101 W. Broadway, Suite 2000
San Diego, CA 92101

Attorney(s) for Defendant Silvergate Bank

[X] BY U.S. MAIL

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

[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 May 20, 2021, at Pasadena, California.



Jillian Kislow

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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 jkislw@justicelawcorp.com

On May 20, 2021, I served the foregoing document described as

FIRST 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
Orange 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 May 20, 2021, at Pasadena, California.



Jillian Kislw