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Case #21CV386630
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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SANTA CLARA
11 UNLIMITED JURISDICTION

12 KATIE CHAVEZ, on behalf of herself, all
13 others similarly situated, and the general
14 public,

15 *Plaintiff,*

16 v.

17 UNITED SECURITY BANK, a California
18 corporation; and DOES 1 through 50,
19 inclusive,

20 *Defendants.*

Case No. 21CV386630

Amended as a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

CLASS AND REPRESENTATIVE ACTION

FIRST AMENDED COMPLAINT

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest breaks (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Pay Vacation Wages (Lab. Code § 227.3);
5. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
6. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
8. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff KATIE CHAVEZ ("Plaintiff"), on behalf of herself and all others similarly
2 situated, the general public, and the State of California, complains and alleges as follows:

3 INTRODUCTION

4 1. Plaintiff brings this representative action against defendant UNITED SECURITY
5 BANK, a California corporation; and DOES 1 through 50, inclusive, (collectively referred to as
6 "Defendants") for alleged violations of the Labor Code and Business and Professions Code. As set
7 forth below, Plaintiff alleges that Defendants have

- 8 (1) failed to provide Plaintiff and all other similarly situated individuals with meal
9 periods;
- 10 (2) failed to provide them with rest breaks;
- 11 (3) failed to pay them premium wages for missed meal and/or rest breaks;
- 12 (4) failed to pay them premium wages for missed meal and/or rest breaks at the regular
13 rate of pay;
- 14 (5) failed to pay them at least minimum wage for all hours worked;
- 15 (6) failed to pay them overtime wages at the correct rate;
- 16 (7) failed to pay them double time wages at the correct rate;
- 17 (8) failed to pay them overtime and/or double time wages by failing to include all
18 applicable remuneration in calculating the regular rate of pay;
- 19 (9) failed to pay them for all vested vacation pay;
- 20 (10) failed to provide them with accurate written wage statements; and
- 21 (11) failed to pay them all of their final wages following separation of employment.

22 Based on these alleged violations, Plaintiff now brings this representative action to recover unpaid
23 wages, restitution, civil and statutory penalties, and related relief on behalf of herself and all others
24 similarly situated, all other aggrieved employees, and the State of California.

25 JURISDICTION AND VENUE

26 2. This Court has subject matter jurisdiction to hear this case because the unpaid wages,
27 actual damages, liquidated damages, restitution, and penalties sought by Plaintiff from Defendants
28 exceeds the minimal jurisdictional limits of the Superior Court of the State of California.

3. Venue is proper in Santa Clara pursuant to Code of Civil Procedure §§ 395(a) and 395.5 in that liability arose there, because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices, transacts business, and/or has an agent therein.

PARTIES

4. Plaintiff is and was, at all relevant times mentioned herein, an individual residing in the State of California.

5. Plaintiff is informed and believes, and thereupon alleges, that Defendant UNITED SECURITY BANK is, and at all relevant times mentioned herein was, a California corporation doing business in the State of California.

6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants when ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of the fictitiously named defendants are responsible in some manner for the occurrences, acts and omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE defendants when ascertained.

7. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times mentioned herein, some or all of the defendants were the representatives, agents, employees, partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some or all of the other defendants, and, in doing the things alleged herein, were acting within the course and scope of such relationship and with the full knowledge, consent, and ratification by such other defendants.

CLASS ALLEGATIONS

8. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure § 382, because there is a well-defined community of interest among the persons who comprise the readily ascertainable classes defined below and because Plaintiff is

1 unaware of any difficulties likely to be encountered in managing this case as a class action.

2 9. **Relevant Time Period:** The relevant time period is defined as the time period
3 beginning four years prior to the filing of this action until final judgment is entered.

4 **Hourly Employee Class:** All persons employed by Defendants and/or any staffing
5 agencies and/or any other third parties in hourly or non-exempt positions in California
during the **Relevant Time Period**.

6 **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked
7 in a shift in excess of five hours during the **Relevant Time Period**.

8 **Rest Break Sub-Class:** All **Hourly Employee Class** members who worked a
9 shift of at least three and one-half (3.5) hours during the **Relevant Time**
Period.

10 **Wage Statement Penalties Sub-Class:** All **Hourly Employee Class**
11 members employed by Defendants in California during the period beginning
one year before the filing of this action and ending when final judgment is
entered.

12 **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members
13 who separated from their employment with Defendants during the period
beginning three years before the filing of this action and ending when final
judgment is entered.

14 **UCL Class:** All **Hourly Employee Class** members employed by Defendants in
15 California during the **Relevant Time Period**.

16 **Vacation Pay Class:** All persons employed by Defendants in California who earned
17 paid vacation days, including but not limited to, "Floating Holidays," without
receiving compensation for each vested paid vacation day during the **Relevant Time**
18 **Period**.

19 10. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
20 right to amend or modify the class definitions with greater specificity by further division into sub-
21 classes and/or by limitation to particular issues.

22 11. **Numerosity:** The class members are so numerous that the individual joinder of each
23 individual class member is impractical. While Plaintiff does not currently know the exact number of
24 class members, Plaintiff is informed and believes, and thereupon alleges, that the actual number
25 exceeds the minimum required for numerosity under California law.

26 12. **Commonality and Predominance:** Common questions of law and fact exist as to all
27 class members and predominate over any questions that affect only individual class members. These
28 common questions include, but are not limited to:

- i. Whether Defendants maintained a policy or practice of failing to provide employees with their meal periods;
- ii. Whether Defendants maintained a policy or practice of failing to provide employees with their rest breaks;
- iii. Whether Defendants failed to pay premium wages to class members when they have not been provided with required meal and/or rest breaks;
- iv. Whether Defendants failed to pay minimum and/or overtime wages to class members as a result of policies that fail to provide meal periods in accordance with California law;
- v. Whether Defendants failed to pay minimum and/or overtime wages to class members for all time worked;
- vi. Whether Defendants used payroll formulas that systematically fail to account for non-discretionary bonuses, incentive earnings, and/or other applicable remuneration when calculating regular rates of pay for class members;
- vii. Whether Defendants failed to pay overtime wages to class members as a result of incorrectly calculating their regular rates of pay;
- viii. Whether Defendants failed to pay premium wages to class members based on their respective “regular rates of compensation” by not including commissions and/or other applicable remuneration in calculating the rates at which those wages are paid;
- ix. Whether Defendants failed to provide proportionate accruals for vested vacation time for class members as required by California law;
- x. Whether Defendants subjected the vacation time and/or floating holidays they offer to class members to forfeiture;
- xi. Whether Defendants failed to provide class members with accurate written wage statements as a result of providing them with wage statements with inaccurate entries for, among other things, amounts of gross and net wages, and total hours worked;
- xii. Whether Defendants applied policies or practices that result in late and/or incomplete final wage payments;

1 xiii. Whether Defendants are liable to class members for waiting time penalties under
2 Labor Code section 203;

3 xiv. Whether class members are entitled to restitution of money or property that
4 Defendants may have acquired from them through unfair competition;

5 13. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff
6 is informed and believes, and thereupon alleges, that Defendants have a policy or practice of failing
7 to comply with the Labor Code and Business and Professions Code as alleged in this Complaint.

8 14. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in
9 that she has no interests that are adverse to or otherwise conflict with the interests of absent class
10 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly
11 and adequately represent and protect the interests of the other class members.

12 15. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
13 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
14 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on
15 behalf of Plaintiff and absent class members.

16 16. **Superiority:** A class action is vastly superior to other available means for fair and
17 efficient adjudication of the class members' claims and would be beneficial to the parties and the
18 Court. Class action treatment will allow a number of similarly situated persons to prosecute their
19 common claims simultaneously and efficiently in a single forum without the unnecessary
20 duplication of effort and expense that numerous individual actions would entail. In addition, the
21 monetary amounts due to many individual class members are likely to be relatively small and would
22 thus make it difficult, if not impossible, for individual class members to both seek and obtain relief.
23 Moreover, a class action will serve an important public interest by permitting class members to
24 effectively pursue the recovery of monies owed to them. Further, a class action will prevent the
25 potential for inconsistent or contradictory judgments inherent in individual litigation.

26 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

27 17. Plaintiff worked for Defendants as an hourly, non-exempt employee from
28 approximately December 10, 2012 through March 17, 2020.

Missed Meal Periods

18. Plaintiff and the putative class were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal period as part of each work shift; (2) chronically understaffing each work shift with not enough workers; (3) imposing so much work on each employee such that it made it unlikely that an employee would be able to take their breaks if they wanted to finish their work on time; and (4) no formal written meal and rest break policy that encouraged employees to take their meal and rest breaks.

19. Defendants have a policy and/or practice of requiring Plaintiff and the putative class to take their meal periods after the fifth hour of work. Also, Plaintiff and the putative class were required to clock out for meal periods even though they continued to perform work with the full knowledge of their supervisors. The bank was constantly short staffed, so Plaintiff and the putative class were required to stop their meal period in order to perform work tasks including but not limited to entering their teller code to unlock the vault as well as assorted tasks to assist with customer requests. Additionally, Plaintiff and the putative class routinely took their meal period later than the fifth hour due to the volume of work imposed upon them that they had to complete. Because Defendants did not adequately provide staffing for their locations, Plaintiff and the putative class were regularly required to stay on the premises during their meal periods so that they could perform "off-the-clock" work when there weren't enough tellers to provide needed services, which was a common occurrence.

20. Furthermore, Plaintiff and the putative class were routinely and systematically deprived of any meal period because there were not enough employees to cover their duties. Therefore, they were required to continue working without any meal period.

21. Accordingly, Plaintiff and the putative class were not provided with legally mandated uninterrupted meal periods of at least thirty minutes pursuant to California law.

22. As a result of Defendants' policy, Plaintiff and the putative class were regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours worked due to complying with Defendants' productivity requirements that required Plaintiff and

1 the putative class to work through their meal periods in order to complete their assignments on
2 time.

3 **Missed Rest Breaks**

4 23. Plaintiff and the putative class were not provided with rest breaks of at least ten (10)
5 minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy
6 of not scheduling each rest break as part of each work shift; (2) chronically understaffing each
7 work shift with not enough workers; (3) imposing so much work on each employee such that it
8 made it unlikely that an employee would be able to take their breaks if they wanted to finish their
9 work on time; and (4) no formal written meal and rest break policy that encouraged employees to
10 take their meal and rest breaks.

11 24. Defendants' written policies failed to advise Plaintiff and the putative class of their
12 legal right to take rest breaks in accordance with California law. Specifically, Defendants have a
13 policy and/or practice of requiring Plaintiff and the putative class to clock in and out for rest
14 breaks. Additionally, Plaintiff and the putative class were routinely instructed by their managers
15 and supervisors to remain on the premises when they took their rest breaks; however, Plaintiff and
16 the putative class were routinely deprived of any opportunity to take their rest breaks because they
17 could not be relieved of all duties.

18 25. Furthermore, when Plaintiff and the putative class worked a shift that was less than
19 scheduled, Defendants took the difference out of their PTO. Accordingly, Plaintiff and the putative
20 class did not want to take their rest breaks because they were fearful that the time they were
21 clocked out would be taken from their PTO.

22 26. Accordingly, Plaintiff and the putative class were not provided with legally
23 mandated rest breaks of at least ten minutes for every four hours worked or major fraction thereof.
24 Accordingly, Plaintiff and the putative class were not provided with legally mandated rest breaks
25 of at least ten minutes for every four hours worked or major fraction thereof.

26 27. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
27 provided with uninterrupted rest breaks of at least ten (10) minutes for each four (4) hours worked
28 due to complying with Defendants' productivity requirements that required Plaintiff and the

1 putative class to work through their rest breaks in order to complete their assignments on time.

2 **Vacation Pay**

3 28. Plaintiff and the putative class accrued vacation wages during their employment with
4 Defendants.

5 29. Vacation wages are considered a form of wages under Labor Code § 200. Vested
6 vacation pay and other similar forms of paid time off earned based on labor performed are
7 considered wages that cannot be subject to forfeiture without compensation for forfeited days at the
8 applicable rates required by law.

9 30. At all relevant times, Defendants maintained policies and/or practices that provide
10 for the unlawful forfeiture of vested vacation pay in violation of Labor Code § 227.3 and *Suastez v.*
11 *Plastic Dress-Up Co.*, (1982) 31 Cal. 3d 774.

12 31. Plaintiff and the putative class are entitled to vacation accrued during their
13 employment with Defendants. Upon termination, Plaintiff and the putative class were not paid all
14 accrued vacation pay.

15 **Regular Rate of Pay**

16 32. The regular rate of pay under California law includes all remuneration for
17 employment paid, on behalf of the employer, to the employee. This requirement includes, but is
18 not limited, to, commissions and non-discretionary bonuses.

19 33. At all relevant times, Defendants failed to pay Plaintiff and the putative class for all
20 hours worked, including, but not limited to, overtime hours and/or premiums for meal and rest
21 break violations. While employed by Defendants, Plaintiff and the putative class received hourly
22 wages and other remuneration, including, but not limited to, non-discretionary bonuses, incentive
23 earnings, Visa gift cards valued at \$150 when their branch met or exceeded their goal and/or other
24 applicable remuneration that must be included when calculated their regular rates of pay. However,
25 Defendants consistently failed to include all applicable forms of remuneration when calculating
26 their regular rates of pay. As a result, any overtime wages and/or premiums paid for meal and/or
27 rest break violations were not paid at the regular rate of pay.

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Wage Statements

34. Plaintiff and the putative class were not provided with accurate wage statements as mandated by law pursuant to Labor Code § 226.

35. Defendants failed to comply with Labor Code 0167 226(a)(1) as “gross wages earned” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work, were not included.

36. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours worked by the employee” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work, were not included.

37. Defendants failed to comply with Labor Code section 226(a)(4) as “all deductions” were not accurately reflected in that deductions, even “aggregated and shown as one item,” were not included.

38. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work, were not included.

39. Defendants failed to comply with Labor Code section 226(a)(6) as “the inclusive dates of the period for which the employee is paid” were not included.

40. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work, were not included.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 204, 223, 226.7, 512 and 1198)

(Plaintiff and Meal Period Sub-Class)

41. Plaintiff incorporates by reference the preceding paragraphs as if fully alleged herein.

42. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been

1 non-exempt employees of Defendants entitled to the full meal period protections of both the Labor
2 Code and the applicable Industrial Welfare Commission Wage Order (“Wage Order”).

3 43. Labor Code § 512 and § 11 of the applicable Wage Order impose an affirmative
4 obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal
5 periods of at least thirty minutes for each work period of five hours, and to provide them with two
6 uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

7 44. Labor Code § 226.7 and § 11 of the applicable Wage Order both prohibit employers
8 from requiring employees to work during required meal periods and require employers to pay non-
9 exempt employees an hour of premium wages on each workday that the employee is not provided
10 with the required meal period.

11 45. Compensation for missed meal periods constitutes wages within the meaning of
12 Labor Code § 200.

13 46. Labor Code § 1198 makes it unlawful to employ a person under conditions that
14 violate the applicable Wage Order.

15 47. Section 11 of the applicable Wage Order states:

16 “No employer shall employ any person for a work period of more than five (5)
17 hours without a meal period of not less than 30 minutes, except that when a
18 work period of not more than six (6) hours will complete the day’s work the
19 meal period may be waived by mutual consent of the employer and employee.
20 Unless the employee is relieved of all duty during a 30 minute meal period, the
21 meal period shall be considered an ‘on duty’ meal period and counted as time
22 worked. An ‘on duty’ meal period shall be permitted only when the nature of
23 the work prevents an employee from being relieved of all duty and when by
24 written agreement between the parties an on-the-job paid meal period is agreed
25 to. The written agreement shall state that the employee may, in writing, revoke
26 the agreement at any time.”

22 48. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
23 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**
24 members were not subject to valid on-duty meal period agreements with Defendants.

25 49. Plaintiff alleges that, at all relevant times during the applicable limitations period,
26 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal**
27 **Period Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for
28 each five (5) hour work period, as required by Labor Code § 512 and the applicable Wage Order.

50. Plaintiff alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of failing to pay premium wages at their regular rate of pay to **Meal Period Sub-Class** members when they worked five (5) hours without clocking out for any meal period.

51. Moreover, Defendants' written policies do not provide that employees must take their first meal period before the end of the fifth hour of work, that employees are entitled to a second meal period if they work a shift of over ten hours, or that the second meal period must commence before the end of the tenth hour of work, unless waived.

52. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-Class** members additional premium wages, and/or were not paid premium wages at the employees' regular rates of pay when required meal periods were not provided.

53. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of herself and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and costs of suit.

54. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and the **Meal Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

(Lab. Code §§ 204, 223, 226.7 and 1198)

(Plaintiff and Rest Break Sub-Class)

55. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

56. At all relevant times, Plaintiff and the **Rest Break Sub-Class** members have been non-exempt employees of Defendants entitled to the full rest break protections of both the Labor Code and the applicable Wage Order.

57. Section 12 of the applicable Wage Order imposes an affirmative obligation on employers to permit and authorize employees to take required rest breaks at a rate of no less than ten minutes of net rest time for each four-hour work period, or major fraction thereof, that must be

1 in the middle of each work period insofar as practicable.

2 58. Labor Code § 226.7 and § 12 of the applicable Wage Order both prohibit employers
3 from requiring employees to work during required rest breaks and require employers to pay non-
4 exempt employees an hour of premium wages at the employees' regular rates of pay, on each
5 workday that the employee is not provided with the required rest break(s).

6 59. Compensation for missed rest breaks constitutes wages within the meaning of Labor
7 Code § 200.

8 60. Labor Code § 1198 makes it unlawful to employ a person under conditions that
9 violate the Wage Order.

10 61. Plaintiff alleges that, at all relevant times during the applicable limitations period,
11 Defendants maintained a policy or practice of not providing members of the **Rest Break Sub-Class**
12 with net rest break of at least ten minutes for each four-hour work period, or major fraction thereof,
13 as required by the applicable Wage Order.

14 62. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Break Sub-**
15 **Class** members additional premium wages when required rest breaks were not provided.

16 63. Specifically, Defendants written policies do not provide that employees may take a
17 rest break for each four hours worked, or major fraction thereof, nor that rest breaks should be taken
18 in the middle of each work period insofar as practicable.

19 64. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of herself and
20 **Rest Break Sub-Class** members, seeks to recover unpaid premium wages, interest thereon, and
21 costs of suit.

22 65. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
23 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Rest break**
24 **Sub-Class** members, seeks to recover reasonable attorneys' fees.

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1 75. Labor Code § 204 requires employers to pay non-exempt employees their earned
2 wages for the normal work period at least twice during each calendar month on days the employer
3 designates in advance and to pay non-exempt employees their earned wages for labor performed in
4 excess of the normal work period by no later than the next regular payday.

5 76. Labor Code § 223 makes it unlawful for employers to pay their employees lower
6 wages than required by contract or statute while purporting to pay them legal wages.

7 77. Labor Code § 510 and § 3 of the applicable Wage Order require employers to pay
8 non-exempt employees overtime wages of no less than one and one-half times the employees'
9 respective regular rates of pay for all hours worked in excess of eight hours in one workday, all
10 hours worked in excess of forty hours in one workweek, and for the first eight hours worked on the
11 seventh consecutive day of one workweek.

12 78. Labor Code § 510 and § 3 of the applicable Wage Order also require employers to
13 pay non-exempt employees overtime wages of no less than two times the employees' respective
14 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
15 worked in excess of eight hours on a seventh consecutive workday during the workweek.

16 79. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
17 centrally devised policies and practices to her and **Hourly Employee Class** members with respect
18 to working conditions and compensation arrangements.

19 80. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
20 **Employee Class** members for all time worked, including but not limited to, overtime hours at
21 statutory and/or agreed rates.

22 81. During the relevant time period, Defendants failed to pay Plaintiff and **Hourly**
23 **Employee Class** members all earned wages every pay period at the correct rates, including
24 overtime rates, because Defendants directed, permitted, or otherwise encouraged Plaintiff and
25 **Hourly Employee Class** members to perform off-the-clock work.

26 82. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**
27 members have suffered damages in an amount subject to proof, to the extent they were not paid the
28 full amount of wages earned during each pay period during the applicable limitations period,

1 including overtime wages.

2 83. Pursuant to Labor Code §§ 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
3 behalf of herself and **Hourly Employee Class** members, seeks to recover unpaid straight time and
4 overtime wages, interest thereon, and costs of suit.

5 84. The regular rate of pay under California law includes all remuneration for
6 employment paid, on behalf of the employer, to the employee. This requirement includes but is not
7 limited to, non-discretionary bonuses, incentive earnings, Visa gift cards valued at \$150 when their
8 branch met or exceeded their goal and/or other applicable remuneration.

9 85. During the applicable limitations period, Defendants violated the rights of Plaintiff
10 and **Hourly Employee Class** members under the above-referenced Labor Code sections by failing
11 to pay them overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194
12 and 1198 by not correctly calculating their regular rate of pay to include all applicable
13 remuneration, including but not limited to, non-discretionary bonuses, incentive earnings, Visa gift
14 cards valued at \$150 when their branch met or exceeded their goal and/or other applicable
15 remuneration.

16 86. California law uses the terms “compensation” and “pay” interchangeably and
17 requires that all applicable remuneration, including but not limited to, non-discretionary bonuses,
18 incentive earnings, Visa gift cards valued at \$150 when their branch met or exceeded their goal
19 and/or other applicable remuneration, be included when calculating an employee’s regular rate of
20 pay.

21 87. At all relevant times, Defendants paid Plaintiff premium wages based on a rate of
22 compensation that did not reflect, among other things, non-discretionary bonuses, incentive
23 earnings, Visa gift cards valued at \$150 when their branch met or exceeded their goal and/or other
24 applicable remuneration as required by Labor Code § 226.7(b) and §§ 11 and 12 of the applicable
25 Wage Order on the occasions when Defendants paid her premium wages in lieu of meal and/or rest
26 breaks.

27 88. Plaintiff is informed and believes, and thereupon alleges, that, at all relevant times
28 during the applicable limitations period, Defendants maintained a policy or practice of paying

1 **Hourly Employee Class** members premium wages based on rates of compensation that have not
2 reflected non-discretionary bonuses, incentive earnings, Visa gift cards valued at \$150 when their
3 branch met or exceeded their goal and/or other applicable remuneration as required by Labor Code
4 § 226.7(b) and §§ 11 and 12 of the applicable Wage Order on the occasions when Defendants paid
5 them premium wages in lieu of meal and/or rest breaks.

6 89. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
7 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Hourly**
8 **Employee Class** members, seeks to recover reasonable attorneys' fees.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO PAY VACATION WAGES**

11 **(Lab. Code § 227.3)**

12 **(Plaintiff and Vacation Pay Class)**

13 90. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

14 91. California Labor Code section 227.3 provides:

15 Unless otherwise provided by a collective-bargaining agreement, whenever a contract
16 of employment or employer policy provides for paid vacations, and an employee is
17 terminated without having taken off his vested vacation time, all vested vacation shall
18 be paid to him as wages at his final rate in accordance with such contract of
19 employment or employer policy respecting eligibility or time served; provided,
however, that an employment contract or employer policy shall not provide for
forfeiture of vested vacation time upon termination. The Labor Commissioner or a
designated representative, in the resolution of any dispute with regard to vested
vacation time, shall apply the principles of equity and fairness.

20 92. At all relevant times during the applicable limitations period, Plaintiff and members
21 of the **Vacation Pay Class** accrued vacation time during their employment with Defendants.

22 93. As a result of Defendants' reimbursement policies and practices, Plaintiff is
23 informed and believes and thereon alleges that Defendants failed to reimburse her and **Vacation**
24 **Pay Class** members for all accrued vacation wages.

25 94. By reason of the above, Plaintiff and the members of the **Vacation Pay Class** are
26 entitled to restitution for all unpaid amounts due and owing to within four years (4) of the date of
27 the filing of the original Complaint until the date of entry of judgment.

28 95. Plaintiff, on behalf of herself and the members of the **Vacation Pay Class**, seeks

1 interest thereon pursuant to California Labor Code section 218.6, costs pursuant to California
2 Labor Code section 218.6, and reasonable attorneys' fees pursuant to California Code of Civil
3 Procedure section 1021.5.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

6 **(Lab. Code § 226)**

7 **(Plaintiff and Wage Statement Penalties Sub-Class)**

8 96. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

9 97. Labor Code § 226(a) states:

10 An employer, semimonthly or at the time of each payment of wages, shall furnish to
11 his or her employee, either as a detachable part of the check, draft, or voucher paying
12 the employee's wages, or separately if wages are paid by personal check or cash, an
13 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
14 worked by the employee, except as provided in subdivision (j), (3) the number of
15 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
16 rate basis, (4) all deductions, provided that all deductions made on written orders of
17 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
18 inclusive dates of the period for which the employee is paid, (7) the name of the
19 employee and only the last four digits of his or her social security number or an
20 employee identification number other than a social security number, (8) the name and
21 address of the legal entity that is the employer and, if the employer is a farm labor
22 contractor, as defined in subdivision (b) of Section 1682, the name and address of the
23 legal entity that secured the services of the employer, and (9) all applicable hourly
24 rates in effect during the pay period and the corresponding number of hours worked
25 at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
26 temporary services employer as defined in Section 201.3, the rate of pay and the total
27 hours worked for each temporary services assignment. The deductions made from
28 payment 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 and the 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. For purposes of
this subdivision, 'copy' includes a duplicate of the itemized statement provided to an
employee or a computer-generated record that accurately shows all of the information
required by this subdivision.

98. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize
the "detachable part of the check" provision and the "accurate itemized statement in writing"
provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each
employee retains the right to elect to receive a written paper stub or record and that those who are
provided with electronic wage statements retain the ability to easily access the information and
convert the electronic statements into hard copies at no expense to the employee. (DLSE Opinion

1 Letter July 6, 2006.)

2 99. Plaintiff is informed and believes that, at all relevant times during the applicable
3 limitations period, Defendants have failed to provide **Wage Statement Penalties Sub-Class**
4 members with written wage statements as described above.

5 100. Plaintiff is informed and believes that Defendants' failure to provide her and **Wage**
6 **Statement Penalties Sub-Class** members with accurate written wage statements were intentional in
7 that Defendants had the ability to provide them with accurate wage statements but had intentionally
8 provided them with wage statements that Defendants knew do not comply with Labor Code §
9 226(a).

10 101. Plaintiff and **Wage Statement Penalties Sub-Class** members have suffered injuries,
11 in that Defendants have violated Plaintiff's and **Wage Statement Penalties Sub-Class** members'
12 legal rights to receive accurate written wage statements and have misled them about their actual
13 rates of pay and wages earned. In addition, inaccurate information on their wage statements has
14 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and
15 mathematical computations to determine the amount of wages owed, has caused difficulty and
16 expense in attempting to reconstruct time and pay records, and/or has led to the submission of
17 inaccurate information about wages and deductions to federal and state government agencies.

18 102. Pursuant to Labor Code § 226(e), Plaintiff, on behalf of herself and **Wage Statement**
19 **Penalties Sub-Class** members, seeks the greater of actual damages or fifty dollars (\$50.00) for the
20 initial pay period in which a violation of Labor Code section 226(a) occurred and one hundred
21 dollars (\$100.00) for each subsequent pay period in which a violation of Labor Code § 226(a)
22 occurred, not to exceed an aggregate penalty of four thousand dollars (\$4,000.00) per class member.

23 103. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
24 the common fund doctrine, Plaintiff, on behalf of herself and **Wage Statement Penalties Sub-**
25 **Class** members, seek awards of reasonable attorneys' fees and costs.

26 ///

27 ///

28 ///

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

3 **(Lab. Code §§ 201–203)**

4 **(Plaintiff and Waiting Time Penalties Sub-Class)**

5 104. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

6 105. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members
7 have been entitled, upon the end of their employment with Defendants, to timely payment of all
8 wages earned and unpaid before termination or resignation.

9 106. At all relevant times, pursuant to Labor Code § 201, employees who have been
10 discharged have been entitled to payment of all final wages immediately upon termination.

11 107. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
12 after giving at least seventy-two (72) hours' notice of resignation have been entitled to payment of
13 all final wages at the time of resignation.

14 108. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
15 after giving less than seventy-two (72) hours' notice of resignation have been entitled to payment of
16 all final wages within seventy-two (72) hours' of giving notice of resignation.

17 109. During the applicable limitations period, Defendants failed to pay Plaintiff all of her
18 final wages in accordance with the Labor Code by failing to timely pay her all of her final wages.

19 110. Plaintiff is informed and believes that, at all relevant times during the applicable
20 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
21 members all of their final wages in accordance with the Labor Code.

22 111. Plaintiff is informed and believes that, at all relevant times during the applicable
23 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
24 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
25 §§ 201 or 202 by failing to timely pay them all final wages.

26 112. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to
27 timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been
28 willful in that Defendants have the ability to pay final wages in accordance with Labor Code §§ 201

1 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
2 requirements.

3 113. Pursuant to Labor Code §§ 203 and 218.6, Plaintiff, on behalf of herself and **Waiting**
4 **Time Penalties Sub-Class** members, seeks waiting time penalties from the respective dates that
5 their final wages had first become due until paid, up to a maximum of thirty days, and interest
6 thereon.

7 114. Pursuant to Labor Code § 226, Code of Civil Procedure § 1021.5, the substantial
8 benefit doctrine and/or the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time**
9 **Penalties Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

10 **SEVENTH CAUSE OF ACTION**

11 **UNFAIR COMPETITION**

12 **(Bus. & Prof. Code §§ 17200 *et seq.*)**

13 **(Plaintiff and UCL Class)**

14 115. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

15 116. Business and Professions Code § 17200 defines "unfair competition" to include any
16 unlawful business practice.

17 117. Business and Professions Code §§ 17203–17204 allow a person who has lost money
18 or property as a result of unfair competition to bring a class action in accordance with Code of Civil
19 Procedure § 382 to recover money or property that may have been acquired from similarly situated
20 persons by means of unfair competition.

21 118. California law requires employers to pay hourly, non-exempt employees for all hours
22 they are permitted or suffered to work, including hours that the employer knows or reasonably
23 should know that employees have worked.

24 119. Plaintiff, on behalf of herself and the **UCL Class** members, re-alleges and
25 incorporates the FIRST, SECOND, THIRD, and FOURTH causes of action herein.

26 120. Plaintiff lost money and/or property as a result of the aforementioned unfair
27 competition.

28 121. Defendants have or may have acquired money by means of unfair competition.

1 122. Plaintiff is informed and believes and thereupon alleges that, by committing the
2 Labor Code violations described in this Complaint, Defendants violated Labor Code §§ 215, 216,
3 225, 226.6, 354, 408, 553, 1175, and 1199. Defendants thus committed misdemeanors by violating
4 the Labor Code as alleged herein.

5 123. Defendants have committed criminal conduct through their policies and practices of,
6 *inter alia*, failing to comport with their affirmative obligations as an employer to provide non-
7 exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each
8 work period of five or more hours, by forfeiting accrued vacation, and by failing to pay non-exempt
9 employees for all hours worked.

10 124. At all relevant times, Plaintiff and **UCL Class** members have been non-exempt
11 employees and entitled to the full protections of both the Labor Code and the applicable Wage
12 Order.

13 125. Defendants' unlawful conduct as alleged in this Complaint amounts to and
14 constitutes unfair competition within the meaning of Business and Professions Code section 17200
15 *et sequitur*. Business and Professions Code §§ 17200 *et sequitur* protect against unfair competition
16 and allow a person who has suffered an injury-in-fact and has lost money or property as a result of
17 an unfair, unlawful, or fraudulent business practice to seek restitution on behalf of herself and on
18 behalf of similarly situated persons in a class-action proceeding.

19 126. As a result of Defendants' violations of the Labor Code during the applicable
20 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
21 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants'
22 conduct.

23 127. Plaintiff is informed and believes that other similarly situated persons have been
24 subject to the same unlawful policies or practices of Defendants.

25 128. Due to the unfair and unlawful business practices in violation of the Labor Code,
26 Defendants have gained a competitive advantage over other comparable companies doing business
27 in the State of California that comply with their legal obligations.

28 129. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive

1 relief for “any unlawful, unfair or fraudulent business act or practice,” including a practice or act
2 that violates, or is considered unlawful under, any other state or federal law.

3 130. Accordingly, pursuant to Business & Professions Code §§ 17200 and 17203,
4 Plaintiff requests the issuance of temporary, preliminary, and permanent injunctive relief enjoining
5 Defendants, and each of them, and their agents and employees, from further violations of the Labor
6 Code and applicable Industrial Welfare Commission Wage Orders, and upon a final hearing, an
7 order permanently enjoining Defendants, and each of them, and their respective agents and
8 employees, from further violations of the Labor Code and applicable Industrial Welfare
9 Commission Wage Orders.

10 131. Pursuant to Business and Professions Code § 17203, Plaintiff, on behalf of herself
11 and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully belonging
12 to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair
13 business practices.

14 132. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
15 the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover reasonable
16 attorneys’ fees in connection with their unfair competition claims.

17 **EIGHTH CAUSE OF ACTION**

18 **CIVIL PENALTIES**

19 **(Lab. Code §§ 2698 *et seq.*)**

20 133. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

21 134. During the applicable limitations period, Defendants have violated Labor Code §§
22 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, 1194, 1197, and 1198.

23 135. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of
24 herself and other current and former employees, to bring a representative civil action to recover
25 civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not,
26 be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

27 136. Plaintiff, a former employee against whom Defendants committed one or more of the
28 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee

1 within the meaning of Labor Code § 2699(c).

2 137. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
3 § 2699.3. Notice was provided to the California Labor & Workforce Development Agency
4 (“LWDA”) and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an
5 intent to investigate.

6 138. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
7 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7,
8 227.3, 510, 512, 1194, 1197, and 1198.

9 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 227.3, 1194, and
10 1198, one hundred dollars (\$100) for each employee per pay period for each
11 initial violation and two hundred dollars (\$200) for each employee per pay
12 period for each subsequent violation (penalties set by Labor Code §
13 2699(f)(2));

14 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding
15 thirty (30) days’ pay as waiting time (penalties set by Labor Code § 256);

16 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
17 employee for each initial violation that was neither willful nor intentional,
18 two hundred dollars (\$200) for each employee, plus 25% of the amount
19 unlawfully withheld from each employee, for each initial violation that was
20 either willful or intentional, and two hundred dollars (\$200) for each
21 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
22 from each employee, for each subsequent violation, regardless of whether the
23 subsequent violation was either willful or intentional (penalties set by Labor
24 Code § 210);

25 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
26 employee for each initial violation that was neither willful nor intentional,
27 two hundred dollars (\$200) for each employee, plus twenty-five percent
28 (25%) of the amount unlawfully withheld from each employee, for each

1 initial violation that was either willful or intentional, and two hundred dollars
2 (\$200) for each employee, plus twenty-five percent (25%) of the amount
3 unlawfully withheld from each employee, for each subsequent violation,
4 regardless of whether the subsequent violation was either willful or
5 intentional (penalties set by Labor Code § 225.5);

6 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
7 citation, two hundred and fifty dollars (\$250) for each employee for each
8 violation. Alternatively, if an initial citation or its equivalent occurred before
9 the filing of this action, one thousand dollars (\$1,000) for each employee for
10 each violation (penalties set by Labor Code § 226.3);

11 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
12 employee for each initial pay period for which the employee was underpaid,
13 and one hundred dollars (\$100) for each employee for each subsequent pay
14 period for which the employee was underpaid (penalties set by Labor Code §
15 558);

16 vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each
17 aggrieved employee for each initial violation of Labor Code § 1197 that was
18 intentional and two hundred and fifty dollars (\$250) for each aggrieved
19 employee per pay period for each subsequent violation of Labor Code §
20 1197, regardless of whether the initial violation was intentional (penalties set
21 by Labor Code § 1197.1);

22 viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable
23 attorneys' fees and costs in connection with Plaintiff's claims for civil
24 penalties.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, the general
27 public, and the State of California, prays for relief and judgment against Defendants as follows:

28 (1) An order that the action be certified as a class action;

- 1 (2) An order that Plaintiff be appointed class representative;
2 (3) An order that counsel for Plaintiff be appointed class counsel;
3 (4) Unpaid wages;
4 (5) Actual damages;
5 (6) Liquidated damages;
6 (7) Restitution;
7 (8) Declaratory relief;
8 (9) Pre-judgment interest;
9 (10) Statutory penalties;
10 (11) Civil penalties;
11 (12) Costs of suit;
12 (13) Reasonable attorneys' fees; and
13 (14) Such other relief as the Court deems just and proper.

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff, on behalf of herself, all other similarly situated, and the general public, hereby
16 demands a jury trial on all issues so triable.

17
18 Dated: November 12, 2021

SETAREH LAW GROUP

19
20
21 

22 SHAUN SETAREH
23 WILLIAM M. PAO
24 NOLAN DILTS
25 Attorneys for Plaintiff
26 KATIE CHAVEZ
27
28

1 **PROOF OF SERVICE**

2 I am a citizen of the United States and am employed in the County of Los Angeles, State
3 of California. I am over the age of 18 and not a party to the within action. My business address
4 is 9665 Wilshire Blvd., Suite 430 Beverly Hills, CA 90212

5 On November 19, 2021, I served the foregoing documents described as:

6 **FIRST AMENDED COMPLAINT**

7 in this action by transmitting a true copy thereof addressed as follows:

8 Michael S. Helsley
9 mhelsley@wjhattorneys.com
10 Giulio A. Sanchez
11 gsanchez@wjhattorneys.com
12 June Villacorta
13 jvillacorta@wjhattorneys.com
14 Kimberley Dodd
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16 WAGNER JONES HELSLEY PC
265 E. River Park Circle, Suite 310
Fresno, CA 93720
Counsel for Defendant UNITED SECURITY
BANK

17 **[X] ONLY BY ELECTRONIC TRANSMISSION**

18 Only by e-mailing the document(s) to the persons at the e-mail address(es) listed based
19 on notice provided on November 12, 2021 that, during the Coronavirus (COVID-19) pandemic,
20 this office will be working remotely, not able to send physical mail as usual, and is therefore
21 using only electronic mail. No electronic message or other indication that the transmission was
22 unsuccessful was received within a reasonable time after the transmission.

23 **[X] STATE** I declare under penalty of perjury under the laws of the State of California that
24 the above is true and correct.

25 Executed on November 19, 2021, at Beverly Hills, California.

26 

27 Lauren Farrington