

EDWARD J. WYNNE, SBN 165819
 ewynne@wynnelawfirm.com
 GEORGE R. NEMIROFF, SBN 262058
 gnemiroff@wynnelawfirm.com
 WYNNE LAW FIRM
 80 E. Sir Francis Drake Blvd., Suite 3G
 Larkspur, CA 94939
 Telephone: (415) 461-6400
 Facsimile: (415) 461-3900

Plaintiffs' Counsel

ELECTRONICALLY FILED
 Superior Court of California
 County of Alameda

SEP 11 2023

Chad Firke, Executive Officer / Clerk of the Court

By: D. Drew Deputy

SUPERIOR COURT OF CALIFORNIA

ALAMEDA COUNTY

NICOLETTE RHODES, an individual, and
 BEATRIZ LIZAOLA, an individual, KIM
 NGO, an individual, on behalf of those
 similarly situated,

Plaintiffs,

vs.

PATELCO CREDIT UNION and DOES 1
 through 50, inclusive,

Defendant.

Case No.: 23CV025913

SECOND AMENDED COMPLAINT

[CLASS ACTION]

1. Labor Code § 510, 1194 - Overtime
2. B&P § 17200 - Overtime
3. Labor Code § 512, 226.7
4. B&P § 17200 – Meal and Rest Breaks
5. B&P § 17200 – Sick Pay
6. B&P § 17200 – Injunction/Dec. Relief
7. Labor Code § 226, 1174, 1174.5
8. Labor Code § 203 - Penalties
9. Labor Code § 2699 *et seq.* - Penalties

1 **GENERAL ALLEGATIONS**

2 1. Plaintiff Nicolette Rhodes is a former Branch Manager for defendant Patelco
3 Credit Union ("Patelco" or "Defendant") in the state of California. Plaintiff resigned from her
4 employment with Defendant in or about May 2023.

5 2. Plaintiff Beatriz Lizaola is a Branch Manager for Defendant in the state of
6 California. Plaintiff was terminated by Defendant on or about July 12, 2023.

7 3. Plaintiff Kim Ngo was a Branch Manager for Defendant in the state of California
8 until she resigned in late-2021.

9 4. Defendant Patelco Credit Union is a not-for-profit, full-service credit union.
10 Defendant owns and operates retail banks in this judicial district and in the state of California.
11 Defendant has employees with the title "Branch Manager" and "Branch Manager in Training."

12 5. Venue is proper in Alameda County as at least some of the acts complained of
13 herein occurred in Alameda County and as Defendant's principal place of business is in
14 Pleasanton, Alameda County.

15 6. At all times herein mentioned, Plaintiffs and the class identified herein worked as
16 employees for Defendant in salaried positions in Defendant's branch and retail locations. At all
17 times herein mentioned, Plaintiffs and the class have been, and continue to be, domiciled in the
18 State of California. Plaintiffs are informed and believe and thereon allege that there are less than
19 100 members in the proposed class. The amount in controversy including damages, restitution,
20 attorney fees, penalties, and value of injunctive relief sought does not exceed \$5,000,000. The
21 amount in controversy for the named Plaintiffs including damages, restitution, pro rata share of
22 attorney fees, penalties, and pro rata value of injunctive relief sought does not exceed \$75,000,
23 respectively.

24 7. At all times herein mentioned Defendant and Does 1 through 50 are and were
25 corporations, business entities, individuals and partnerships, licensed to do business and actually
26 doing business in the State of California, Alameda County. Defendant owns and operates an
27 industry, business and establishment in a number of separate geographic locations within the
28 State of California, including within Alameda County, for the purpose of selling banking

1 services and products. As such and based upon all the facts and circumstances incident to
2 Defendant's business in California, Defendant is subject to California Labor Code §§ 1194, 510,
3 512, 226.7, 226, 1174, 1174.5, 203, California Business and Professions Code § 17200 *et seq.*,
4 (Unfair Practices Act) and the applicable Industrial Welfare Commission Wage Orders.

5 8. Plaintiffs do not know the true names or capacities, whether individual, partner
6 or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that
7 reason, said Defendants are sued under such fictitious names, and Plaintiffs pray leave to amend
8 this complaint when the true names and capacities are known. Each of said fictitious Defendants
9 were responsible in some way for the matters alleged herein and proximately caused Plaintiffs
10 and members of the class to be subject to the illegal employment practices, wrongs and injuries
11 complained of herein.

12 9. At all times herein mentioned, each of said Defendants participated in the doing
13 of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
14 Defendants, and each of them, were the agents, servants and employees of each of the other
15 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
16 acting within the course and scope of said agency and employment.

17 10. At all times herein mentioned, Defendants, and each of them, were members of,
18 and engaged in, a joint venture, partnership and common enterprise, and acting within the
19 course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

20 11. At all times herein mentioned, the acts and omissions of various Defendants, and
21 each of them, concurred and contributed to the various acts and omissions of each and all of the
22 other Defendants in proximately causing the injuries and damages as herein alleged.

23 12. At all times herein mentioned, Defendants, and each of them, ratified each and
24 every act or omission complained of herein. At all times herein mentioned, the Defendants, and
25 each of them, aided and abetted the acts and omissions of each and all the other Defendants in
26 proximately causing the damages as herein alleged. Further, at all times mentioned herein, the
27 wage and hour related compensation policies of Defendant's branch locations in California are
28 and were dictated by, controlled by, and ratified by the Defendants herein and each of them.

1 **FACTUAL ALLEGATIONS**

2 13. Pursuant to California Labor Code §§ 218, 218.6, and 1194, Plaintiffs may bring
3 a civil action for overtime wages directly against their employer without first filing a claim with
4 the California Division of Labor Standards Enforcement and may recover such wages, together
5 with interest thereon, penalties, attorney fees and costs.

6 14. Plaintiffs and class members were regularly scheduled as a matter of uniform
7 company policy to work and in fact worked as salaried bank employees in excess of eight hours
8 per workday and/or in excess of forty hours per workweek without receiving straight time or
9 overtime compensation for such overtime hours worked in violation of California Labor Code §
10 1194 and California Industrial Welfare Commission Wage Order 4-2001. Plaintiffs and class
11 members were primarily engaged in assisting customers and routine inside sales work consistent
12 with Defendant's realistic expectations. Defendant has failed to meet the requirements for
13 establishing any exemption from California's overtime requirements because all class members
14 (a) regularly spent more than 50% of their time performing nonexempt work, (b) did not
15 customarily and regularly exercise discretion and independent judgment on matters of
16 significance, (c) did not have the authority to hire or fire or make meaningful recommendations
17 regarding same, (d) did not customarily and regularly supervise at least two employees or the
18 equivalent, (e) did not perform work directly related to the management policies or the general
19 business operations of Defendant or Defendant's customers, (f) did perform nonexempt
20 production and/or sales work a majority of their time (i.e., in excess of 50%) consistent with
21 Defendant's realistic expectations, (g) did not customarily and regularly spend more than 50%
22 of their time away from the Defendant's places of business selling or obtaining orders or
23 contracts, and (h) did not earn more than 50% of their compensation in a bona fide commission
24 plan. Thus, Plaintiffs and the class members were not exempt from the overtime requirements of
25 California law for these reasons.

26 15. As a result of Defendant misclassification of Plaintiffs and the class members, it
27 did not provide meal periods and failed to authorize and permit rest periods. Defendant also
28 failed to pay meal and rest period premiums for missed meal and rest periods.

16. Defendant provided sick pay to Plaintiffs and class members. Sick pay must be compensated at the employee's regular rate of pay, for the workweek in which the paid leave was taken, or at the rate determined by averaging over 90-days pursuant to Labor Code § 246(l). Defendant failed to pay Plaintiffs and class members their sick pay at each employee's regular rate.

17. Defendant does not provide Plaintiffs and class members with accurate wage statements as required by California law. Plaintiffs and class members receive wage statements that do not reflect all hours worked, applicable overtime premiums, meal and rest period premiums and the correct regular rate for overtime, meal and rest period premiums and sick pay calculations.

CLASS ALLEGATIONS

18. This complaint is brought by Plaintiffs pursuant to California Code of Civil Procedure § 382 on behalf of a class. All claims alleged herein arise under California law for which Plaintiffs seeks relief authorized under California law. The class is comprised of, and defined as:

All current and former California-based employees of Patelco Credit Union with the title “Branch Manager”, “Branch Manager in Training”, or “Group Manager” (collectively, “class members”) who worked at any time from four years prior to the time this case is filed up to the time of trial, plus any additional tolling pursuant to California’s Emergency Rules Related to COVID-19.

19. The members of the class are so numerous that joinder of all members is impracticable. The exact number of the members of the class can be determined by reviewing Defendant's records.

20. Plaintiffs will fairly and adequately protect the interests of the class and has retained counsel that is experienced and competent in class action and employment litigation. Plaintiffs have no interests that are contrary to, or in conflict with, members of the class.

21. A class action suit, such as the instant one, is superior to other available means for fair and efficient adjudication of this lawsuit. The damages suffered by individual members of the class may be relatively small when compared to the expense and burden of litigation, making it virtually impossible for members of the class to individually seek redress for the

1 wrongs done to them.

2 22. A class action is, therefore, superior to other available methods for the fair and
3 efficient adjudication of the controversy. Absent these actions, the members of the class likely
4 will not obtain redress of their injuries and Defendant will retain the proceeds of its violations of
5 California law.

6 23. Even if any member of the class could afford individual litigation against
7 Defendant, it would be unduly burdensome to the judicial system. Concentrating this litigation
8 in one forum will promote judicial economy and parity among the claims of individual members
9 of the class and provide for judicial consistency.

10 24. There is a well-defined community of interest in the questions of law and fact
11 affecting the class as a whole. Questions of law and fact common to each of the class
12 predominate over any questions affecting solely individual members of the action. Among the
13 common questions of law and fact are:

14 a. Whether the class has been properly classified as exempt by Defendant from
15 overtime compensation;

16 b. Whether the class is expected to regularly work hours in excess of forty per week
17 and/or in excess of eight hours per day;

18 c. Whether the class was not provided meal periods;

19 d. Whether the class was not authorized and permitted rest periods;

20 e. Whether the class was paid meal and rest period premiums at the correct
21 regular rate;

22 f. Whether the class was paid sick pay at the correct regular rate;

23 g. How the class is compensated; and,

24 h. Whether the class has sustained damages and, if so, what the proper measure of
25 damages is.

26 **FIRST CAUSE OF ACTION**

27 **(Labor Code §§ 510 & 1194 - Overtime)**

28 25. Plaintiffs incorporate the allegations contained in the previous paragraphs of this

1 Complaint as if fully set forth herein.

2 26. California Wage Order 4-2001, 8 C.C.R. § 11040, and Labor Code § 510 state
3 that an employee must be paid overtime, equal to 1.5 times the employee's regular rate of pay,
4 for all hours worked in excess of 40 per week and/or 8 per day.

5 27. Class members regularly work more than 40 hours per week and/or 8 hours per
6 day but are not paid overtime compensation.

7 28. Class members do not meet any of the tests for exempt status under the
8 California Wage Orders and/or the California Labor Code.

9 **SECOND CAUSE OF ACTION**

10 **(Bus. & Prof. Code § 17203 – Overtime)**

11 29. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
12 Complaint as if fully set forth herein.

13 30. Defendant has committed an act of unfair competition under California Business
14 & Professions Code § 17200 *et seq.* by not paying the required state law overtime pay to the
15 members of the class.

16 31. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs request an order requiring
17 Defendant to make restitution of all overtime wages due to the class.

18 **THIRD CAUSE OF ACTION**

19 **(Labor Code §§ 512 & 226.7 – Meal & Rest Breaks)**

20 32. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
21 Complaint as if fully set forth herein.

22 33. In violation of Labor Code § 512 and IWC Wage Order 4-2001, Defendant failed
23 to provide, authorize, permit and document meal and rest period breaks for the class in the
24 number, length and manner as required. At no time has the Plaintiffs or the class entered into
25 any written agreement with Defendant expressly or impliedly waiving their right to their meal
26 and rest breaks. Plaintiffs and the class have been injured by Defendant's failure to comply
27 with Labor Code § 512 and IWC Wage Order 4-2001 and are thus entitled to the wages set forth
28 in Labor Code § 226.7.

1 **FOURTH CAUSE OF ACTION**

2 **(Bus. & Prof. Code § 17203 – Meal & Rest Breaks)**

3 34. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
4 Complaint as if fully set forth herein.

5 35. Defendant has committed an act of unfair competition under California Business
6 & Professions Code § 17200 *et seq.* by failing to provide, authorize, permit and document meal
7 and rest periods breaks to the members of the class. Defendant further violated the Labor Code
8 by failing to pay premium pay for missed meal and rest breaks to the members of the class.

9 36. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs request Defendant make
10 restitution of all wages due to the class under this Fourth Cause of Action.

11 **FIFTH CAUSE OF ACTION**

12 **(Bus. & Prof. Code § 17203 – Failure to Pay Sick Time)**

13 37. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
14 Complaint as if fully set forth herein.

15 38. Defendant has committed an act of unfair competition under California Business
16 & Professions Code § 17200 *et seq.* by failing to pay class members sick pay at their regular
17 rate of pay in violation of Labor Code § 246 *et seq.*

18 39. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs request Defendant make
19 restitution of all wages due to the class under this Fifth Cause of Action.

20 **SIXTH CAUSE OF ACTION**

21 **(Bus. & Prof. Code § 17203 – Injunctive & Declaratory Relief)**

22 40. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
23 Complaint as if fully set forth herein.

24 41. Plaintiffs, and all persons similarly situated, are further entitled to and do seek a
25 both a declaration that the above-described business practices are unfair, unlawful and/or
26 fraudulent and injunctive relief restraining Defendant from engaging in any of such business
27 practices in the future. Such misconduct by Defendant, unless and until enjoined and restrained
28 by order of this Court, will cause great and irreparable injury to all members of the class in that

1 the Defendant will continue to violate California law, represented by labor statutes and IWC
2 Wage Orders, unless specifically ordered to comply with same. This expectation of future
3 violations will require current and future employees to repeatedly and continuously seek legal
4 redress in order to gain compensation to which they are entitled under California law. Plaintiffs
5 have no other adequate remedy at law to ensure future compliance with the California labor
6 laws and wage orders alleged to have been violated herein.

7 **SEVENTH CAUSE OF ACTION**

8 **(Labor Code §§ 226, 1174, & 1174.5 – Failure to Furnish Accurate Wage Statements)**

9 42. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
10 Complaint as if fully set forth herein.

11 43. Defendant, as a matter of corporate policy did not maintain or provide accurate
12 itemized statements in violation of Labor Code §§ 226 and 1174.

13 44. For instance, Defendant did not state or did not accurately state, *inter alia*, the
14 total hours worked, hours worked daily, or the actual hourly rate of Plaintiffs and other class
15 members in their pay statements. Defendant's failure to maintain accurate itemized statements
16 was willful, knowing, intentional, and the result of Defendant's custom, habit, pattern and
17 practice. Defendant's failure to maintain accurate itemized statements was not the result of
18 isolated, sporadic or unintentional behavior. Due to Defendant's failure to comply with the
19 requirements of Labor Code §§ 226 and 1174, Plaintiffs and the class members were injured
20 thereby.

21 45. Such a pattern and practice as alleged herein is unlawful and creates an
22 entitlement to recovery by Plaintiffs and the class identified herein for all damages and penalties
23 pursuant to Labor Code §§ 226 and 1174.5, including interest thereon, penalties, attorneys' fees
24 and costs.

25 **EIGHTH CAUSE OF ACTION**

26 **(Labor Code § 203 – Waiting Time Penalties)**

27 46. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set
28 forth herein.

1 47. Plaintiff separated from employment with Defendant, and did not have a written
2 contract for employment. Defendant, in violation of California Labor Code §§ 201 and 202 *et*
3 *seq.* had a consistent and uniform policy, practice and procedure of willfully failing to pay the
4 earned and unpaid wages of all such former employees. Defendant has willfully failed to pay
5 the earned and unpaid wages of such individuals, including, but not limited to, overtime
6 compensation and meal period premiums, according to proof. Plaintiff did not secret or absent
7 herself from Defendant nor refuse to accept the earned and unpaid wages from Defendant.
8 Accordingly, Defendant is liable for waiting time penalties for the unpaid wages pursuant to
9 California Labor Code § 203.

10 **NINTH CAUSE OF ACTION**

11 **(Labor Code §§ 2699 *et seq.* – Penalties under the Private Attorney General Act (PAGA))**

12 48. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set
13 forth herein.

14 49. As alleged above, Defendant failed to comply with the California Labor Code.
15 As such, Plaintiffs are “aggrieved employee(s)” as defined in Labor Code § 2699(a). Pursuant to
16 Labor Code § 2699, the Labor Code Private Attorneys General Act of 2004, Plaintiffs bring this
17 action on behalf of themselves and other current and former branch managers against Patelco
18 Credit Union, and seek recovery of applicable civil penalties as follows:

19 a. where civil penalties are specifically provided in the Labor code for each
20 of the violations alleged herein, Plaintiffs seek recovery of such penalties;

21 b. where civil penalties are not established in the Labor Code for each of the
22 violations alleged herein, Plaintiffs seek recovery of the penalties established in § 2699(e) of the
23 Labor Code Private Attorneys General Act of 2004, and in accordance with § 200.5 of the Labor
24 Code.

25 50. On January 31, 2023, Plaintiff Rhodes caused to be served written notice, via
26 certified mail, to the Labor and Workforce Development Agency and to Defendant, Patelco
27 Credit Union, of Plaintiff’s intent to assert a cause of action pursuant to Labor Code §§ 2699 *et*
28 *seq.*

51. The Labor and Workforce Development Agency declined to issue notice of its intention to pursue civil penalties in response to either Notice. Accordingly, Plaintiff commenced this PAGA claim for civil remedies as provided for under Labor Code § 2699.

52. On April 24, 2023, Plaintiff Lizaola caused to be served written notice, via certified mail, to the Labor and Workforce Development Agency and to Defendant, Patelco Credit Union, of her intent to amend Plaintiff Rhodes' previously filed PAGA notice and assert the same causes of action as an aggrieved employee pursuant to Labor Code §§ 2699 *et seq.*

53. Plaintiffs, on behalf of themselves and similarly situated branch managers, requests relief as described below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on her own behalf and on behalf of the class, prays for judgment as follows:

1. For an order certifying the proposed class;
2. For damages, penalties, restitution, attorney fees and costs, and injunctive relief as the amount in controversy not in excess of \$5,000,000 for the class and not in excess of \$75,000 for the named plaintiffs; and,
3. For prejudgment interest.

Dated: September 11, 2023

WYNNE LAW FIRM

By: 
Edward J. Wynne
80 E. Sir Francis Drake Blvd., Suite 3G
Larkspur, CA 94939
Telephone: (415) 461-6400
Facsimile: (415) 461-3900
Counsel for Plaintiff