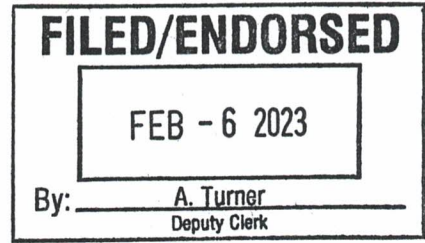


1 **CLAYEO C. ARNOLD**
2 **A PROFESSIONAL LAW CORPORATION**
3 Clayeo C. Arnold (SBN 65070)
4 carnold@justice4you.com
5 John T. Stralen (SBN 171227)
6 jstralen@justice4you.com
7 865 Howe Avenue
8 Sacramento, CA 95825
9 Tele: (916) 924-3100/Fax: (916) 924-1829



7 **THE DARREN GUEZ LAW FIRM**
8 Darren Guez (SBN 282023)
9 darren@guezlaw.com
10 930 Tahoe Blvd., Suite 802 #44
11 Incline Village, NV 89451
12 Tele: (916) 520-0988/Fax: (916) 490-3714

11 **COHELAN KHOURY & SINGER**
12 Isam C. Khoury (SBN 58759)
13 ikhoury@ckslaw.com
14 Michael D. Singer (SBN 115301)
15 msinger@ckslaw.com
16 605 C Street, Suite 200
17 San Diego, CA 92101
18 Tele: (619) 595-3001/Fax: (619) 595-3000

19 Attorneys for Plaintiffs ADAM J. HARMONING and MARCUS CASTRO

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

21 **COUNTY OF SACRAMENTO**

22 ADAM J. HARMONING and MARCUS
23 CASTRO

24 Plaintiffs,

25 vs.

26 FIRST BANK; FIRST BANKS, INC.; and
27 DOES 1 through 50 inclusive

28 Defendants.

Case No. 34-2017-00223939

**FIRST AMENDED CLASS ACTION
COMPLAINT and REPRESENTATIVE
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT ("PAGA")
FOR:**

**(1) Failure to Indemnify/Reimburse Business
Expenses in Violation of California Labor Code
§ 2802;**

**(2) Failure to Pay Regular/Minimum Wages in
Violation of California Labor Code §§ 1182.12,
1194, 1194.2, 1197, and Wage Order No. 4-
2001, § 4(A);**

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

(3) Failure to Pay Overtime and Double Overtime Compensation in Violation of Labor Code § 1194 and Wage Order No. 4-2001, § 3(A);

(4) Failure to Provide Compliant Meal Periods in Violation of Labor Code §§ 226.7, 512, and IWC Wage Order 4-2001, § 11;

(5) Failure to Provide Compliant Rest Periods in Violation of Labor Code § 226.7 and IWC Wage Order 4-2001, § 12;

(6) Failure to Make Payments Within the Required Time in Violation of California Labor Code §§ 201, 202-204;

(7) Statutory Penalties for Failure to Provide Accurate Wage Statements in Violation of Labor Code § 226;

(8) Failure to Maintain Required Records in Violation of California Labor Code §§ 1174, 1174.5 and Wage Order No. 4, § 7;

(9) Restitution for Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)

(10) PAGA Civil Penalties pursuant to Labor Code § 2699(f)(2) for Failure to Comply with Labor Code § 2802;

(11) PAGA Civil Penalties pursuant to Labor Code § 2699(f)(2) for Failure to Comply with Labor Code §§ 1182.12, 1194, 1194.2, 1197, and Wage Order No. 4-2001, § 4(A);

(12) PAGA Civil Penalties pursuant to Labor Code § 2699(f)(2) for Failure to Comply with Labor Code §§ 226.7, 512, and IWC Wage Order 4-2001, §§ 11-12

(13) PAGA Civil Penalties pursuant to Labor Code § 2699(f)(2) and as permitted by Labor Code §§ 203, 210, and 256 for Untimely Separation Pay;

(14) PAGA Civil Penalties pursuant to Labor Code § 226.3;

(15) PAGA Civil Penalties pursuant to Labor Code § 558(a).

DEMAND FOR JURY TRIAL

1 Plaintiffs, MARCUS CASTRO and ADAM HARMONING, on behalf of themselves, as
2 Representatives of the California Labor and Workforce Development Agency (“LWDA”), all
3 similarly “aggrieved employees” and all others similarly situated, complains and alleges as
4 follows:

5 **INTRODUCTION**

6 1. Plaintiffs bring this action against Defendants as a proposed class action pursuant to
7 Code of Civil Procedure section 382 based on systematic and continuous wage and hour abuses in
8 violation of the California Labor Code and the Industrial Welfare Commission Wage Orders (the
9 “IWC Wage Orders”). As a result of Defendants’ uniform and systematic conduct, policies,
10 practices, and procedures, Plaintiffs and a proposed class of California-based “Home Loan
11 Consultant” (or “HLC”) employees are owed reimbursement of expenses, unpaid minimum,
12 regular, and overtime wages, statutory penalties, restitution, and interest for a period of at least
13 four years prior to the commencement of this action until the commencement of trial (hereinafter
14 referred to as the proposed “Class Period” or as the “Relevant Time Period”).

15 2. Plaintiffs also bring this action as a Representative Action pursuant to the California
16 Private Attorneys General Act (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of
17 themselves and all other “aggrieved employees” as representatives of the California Labor and
18 Workforce Development Agency (“LWDA”) for recovery of civil penalties in addition to unpaid
19 wages, restitution, and statutory penalties. Plaintiffs suffered harm in loss of wages and business
20 expenses and are “aggrieved employees” under the PAGA, and after having sent Notice to the
21 LWDA in excess of 65 days prior to this Amendment, without cure by Defendants or without
22 intervention by the LWDA, Plaintiffs are deemed by operation of law to be LWDA
23 Representatives and are entitled to pursue civil penalties in this action as permitted by Labor Code
24 sections 2699-2699.3.

25 3. True and correct copies of the PAGA Notices filed by each Plaintiff evidencing
26 compliance with PAGA’s Notice Requirements are attached hereto within **Exhibit 1**, and are
27 expressly incorporated into this First Amended Complaint as if fully set forth herein. The Castro
28 Notice was electronically filed with the LWDA on January 14, 2019 and sent by certified mail on

1 the same day to Defendants. The Harmoning Notice was electronically filed with the LWDA on
2 January 17, 2018. The “PAGA Period” for recovery of civil penalties runs from January 14, 2018
3 to the date of commencement of trial in this action (or such other date ordered the Court).

4 **JURISDICTION AND VENUE**

5 4. Pursuant to Article VI, section 10 of the California Constitution, subject matter
6 jurisdiction is proper in the Superior Court of California, County of Sacramento, State of
7 California.

8 5. Pursuant to sections 395 and 395.5 of the California Code of Civil Procedure,
9 venue is proper in the Superior Court of California for the County of Sacramento, State of
10 California, because this is where Defendants do business and it is where the corporate
11 headquarters are located.

12 6. Plaintiffs allege that the matter is a local case or controversy not subject to the
13 Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. section 1332(d) as there is no diversity
14 jurisdiction or “minimal diversity.” The claims are based solely on California statutes and law,
15 including the Labor Code, IWC Wage Orders, Code of Civil Procedure, Civil Code, and Business
16 and Professions Code, and there is no federal question at issue under 28 U.S.C. section 1331.
17 Plaintiffs are informed and believe individual damages are below \$75,000 and that the number of
18 putative Class Members is less than 100 persons, and estimated in the range of 65-80 persons.
19 Further, although Defendant First Bank’s state of incorporation is Missouri, Defendant’s principle
20 headquarters and primary state of operations is the State of California and the principle place for
21 business is located at 16900 Goldenwest Street, Huntington Beach, California. Defendant First
22 Bank operates at least 38 branches/locations in California, the most in any state combined.

23 7. Moreover, PAGA civil penalty actions are not subject to federal jurisdiction.

24 **PARTIES**

25 8. Plaintiff MARCUS CASTRO is an individual who resides in California. From
26 November 2016 until April 30, 2018, CASTRO was an employee of First Bank with the position
27 and/or title of “Home Loan Consultant.” He and all other HLCs were uniformly and systematically
28 misclassified as “outside sales” exempt employees, and were paid purely on commissions from

1 loans generated and funded. Plaintiff ADAM HARMONING is an individual who resides in
2 California. From April 2017 through December 8, 2017, HARMONING was an employee of First
3 Bank with the position and/or title of “Home Loan Consultant. He and all other HLC’s were
4 subject to Defendant FIRST BANK’S (hereinafter “Defendant” or “FIRST BANK) unlawful
5 business expense reimbursement policies and/or practices as set forth herein.

6 9. FIRST BANK”) is a Missouri Corporation doing business in California. Based on
7 records maintained by the California Secretary of State, FIRST BANK is incorporated in the State
8 of Missouri, but maintains its principle place of business at 16900 Goldenwest Street, Huntington
9 Beach, California, and derives most of its income from approximately 38 branches/locations
10 located throughout the State of California.

11 10. The true names and capabilities, whether individual, corporate, associate, or
12 otherwise, of the Defendants named herein as DOES 1 through 50 (“DOE Defendants”) (FIRST
13 BANK and DOE Defendants collectively referred to as “Defendants”), are currently unknown to
14 Plaintiffs, and Plaintiffs therefore sue these DOE Defendants by such fictitious names pursuant to
15 California Code of Civil Procedure section 474. Plaintiffs will amend this complaint to allege the
16 true names and capacities of the DOE Defendants when ascertained as permitted by Code of Civil
17 Procedure section 474 and/or as required by law under Labor Code sections 558, 558.1, and
18 1197.1, applicable IWC Wage Orders, and decisional law pursuant to *Atempa v. Pedrazzani*
19 (2018) 27 Cal.App.5th 809 (petition for review denied, January 16, 2019) and *Turman v. Superior*
20 *Court* (2017) 17 Cal.App.5th 969. Further, any person who is a managing agent, whether known
21 now or later named as a DOE Defendant, is personally liable for civil penalties and wages
22 pursuant to California Labor Code section 558.1, which provides: “Any employer or other person
23 acting on behalf of an employer, who violates, or causes to be violated, any provision regulating
24 minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or
25 violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
26 liable as the employer for such violation.”

27 ///

28 ///

1 operating in California, with approximately 44 locations operating in various other mid-western
2 states.

3 18. Defendants’ customers or the public may obtain information about home loans free
4 of charge through Defendants’ website, telephone, or bank representatives.

5 19. Defendants’ customers or the public seeking information about home loans are
6 considered potential “leads” which might be distributed to Defendants’ “Home Loan Consultants.”
7 HLCs, however, under their uniform commission plan, are to generate their own business, outside
8 of the FIRST BANK branches, but branch managers require the HLCs to conduct general banking
9 business in a bank location and actively prevent HLCs from engaging in outside client generation
10 activities. Further, Defendants’ underwriting and processing is in the Central time zone, so for
11 California HLCs, they must utilize home offices to engage in business of getting underwriting and
12 funding of loans starting at 6:00 a.m., well before FIRST BANK branches open in California.
13 They do this without any reimbursement from FIRST BANK for home office equipment expenses.

14 20. Defendants’ “Home Loan Consultants” (“HLCs”) are employees of the company
15 but are uniformly and systematically deemed exempt from overtime pay and other protections of
16 the California Labor Code and applicable Industrial Welfare Commission (“IWC”) Wage Orders.

17 21. Plaintiff Marcus H. Castro was employed by FIRST BANK as an exempt “outside
18 sales” Home Loan Consultant (“HLC”) from approximately November 4, 2016 until
19 approximately April 30 2018 in the Southern California region. His employee identification
20 number was believed to be 0000170027. At the time of hire, he was provided no orientation or
21 training as to First Bank’s loan processing system, but believed that there would be sufficient loan
22 support and processing staff to allow him to acquire customers for home loan and mortgage
23 applications. It appears he was paid solely on a commission and advance draw basis. Within
24 weeks after Mr. Castro’s hire, it became apparent that First Bank branch managers and supervisors
25 for assigned areas required his personal attendance in branch locations to assist in regular banking
26 business which prevented Plaintiff CASTRO and other similarly-situated HLCs from actively
27 engaging in outside sales activities, marketing, and other outside potential customer acquisition
28 events. Plaintiff CASTRO estimates he spent, and observed others spending, upwards of 75% to

1 80% (or more) of their workweeks confined to assigned First Bank branch locations, while
2 working in the range of 55-60 or more hours per week.

3 22. As a “Home Loan Consultant,” Plaintiff CASTRO spent a small percentage of his
4 time communicating with Defendants’ leads (or leads “Home Loan Consultants” obtained through
5 their own sources) to discuss Defendants’ mortgage loan products and their suitability for the
6 potential borrower.

7 23. For a vast majority of his work time, Plaintiff CASTRO’s position does not permit
8 him or others holding similar titles and positions to engage primarily in sales activity.

9 24. First Bank completely disregarded Labor Code section 2802 and required HLCs to
10 pay full price for all business use of smartphones and required home internet services, without
11 reimbursement, for HLCs to monitor loan progression through the ENCOMPASS system, and
12 thus, HLCs were also serving as their own loan processing agents. This required constant updating
13 and monitoring of every trivial detail or else HLCs would lose the loan, lose time, and lose
14 commissions. This was not a complaint just arising from Plaintiffs; all HLCs for whom Castro and
15 Harmoning had contact with were spending an inordinate amount of time babysitting loans and
16 could not generate new business outside the branch offices.

17 25. Once potential borrower express interest in obtaining a loan from Defendants,
18 Plaintiff CASTRO and other “Home Loan Consultants” spend a considerable amount of time (far
19 in excess of 50% of their work time) collecting information from potential borrowers, entering
20 their information into mortgage applications, gathering documents such as tax records, pay stubs,
21 bank statements, homeowners insurance, and a myriad of other records from borrowers or
22 potential borrowers to process the loan application.

23 26. FIRST BANK also held various events that branch managers deemed to be must
24 attend events, even though the likelihood of securing a new client loan origination was minimal.
25 This required travel without reimbursement of mileage and, at least once every quarter, to expend
26 funds for overnight accommodations. There was no reimbursement by FIRST BANK. The only
27 reimbursement offered, which did not cover the actual cost, was a taxable reimbursement of \$50
28 per month for a smartphone, but no equipment, no hands-free device, and the general cost of at

1 least \$100 per month given the data usage necessary to interact with the Defendants. All other
2 expenses - mileage, travel, tolls, parking, meals, and entertainment - were expected to be paid by
3 the HLCs, despite the fact that HLCs were unable to leave the confines of the assigned branches
4 for most of the workweek. The expectation, system-wide, was that HLCs were to provide in-
5 branch mortgage lending coverage and to assist in other bank functions (not sales) due to high
6 turnover. In terms of expenses, Plaintiff CASTRO describes one intake document as stating,
7 contrary to law: “How much of your own money are you willing to invest in your business to
8 ensure success?” The fact is, all business was FIRST BANK’s business and in California, those
9 expenses, which were many, were required to have a reasonable basis for either limitation or
10 reimbursement of actual costs. FIRST BANK was not just considering HLCs “outside sales”
11 employees, but in essence, illegal independent contractors under Labor Code section 226.8.

12 27. Further, branch managers and supervisors require the HLCs to spend far more than
13 50% of their worktime in branch locations and not outside or away from FIRST BANK locations.

14 28. These activities are primarily clerical in nature and required as part of FIRST
15 BANK’s policies and procedures.

16 29. Defendants knew or should have known that the result of these procedures and
17 policies was to restrict “Home Loan Consultants” from conducting sales activities for a majority
18 of their work time in order to maintain the classification as “exempt” employees. Ostensibly,
19 FIRST BANK expected Plaintiff CASTRO and all similarly-situated HLCs to engage in work for
20 at least 40 hours per week. At no time did FIRST BANK actually record in-branch hours, though
21 electronic records of login and password authentications would show in-branch office hours
22 exceeding far more than 50% of weekly work time for Plaintiff CASTRO and other HLCs.
23 Nothing at FIRST BANK accounted for meeting with clients at their work or home, doing intake
24 on necessary documents and information. Plaintiff CASTRO and similar HLCs within California
25 worked 6-7 days per week, traveling, meeting clients, using their own internet (without
26 reimbursement), and processing information without any substantial assistance.

27 30. Plaintiff CASTRO and other “Home Loan Consultants” spent most of their time
28 working from an office (either home or at one of Defendants’ branches), processing loan

1 applications.

2 31. FIRST BANK expected CASTRO and other “Home Loan Consultants” to maintain
3 regular office hours and be physically present at the bank branch on a frequent basis, and not be
4 regularly engaged in outside sales lead generation.

5 32. If Plaintiff CASTRO was not working at a bank, Plaintiff was normally working
6 from his home office or some other fixed office with internet access processing loan applications,
7 checking on and constantly updating FIRST BANK’s “Encompass” system to push loans toward
8 funding and close.

9 33. FIRST BANK knew “Home Loan Consultants” would work from home to process
10 loans, but failed to provide reimbursement for costs necessary to maintain a home office.

11 34. Once Plaintiff CASTRO and other “Home Loan Consultants” believed they had
12 completed a prospective borrower’s loan application and had provided Defendants’ mortgage loan
13 processor (located out of state) with prospective borrowers’ loan applications and supporting
14 records, Plaintiff and other “Home Loan Consultants” waited to obtain approval from Defendants’
15 mortgage underwriter. This process could take months and without sufficient clerical staff or loan
16 processing assistants, all documentation was performed by the “Home Loan Consultant” without
17 the likelihood of generating commission-based pay.

18 35. “Home Loan Consultants” have no authority or discretion to approve or disapprove
19 a loan.

20 36. With the collapse of the subprime mortgage market in 2008, a substantial number
21 of new requirements imposed upon lenders such as Defendants have made getting loans for
22 prospective borrowers extremely difficult.

23 37. The net effect of the increased scrutiny placed upon banks such as Defendants has
24 caused many applications for prospective borrowers to be declined or delayed substantially,
25 making it extremely difficult for Plaintiff and other “Home Loan Consultants” to earn a
26 commission, and requiring vast amounts of hours to accumulate sufficient clerical documentation
27 for mortgage underwriters, which restricts, inhibits, and often precludes outside sales activities.

28 ///

1 38. In an effort to cut costs, Defendants do not provide their “Home Loan Consultants”
2 with an assistant loan processor to complete the loan application paperwork for prospective
3 borrowers and thus to free up time to allow Plaintiff CASTRO and “Home Loan Consultants” to
4 spend looking for prospective borrowers.

5 39. Instead, Defendants require Plaintiff CASTRO and “Home Loan Consultants” to
6 spend a considerable amount of time (far in excess of 50% of their work time) doing the clerical
7 work associated with processing loans, which, as alleged above, is a substantial time consumer for
8 Plaintiff and other “Home Loan Consultants.”

9 40. FIRST BANK managers know or should know that Plaintiff CASTRO and others
10 in the proposed Class are spending a majority of their work time engaged in clerical tasks and not
11 engaged in any significant amount of time engaged in soliciting potential borrowers. For Plaintiff
12 and all similarly-situated California-based HLCs the following facts were common and universal,
13 and implicate liability for FIRST BANK:

- 14 - regularly required and expected to remain in assigned FIRST BANK branches to assist in
15 activities of the bank and not allowed at least more than 50% of their daily worktime to
work away from the premises of FIRST BANK;
- 16 - required to attend in-branch meetings and to remain in the branch even though new loan
17 processing required meeting with and obtaining necessary information/documentation
18 from loan applicants, which also undermined the HLCs’ ability to engage in sales activity
away from the employer’s premises;
- 19 - encouraged and expected to pay money out of their own commissions without complete
20 non-taxed reimbursement for overnight lodging, mileage, parking, tolls, travel, meals,
entertainment, and client gifts/marketing materials that provided to aid and encourage
21 customers to become FIRST BANK clients;
- 22 - in fact impeded from engaging in activities away from FIRST BANK facilities with
23 monthly and quarterly meetings and events done for the benefit of bank branch managers
and supervisors, that had either no or minimal prospects for generating new business or
24 clients and usually held at FIRST BANK premises convenient for supervisors or
management;
- 25 - expected to work anywhere from 10 plus hours per day and between 55-60 (or more) hours
26 per week, and were not paid minimum wages, regular wages, or overtime wages for hours
worked in excess of 8 hours per day and/or 40 hours per week;
- 27 - offered a taxable stipend of \$50 per month to use their home internet, equipment (hands
28 free), and personal smartphones when in fact the general amount to procure and service all
necessary equipment for FIRST BANK mortgage processing was in excess of \$200 per

1 month, with necessary small tool and equipment costs in addition to the monthly payments
for services;

- 2 - required to use their personal vehicles without reimbursements for any intraday mileage,
3 tolls, or parking;
- 4 - never paid based on their “hours worked” and spent anywhere from 75% to 80% (or more)
of a traditional workweek inside FIRST BANK branch offices;
- 5 - not provided any 30-minute, off-duty uninterrupted meal periods before the end of their
6 fifth hour of work and were never paid an hour of pay for any non-compliant meal periods;
- 7 - not provided any 10-minute, paid rest periods for every approximate 4 hours worked (or
8 any major fraction thereof) and were never paid an hour of pay for non-compliant rest
periods;
- 9 - subject to FIRST BANK’s practice of not keeping track of, as required by law, the number
of hours worked, the amounts of pay and corresponding rates, or all on-duty time; and
- 10 - not timely paid all wages due as non-exempt employees during the time proscribed by
11 Labor Code sections 201-204, and all formerly-employed HLCs (like Plaintiff) were not
12 paid all wages due in a timely manner for terminated or separated employees.

13 41. Plaintiff CASTRO and other “Home Loan Consultants” were paid on a commission
14 basis with a monthly draw against future commissions and were not paid a salary or hourly pay.

15 42. The result of the system in place at FIRST BANK is that Plaintiff CASTRO and the
16 proposed Class work excessive hours for less than minimum wage as commissions do not cover
17 the amount of hours worked to satisfy any exemption from the presumption that employees are
18 entitled to hourly pay and overtime wages.

19 **CLASS ACTION ALLEGATIONS**

20 43. Plaintiffs brings this action on behalf of themselves and all others similarly situated
21 as a Class Action pursuant to Section 382 of the Code of Civil Procedure.

22 44. Plaintiffs seeks to represent a class composed of and defined as follows:

23 **Plaintiff Class:**

24 All of Defendants’ California-based employees who at any time four
25 years prior to the filing of this action through the date of trial (“Relevant
26 Time Period”) held the job title of “Home Loan Consultant” (“HLC”) and who were classified as exempt “outside sales” employees subject to
27 Defendants’ “Home Loan Consultant Compensation Plan.”

27 ///

28 ///

1 45. Plaintiffs also seek to represent the following subclasses composed of and defined
2 as follows:

3 **Unreimbursed Expense Subclass:**

4 All members of the Plaintiff Class who, during the Relevant Time
5 Period, were not reimbursed for reasonable and necessary expenses for
6 maintaining a home office to conduct work required by Defendants
and/or were not reimbursed for mileage, meals, and entertainment
expenses associated with meetings with clients and/or commuting
between branch locations during the same workday.

7 **Minimum Wage Subclass:**

8 All members of the Plaintiff Class who, during the Relevant Time
9 Period, failed to receive pay sufficient to satisfy minimum wage for all
hours worked.

10 **Overtime Subclass:**

11 All members of the Plaintiff Class who, during the Relevant Time
12 Period, worked in excess of eight (8) hours per day and/or in excess of
forty (40) hours per week, and who did not receive overtime pay at the
requisite overtime rate of pay.

13 **Meal and Rest Period Subclass:**

14 All members of the Plaintiff Class who, during the Relevant Time
15 Period, were not provided off-duty, unpaid 30-minute meal periods
before the end of the fifth hour worked, or who were not provided off-
16 duty, paid 10-minute rest periods for approximately every 4 hours
worked (or every major fraction thereof), nor were provided with at least
17 one hour of “premium pay” at the employees’ regular rate of pay for
each non-compliant meal or rest period per day worked exceeding at
18 least 5 hours per day.

19 **Wage Statement Subclass:**

20 All members of the Plaintiff Class who, during the applicable statute of
21 limitations period, did not receive accurate itemized Wage statements as
required by Labor Code section 226.

22 **Recordkeeping Subclass:**

23 All members of the Plaintiff Class who, during the applicable statutory
24 period, suffered harm as a result of Defendants’ failure to maintain
proper and required records of their employees.

25 **Waiting Time Subclass:**

26 All members of the Plaintiff Class who, during the applicable limitations
27 period, did not receive all wages due in a timely manner as required by
Labor Code sections 201-204.
28

UCL Subclass:

All members of the Plaintiff Class who, during the Relevant Time Period, are owed restitution in the form of (1) unreimbursed expenses and/or (2) wages earned and unpaid as a result of Defendants' uniform pay policies and procedures.

46. Plaintiffs reserve the right under the California Rules of Court to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

47. This action is brought and may properly be maintained as a Class Action under the provisions of Section 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity

48. The potential members of the Plaintiff Class as defined are so numerous or many, that joinder of all the members of the Plaintiff Class is impracticable. Plaintiffs are informed and believe that the number of HLCs working in the State of California during the Relevant Time Period is in excess of 50 persons, but less than 100.

49. While the precise number of Class Members has not been determined at the time, Plaintiffs are informed, believe, and on that basis allege, that Defendants currently employ, and during the relevant time periods employed, over 100 Class Members.

50. Accounting for employee turnover during the relevant periods necessarily increases the number substantially.

B. Commonality and Predominance of Factual and Legal Issues

51. There are questions of law and fact common to the Plaintiff Class that predominate over any questions affecting only individual Class Members. In essence, Defendants' systematic classification of HLCs as outside sales while requiring more than 50% of their work time to remain on bank premises abrogates the exemption and results in the liability for payment of all hours worked, overtime, and provisions of compliant meal and rest periods. All other claims are derivative of the common and predominate issue as to whether the FIRST BANK engaged in improper classification of the HLCs as "outside sales" exempt when in fact they were not.

///

1 52. Common questions of law and fact include, without limitation and subject to
2 possible further amendment, the following:

- 3 (a) Whether Defendants are required to reimburse employees for equipment,
4 services, travel expenses such as mileage, meal, and entertainment
5 expenses, and supplies they required Class Members to incur;
- 6 (b) Whether Defendants required Class Members to work regular hours for
7 which Class Members were not fully compensated;
- 8 (c) Whether Defendants required Class Members to work overtime hours for
9 which Class Members were not fully compensated;
- 10 (d) Whether Defendants required Class Members to work double overtime
11 hours for which Class Members were not fully compensated;
- 12 (e) Whether Defendants provided compliant meal and/or rest periods as
13 required by Labor Code sections 226.7, 512(a) and/or applicable IWC
14 Wage Order sections 11-12;
- 15 (f) Whether Defendants violated California Labor Code section 226;
- 16 (g) Whether Defendants promptly paid all wages owed to Class Members
17 after the termination of the Class Members' employment;
- 18 (h) Whether Defendants violated California Labor Code sections 1174,
19 1174.5, and Wage Order No. 4-2001, section 7 by failing to maintain
20 required records;
- 21 (i) Whether Defendants engaged in unfair, deceptive and/or unlawful
22 practices that violated the Unfair Competition Law sections 17200, *et*
23 *seq.*;
- 24 (j) Whether Defendants are subject to penalties under California Labor Code
25 section 558; and
- 26 (k) Whether Defendants are subject to penalties under California Labor Code
27 section 2699(f)(2).

28 ///

1 **C. Typicality**

2 53. Plaintiffs’ claims are typical of the claims of the Plaintiff Class because Plaintiffs
3 and all members of the proposed Plaintiff Class and subclasses sustained similar injuries and
4 damages arising out of and caused by Defendants’ common course of conduct and policies in
5 violation of laws, regulations that have the force and effect of law and statutes as alleged herein.

6 **D. Adequacy of Representation**

7 54. Plaintiffs do not have any conflicts of interest with other Class Members, and will
8 prosecute the case vigorously on behalf of the Plaintiff Class.

9 55. Counsel representing Plaintiffs and the putative Class are competent and
10 experienced in litigating employment class actions, including wage and overtime class actions.

11 56. Plaintiffs will fairly and adequately represent and protect the interests of the
12 Plaintiff Class Members and has no interests adverse to the proposed Plaintiff Class and
13 Subclasses.

14 **E. Superiority of Class Action and Manageability**

15 57. A class action is superior to other available means for the fair and efficient
16 adjudication of the controversy because individual joinder of all Class Members is not practicable,
17 and questions of law and fact common to the Plaintiff Class predominate over any questions
18 affecting only individual members of the Plaintiff Class.

19 58. Each Class Member has been damaged or suffered injury and is entitled to recovery
20 because of Defendants’ illegal policies and/or practices.

21 59. Class Action treatment will allow those similarly situated persons to litigate their
22 claims in the manner that is most efficient and economical for the parties and the judicial system.

23 60. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
24 management of this action that would preclude maintenance as a Class Action.

25 61. At the appropriate time, Plaintiffs will present a trial methodology and plan that
26 will streamline the action, base liability and damages on common evidence and common modes of
27 proof through Defendants’ corporate records, testimony of corporate common policy and
28 practices, representative evidence, sampled and presented in a manner consistent with recognized

1 scientific and statistical principles. Such methodology likely includes bifurcation of liability and
2 damages, the use of professionally administered survey evidence, seeking adjudication of class-
3 wide legal issues of particular claims or preliminary factual issues and other methods and
4 proposals to manage class-wide determinations common to all persons in the proposed Plaintiff
5 Class.

6 **CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 **Failure to Indemnify/Reimburse Business Expenses in Violation of
California Labor Code § 2802**

9 **(By Plaintiffs and the Unreimbursed Expense Subclass as Against All Defendants)**

10 62. Plaintiffs re-allege and incorporate by this reference each of the foregoing
11 allegations, as though fully set forth herein.

12 63. California Labor Code section 2802 requires employers to indemnify their
13 employees for expenses and losses incurred while discharging their duties or obedience to the
14 directions of their employer.

15 64. California Labor Code section 2804 mandates that this statutory right cannot be
16 waived.

17 65. Plaintiffs and the Unreimbursed Expense Subclass Members incurred losses in
18 obedience to the directions of Defendants. This included home offices expenses, office supplies,
19 pens, paper, printer, internet, and other similar expenses. Defendants maintained no policy of
20 reimbursement of such expenses, and refused to reimburse said expenses even though the
21 employer knew of and required work to be performed at home by HLC employees.

22 66. Plaintiffs and Plaintiff Class Members were required to purchase and provide their
23 own equipment, services, and supplies in order to work for Defendants. Some examples of
24 expenses include:

- 25 - Required high speed cable or DSL internet at home to process documents and loan
- 26 applications and underwriting at approximately \$130.00 per month;
- 27 - Personal Smart Phone at \$400-\$600, with monthly charges of \$75.00 per month;
- 28 - Printer cost of \$350.00;

- 1 - Scanner cost of \$175.00;
- 2 - Ink/Toner costs of approximately \$40.00 per month or about \$80.00 every three months;
- 3 and
- 4 - Miscellaneous home office supplies and paper costs at approximately \$50.00 per month;

5 67. Furthermore, because Plaintiffs and Plaintiff Class Members were often required to
6 travel to meet customers or prospective customers, and pay for customers or prospective
7 customers' meals, Plaintiffs and Plaintiff Class Members incurred to their detriment meal and
8 entertainment, mileage, and other travel expenses, in amounts according to proof.

9 68. Also, because all underwriting was done in Missouri, in the central time zone, all
10 California HLCs had to have a home office and engage with underwriting in the early morning
11 hours before any branch-office was available. No home office expenses were ever considered to
12 be reimbursed and there was no policy to request reimbursement. The policy was pay to play.

13 69. As a direct result of Defendants' violation of California Labor Code section 2802,
14 Plaintiffs suffered substantial losses related to unpaid expenses, the use and enjoyment of monies
15 owed, lost interest on monies owed, and attorneys' fees in an amount to be proven at the time of
16 trial.

17 70. Defendants derive an unjust and inequitable economic benefit in failing to comply
18 with the law regarding indemnification and reimbursement of employees.

19 71. For Defendants' violations of California Labor Code section 2802, Plaintiffs are
20 entitled to and hereby seeks back-owed reimbursement for equipment, services, supplies, office
21 space, products, and mileage/travel expenses, interest, statutory and equitable attorneys' fees,
22 costs, and applicable penalties in an amount to be proven at trial.

23 **SECOND CAUSE OF ACTION**
24 **Failure to Pay Regular and/or Minimum Wages in Violation of**
25 **California Labor Code §§ 218.5, 1182.12, 1194,**
26 **1194.2, 1197, and Wage Order No. 4-2001 § 4(A)**
27 **(By Plaintiff CASTRO and the Minimum Wage Subclass as Against All Defendants)**

28 72. Plaintiffs re-allege and incorporate by this reference each of the foregoing
allegations, as though fully set forth herein.

///

1 73. Pursuant to Labor Code sections 218.5, 1182.12, 1194, 1194.2, and 1197, it is
2 unlawful for a California employer to suffer or permit an employee to work without paying wages
3 for all hours worked, as required by the applicable Industrial Welfare Commission (“IWC”) Wage
4 Order.

5 74. During all times relevant, IWC Wage Order No. 4-2001, governing the
6 “Professional, Technical, Clerical, Mechanical and Similar Occupations” industry, applied to
7 Plaintiff and the Plaintiff Class Members’ employment with Defendants.

8 75. Pursuant to Wage Order 4, section 2(K), “hours worked” include the time during
9 which an employee is “suffered or permitted to work, whether or not required to do so.”

10 76. During all times relevant, Defendants failed to pay Plaintiff Class Members,
11 including Plaintiff, the minimum wages owed for all hours suffered or permitted to work in
12 violation of the minimum wage provisions of California Labor Code sections 1182.12, 1194,
13 1194.2, and 1197-1197.1, and IWC Wage Order No. 4-2001, section 4 (A).

14 77. Labor Code section 1194.2, subdivision (a) provides that, in an action to recover
15 wages because of the payment of a wage less than the minimum wage fixed by IWC Wage Orders,
16 an employee is entitled to recover liquidated damages in an amount equal to the wages unlawfully
17 unpaid and interest thereon.

18 78. Plaintiff Class Members, including Plaintiff, should have received minimum wages
19 in a sum according to proof during all times relevant to this action.

20 79. Defendants intentionally and willfully failed and refused, and continue to fail and
21 refuse, to pay Plaintiff Class Members, including Plaintiff, minimum wages for all time suffered
22 or permitted to work.

23 80. Plaintiff, on behalf of himself and the Plaintiff Class, requests the recovery of the
24 unpaid minimum wage; including liquidated damages; interest, attorneys’ fees; and costs in an
25 amount to be determined at trial.

26 ///

27 ///

28 ///

THIRD CAUSE OF ACTION
**Failure to Pay Overtime Compensation in Violation of
California Labor Code §§510 and 1194, and Wage Order No. 4-2001, § 3(A)
(By Plaintiff CASTRO and the Overtime Subclass as Against All Defendants)**

1
2
3
4 81. Plaintiffs re-allege and incorporate by this reference each of the foregoing
5 allegations, as though fully set forth herein.

6 82. California law requires an employer to pay each employee accurately. If hourly, the
7 employer is required to compensate the employee for the actual hours worked. (See Cal. Labor
8 Code § 226.)

9 83. For each hour (or fraction thereof) an employee works up to forty (40) hours in a
10 week and eight (8) hours in a day, the employer must pay the employee's regular hourly wage.

11 84. For each hour (or fraction thereof) an employee works over forty (40) hours in a
12 week or in excess of eight (8) hours in a workday, the employer must pay the rate of one and a half
13 times the employee's regular hourly wage.

14 85. For each hour (or fraction thereof) an employee works in excess of twelve (12)
15 hour in one day or in excess of eight (8) hours a day on the seventh consecutive day of work, the
16 employee must be compensated at the rate of no less than twice the regular rate of pay for that
17 employee.

18 86. During all times relevant, Plaintiff and Plaintiff Class Members worked countless
19 hours for which they were not properly compensated because of Defendants' willfully unlawful
20 policies regarding counting regular and overtime hours worked. Plaintiff estimates that he worked,
21 at times, 72-90 hours per week and had no break periods, and was always required to take calls
22 anywhere from 12-14 hours per day. All HLCs had substantially similar obligations to remain in
23 the branch offices and not able to spend more than 50% of their hours worked out seeking new
24 business.

25 87. Plaintiff and Class Members worked more than eight (8) hours a day and/or forty
26 (40) hours a week, sometimes working for seven or more consecutive dates often without payment
27 of legally mandated overtime compensation.

28 ///

1 88. Plaintiff and Class members are entitled to recover the full amount of their unpaid
2 regular, overtime, and double overtime wages; interest; applicable penalties, including but not
3 limited to penalties under California Labor Code Sections 1194 and attorneys' fees and costs in an
4 amount to be determined at trial.

5 **FOURTH CAUSE OF ACTION**
6 **Failure To Provide Meal Periods Or Compensation In Lieu Thereof in Violation of Labor**
7 **Code §§ 226.7, 512, and IWC Wage Order 4-2001, § 11**
8 **(By Plaintiff CASTRO and the Meal Period Subclass as Against all Defendants)**

9 89. Plaintiffs re-allege and incorporate by this reference each of the foregoing
10 paragraphs as if fully set forth herein.

11 90. Defendants unfairly and illegally failed to provide Plaintiff and members of the
12 "Meal Period Subclass" with sufficient and compliant meal periods as required by Labor Code
13 sections 226.7, 512, and IWC Wage Order 4-2001, section 11. On a daily basis, Plaintiff was
14 required to drive miles to job locations at extreme distances without a meal period. On the
15 occasions Plaintiff has able to take a meal period, he was required to be on duty at all times to
16 return to work if summoned by a manager. Plaintiff observed all others doing the same. By
17 requiring Plaintiff and members of the Plaintiff Class to work periods exceeding five hours
18 without an uninterrupted, off-duty 30-minute meal period and to work periods exceeding ten
19 hours without a second uninterrupted, off-duty 30-minute meal period, and not compensating one
20 hour of pay at their regular rate of compensation for each such occurrence, Defendants violated
21 the provisions of Labor Code sections 226.7, 512, and IWC Wage Order No. 4-2001.

22 91. Pursuant to Labor Code sections 226.7 and 512, the Plaintiff Class Members seek
23 the payment of all meal period compensation owed, according to proof. For purposes of class
24 certification, Plaintiff can show that Defendants had a consistent pattern and practice of not
25 providing meal periods to members of the proposed Meal Period Subclass, and never paid a
26 "premium wage" for missed, late, or interrupted meal periods, as is otherwise required by IWC
27 Wage Orders and applicable law and regulation.

28 92. Additionally, Plaintiff and Plaintiff Class Members are entitled to attorneys' fees,
costs, and prejudgment interest as permitted by statute and by law.

FIFTH CAUSE OF ACTION

**Failure To Provide Rest Periods Or Compensation In Lieu Thereof in Violation of Labor Code Section § 226.7, IWC Wage Order 4-2001, § 12]
(By Plaintiff CASTRO and the Rest Period Subclass as Against all Defendants)**

1
2
3
4 93. Plaintiffs re-allege and incorporate by this reference each of the foregoing
5 paragraphs as if fully set forth herein.

6 94. Defendants unfairly and illegally failed to provide Plaintiff and members of the
7 “Rest Period Subclass” with sufficient and compliant rest periods as required by Labor Code
8 section 226.7 and IWC Wage Order 4-2001, section 12. On a daily basis, Plaintiff was not
9 authorized or permitted to take 10-minute paid rest breaks for every four hours or major fraction
10 thereof worked and to the extent any “rest break” was authorized, Plaintiff and the Plaintiff Class
11 were subject to employer control by being required to be immediately available by cell phone.
12 Plaintiff observed all others doing the same. No time was allotted for 10-minute paid rest periods
13 free from all duties for approximately every four hours or major fraction thereof worked. Since
14 Defendants classified Plaintiff as exempt, the managers simply stated that 10-minute paid rest
15 periods were not required. By requiring Plaintiff and members of the Rest Period Subclass to
16 work periods exceeding four hours without an uninterrupted, off-duty 10-minute rest period, and
17 not compensating one hour of pay at their regular rate of compensation for each such occurrence,
18 Defendants willfully violated the provisions of Labor Code section 226.7 and IWC Wage Order
19 No. 4-2001, section 12.

20 95. Plaintiff, and the Plaintiff Class Members he seeks to represent, did not willfully
21 waive through mutual consent with Defendants such rest periods. Plaintiff and Plaintiff Class
22 Members are entitled to an hour of pay for each day that Defendants failed to properly provide
23 one or more rest periods as set forth in the IWC wage orders, in an amount according to proof.
24 Pursuant to Labor Code section 226.7, the Plaintiff Class Members seek the payment of all rest
25 period compensation which they are owed according to proof.

26 96. Additionally, Plaintiff and members of the Plaintiff Class are entitled to attorneys’
27 fees, costs, and prejudgment interest as permitted by statute.

28 ///

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

SIXTH CAUSE OF ACTION
Failure to Make Payments Within the Required Time in Violation of
Labor Code §§ 201, 202, and 204 and Penalties Pursuant to Labor Code § 203
(By Plaintiff CASTRO and the Waiting Time Subclass as Against All Defendants)

97. Plaintiffs re-allege and incorporate by this reference each of the foregoing allegations, as though fully set forth herein.

98. California Labor Code section 204 requires employers to pay employees all wages earned and unpaid, without abatement or reduction, at least twice a month.

99. California Labor Code section 201 requires employers to immediately pay wages, without abatement or reduction, to any employee who is discharged.

100. Similarly, California Labor Code section 202 requires employers to pay all wages earned and unpaid, without abatement or reduction, no later than 72 hours after receiving an employee’s notice of intent to quit or immediately at the time of quitting if the employee provided at least 72 hours’ notice of intent to quit.

101. If an employer fails to pay wages owed, as a penalty California Labor Code section 203 mandates that an employer owes to the employee continuing wages after discharge until the employer pays the originally owed wages or until an action to recover the wages is commenced, not to exceed 30 days of continuing wages.

102. As a pattern and practice, Defendants failed to provide all wages due and owing, including regular, overtime, and double overtime wages to the Plaintiff and the Plaintiff Class by the time specified by law.

103. Defendants owe the Plaintiff and the Plaintiff Class Members payment of earned wages and a waiting time penalty in an amount to be determined at trial exceeding the jurisdictional minimum of this Court.

104. For Defendants’ violations, Plaintiff and the Class Members also seek applicable penalties, including but not limited to penalties under California Labor Code sections 203 and 210 plus interest under California Labor Code section 218.6; and reasonable attorneys’ fees and costs under California Labor Code sections 203 and 218.5.

///

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

SEVENTH CAUSE OF ACTION
Failure to Provide Accurate Wage Statements in Violation of
California Labor Code § 226
(By Plaintiff CASTRO and the Wage Statement Subclass as Against All Defendants)

105. Plaintiffs re-allege and incorporate by this reference each of the foregoing allegations, as though fully set forth herein.

106. Plaintiff alleges that Labor Code section 226 subdivision (a) requires, in pertinent part, that “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of § 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number ... , (8) the name and address of the legal entity that is the employer ... , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. . .” (Labor Code § 226, subdivision (a).)

107. Upon information and belief, during all times relevant to this action, Defendants did not provide accurate wage statements to Plaintiff.

108. Defendants did not record or track time worked and knew or should have known that Plaintiff and members of the Plaintiff Class were working sufficient hours without sales activity that the exemption from the requirement to track hours worked under applicable Wage Order was not implicated.

///
///

1 109. As a result, the failure on the part of the Defendants to provide accurate itemized
2 wage statements was knowing and intentional as that term is defined by the Department of Labor
3 Standards Enforcement (“DLSE”).

4 110. Plaintiff alleges that on various occasions, an exact amount by which will be
5 proven at trial, Defendants violated various provisions of section 226, including but not limited to
6 subdivisions (a)(1), (a)(2), (a)(4), (a)(5), (a)(6), and (a)(9) by failing to provide Plaintiff accurate
7 itemized statement in writing accurately showing gross wages earned, net wages earned, among
8 other things, due, in part, to Defendants’ illegal actions as alleged in this Complaint.

9 111. For Defendants’ misconduct as alleged in this Complaint, Plaintiff seeks damages,
10 injunctive relief, penalties, costs, and attorneys’ fees pursuant to Labor Code sections 226 and
11 226.3 in an amount to be proven at trial.

12 **EIGHTH CAUSE OF ACTION**
13 **Failure to Maintain Required Records in Violation of**
14 **California Labor Code §§ 1174, 1174.5, 1198, and Wage Order No. 4, § 7**
(By Plaintiff CASTRO and the Recordkeeping Subclass as Against All Defendants)

15 112. Plaintiffs re-allege and incorporate by this reference each of the foregoing
16 allegations, as though fully set forth herein.

17 113. At all times relevant herein, IWC Wage Order No. 4, section 7 requires every
18 employer to maintain payroll records.

19 114. Labor Code section 1174 requires every employer to maintain payroll records.

20 115. Labor Code section 1198 states, “The maximum hours of work and the standard
21 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
22 conditions of labor for employees. The employment of any employee for longer hours than those
23 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

24 116. Plaintiff is informed and believes, and based thereon alleges, that during all times
25 relevant, Defendants failed to comply with section 7 of IWC Order 4-2001 and with Labor Code
26 sections 1174 and 1198 by failing to maintain certain records which employers are required to
27 maintain, including but not limited to, all wage and earning statements, reimbursement records,
28 among other things.

1 117. Plaintiff and members of the Recordkeeping Subclass suffered harm as a result of
2 Defendants' failure to maintain usual and customary records in an amount according to proof.

3 118. As a direct and proximate result of Defendants' conduct, Plaintiff and the Plaintiff
4 Class will require the need for experts and other alternative means of proof in order to establish
5 liability and damages.

6 119. For the reasons alleged herein, Plaintiff seeks any and all available remedies in an
7 amount to be proven at trial including but not limited to damages, penalties, attorneys' fees and
8 costs, and interest pursuant to law including but not limited to Labor Code section 1174.5.

9 **NINTH CAUSE OF ACTION**
10 **Violations of California Business and Professions Code §§ 17200, *et seq.***
11 **(Plaintiffs and the UCL Subclass as Against All Defendants)**

12 120. Plaintiffs re-allege and incorporate by this reference each of the foregoing
13 allegations, as though fully set forth herein.

14 121. California Business and Professions Code sections 17200, *et seq.*, commonly
15 referred as the Unfair Competition Law ("UCL"), prohibits "any unlawful, unfair or fraudulent
16 business act or practice."

17 122. Unlawful business acts are those acts which are in violation of any federal, state, or
18 municipal statutes or codes, as well as state and federal regulations.

19 123. It is fraudulent and unfair for Defendants to not accurately pay their employees for
20 hours worked and provide expense reimbursements for reasonable and necessary costs of
21 performing services for FIRST BANK.

22 124. Defendants misled and unfairly took advantage of their employees by mandating
23 that employees work hours or make purchases for which they unlawfully will not be paid or
24 reimbursed.

25 125. Defendants maintained an unfair business advantage over their competitors, who
26 comply with their employment obligations.

27 126. Defendants' conduct offends public policy, is immoral, unscrupulous, unethical and
28 offensive, and causes substantial injury to their employees and the public.

///

1 127. Defendants’ practices are also unlawful and violate each of the preceding alleged
2 statutes, regulations and wage orders.

3 128. As elaborated above Defendants’ failure to pay their employees’ wages/expenses
4 properly and their failure to keep accurate wage statements violates many provisions of the
5 California Labor Code.

6 129. As a direct and proximate result of Defendants’ unfair competition in violation of
7 the UCL, Plaintiffs and the UCL Subclass have suffered injury and in fact and lost money, and the
8 members of the Plaintiff Class are owed restitution in sums exceeding the jurisdictional minimum
9 of this Court, in an amount according to proof.

10 130. Plaintiffs did not receive the wages/reimbursements that he earned/incurred.
11 Plaintiffs request this Court order, as it is empowered to order, restitution to all persons from
12 whom Defendants unfairly and/or unlawfully withheld money, whether in the form of wages or in
13 the form of unreimbursed business expenses incurred by Plaintiffs and the Plaintiff Class for the
14 benefit of the Defendants.

15 131. Defendants’ unfair competition in violation of the UCL also presents a continuing
16 threat to Defendants’ workforce and members of the general public in that Defendants are
17 continuing, and will continue, unless enjoined, to commit unlawful, unfair, and/or fraudulent
18 business acts or practices.

19 132. Plaintiffs request that this Court order a preliminary and permanent injunction
20 against such acts and practices.

21 133. Plaintiffs seek recovery of all attorneys’ fees and litigation expenses pursuant to
22 California Code of Civil Procedure section 1021.5 or any other applicable laws.

23 134. Plaintiffs also seek recovery of all attorneys’ fees and other litigation expenses paid
24 under the common fund doctrine or other authority requiring Defendants to pay Plaintiffs’
25 attorneys’ fees and litigation expenses.

26 ///

27 ///

28 ///

TENTH CAUSE OF ACTION

For Recovery of PAGA Civil Penalties on Behalf of Plaintiffs and all Similarly “Aggrieved Employees” as a Representative of the LWDA, Pursuant to Labor Code § 2699(F)(2) Based on Defendants’ Failure to Comply With Labor Code § 2802

135. Plaintiffs re-allege and incorporate by this reference each of the foregoing allegations, as though fully set forth herein.

136. Defendants were required by law to reimburse all reasonable and necessary business expenses incurred by Plaintiffs and other aggrieved employees that were necessary to accomplish Defendants’ business goals.

137. Defendants’ uniform and systematic policies placed costs of doing business on the Plaintiffs and other aggrieved employees during the proposed “PAGA Period” which is defined from at least one year prior to the date of the LWDA Notice Letter (**Exhibit 1**) to the present. In fact, Defendants explicitly told Plaintiffs and other HLCs that they expected them to spend their own money to earn money for the Bank.

138. Such policies and practices violate Labor Code section 2802-2804 in that Defendants were unlawfully forcing the employees to pay for the costs of engaging in Defendants’ business.

139. Labor Code section 2802 is a statute specifically listed in Labor Code section 2699.5 as a statute for which default civil penalties may be recovered under Labor Code section 2699(f)(2). That section provides: “(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

140. Depending on the number of pay periods during the PAGA Period for each aggrieved employee in the State of California where employees incurred expenses on behalf and at the bequest of the Defendants, Plaintiffs will seek civil penalties in an amount according to proof and subject to Court approval.

1 141. Plaintiffs also allege that he is entitled to reasonable attorneys' fees and costs
2 pursuant to California Labor Code section 2699(g)(1) and/or Code of Civil Procedure section
3 1021.5, in an amount according to proof and subject to Court approval.

4 **ELEVENTH CAUSE OF ACTION**

5 **For Recovery of PAGA Civil Penalties on Behalf of Plaintiff CASTRO and all Similarly**
6 **"Aggrieved Employees" as a Representative of the LWDA, Pursuant to Labor Code §**
7 **2699(f)(2) Based on Defendants' Failure to Comply With Labor Code §§ 1182.12, 1194,**
8 **1194.2, 1197-1197.1, and Wage Order No. 4-2001, § 4(A)**

9 142. Plaintiffs re-allege and incorporate by this reference each of the foregoing
10 allegations, as though fully set forth herein.

11 143. Based on FIRST BANK's unlawful systematic classification of HLCs as exempt
12 outside sales, Defendants are also liable for PAGA civil penalties in addition to wages.

13 144. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from the
14 policies, practices, and business acts of Defendants to the extent provided by law as a
15 Representative Action, including reasonable attorneys' fees and costs, and underpayment of wages
16 as permitted by Cal. Labor Code sections 558 and 1197.1, as a separate penalty provided by the
17 PAGA statute.

18 145. As a direct and proximate result of the Defendants' unlawful conduct, as alleged
19 herein, Plaintiff and similarly-aggrieved HLCs have been deprived, and continue to be deprived,
20 of earned regular pay and mandated minimum wages for regular hours worked each and every pay
21 period that they remain misclassified.

22 146. Accordingly, Defendants violated Labor Code sections 510, 558, 1194, 1194.2, and
23 1197.1, in addition to IWC Wage Order 4-2001. Labor Code section 2699.5 enumerates each of
24 these statutes for default civil penalties under Labor Code section 2699(f)(2). To the extent the
25 Defendants violate Sections 1, 7, 9, and 11-12 of the applicable IWC Wage Order 4-2001,
26 additional civil penalties are imposed pursuant to Labor Code section 558(a)(1) in the amount of
27 \$50 for each initial violation per pay period and another \$100 per subsequent violation in each pay
28 period thereafter. The nature, extent, and amount of civil penalties for which Defendants are liable
is presently unknown but can be calculated based on pay period and work week data for
ascertainable and identifiable "aggrieved employees" who provide home loan services to

1 Defendants' customers.

2 147. Labor Code section 2699.5 lists Labor Code sections 510, 558, 1194, 1194.2, and
3 1197.1 as statutes for which default civil penalties may be recovered under Labor Code section
4 2699(f)(2).

5 148. Civil penalties may be recoverable pursuant to Labor Code section 2699(f)(2)
6 which states in pertinent part: "(a) Any employer or other person acting on behalf of an employer
7 who violates, or causes to be violated, a section of this chapter or any provision regulating hours
8 and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
9 penalty as follows: . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
10 underpaid employee for each pay period for which the employee was underpaid in addition to an
11 amount sufficient to recover underpaid wages."

12 149. To the extent Plaintiff and other potentially aggrieved employees have been
13 impacted, Plaintiff is entitled to recover civil penalties on behalf of the LWDA and also to seek
14 reasonable attorneys' fees and costs in accordance with Labor Code section 2699(g) and/or
15 California Code of Civil Procedure section 1021.5, subject to court approval.

16 **TWELFTH CAUSE OF ACTION**

17 **For Recovery of PAGA Civil Penalties on Behalf of Plaintiff CASTRO and all Similarly**
18 **"Aggrieved Employees" as a Representative of the LWDA, pursuant to Labor Code §**
19 **2699(f)(2) Based on Defendants' Failure to Comply With Labor Code §§ 226.7 and 512, and**
20 **IWC Wage Order 4-2001, §§ 11-12**

21 150. Plaintiffs re-allege and incorporate by this reference each of the foregoing
22 allegations, as though fully set forth herein.

23 151. California Labor Code section 512(a) provides:

24 (a) An employer may not employ an employee for a work period of
25 more than five hours per day without providing the employee with a
26 meal period of not less than 30 minutes, except that if the total work
27 period per day of the employee is no more than six hours, the meal
28 period may be waived by mutual consent of both the employer and
employee. An employer may not employ an employee for a work
period of more than 10 hours per day without providing the employee
with a second meal period of not less than 30 minutes, except that if the
total hours worked is no more than 12 hours, the second meal period
may be waived by mutual consent of the employer and the employee
only if the first meal period was not waived."

1 152. California Labor Code section 226.7 provides in pertinent part: “(b) An employer
2 shall not require an employee to work during a meal or rest or recovery period mandated pursuant
3 to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
4 Commission... (c) If an employer fails to provide an employee a meal or rest or recovery period in
5 accordance with a state law, including, but not limited to, an applicable statute or applicable
6 regulation, standard, or order of the Industrial Welfare Commission, . . .the employer shall pay the
7 employee one additional hour of pay at the employee’s regular rate of compensation for each
8 workday that the meal or rest or recovery period is not provided.”

9 153. Labor Code section 226.7 and 512 are statutes identified by Labor Code section
10 2699.5, and are subject to default civil penalties as identified in Labor Code 2699(f)(2) for each
11 pay period for each aggrieved HLC during the PAGA Period.

12 154. IWC Wage Order 4-2001, sections 11-12, also possess the force and impact of law
13 and set for the requirements that all non-exempt employees be provided timely, unimpeded,
14 uninterrupted, and duty-free meal and rest periods. Labor Code section 558(a) requires that
15 violations of these regulations are also subject to civil penalties for each pay period for each
16 aggrieved HLC during the PAGA Period for each pay period, with the initial violation penalty at
17 \$50 per employee pay period, and \$100 for each subsequent violation per employee per pay
18 period.

19 155. Accordingly, Plaintiff as Representative of the LWDA, will seek recovery of all
20 PAGA civil penalties under Labor Code section 2699(f)(2) and/or Labor Code section 558(a), in
21 an amount according to proof and subject to Court approval.

22 156. As a proximate result of Defendants’ conduct described herein, the Defendants are
23 liable, jointly and severally, for PAGA penalties resulting from their failure to provide Plaintiff
24 and similarly-aggrieved HLCs lawful meal and rest periods and the corresponding meal and rest
25 period premium pay. Accordingly, Plaintiff is entitled to recover, and hereby seeks through this
26 Representative Action, all civil penalties provided by California Labor Code sections 226.7, 512,
27 and 558, as well as attorneys’ fees and costs pursuant to California Labor Code section 2699(g)(1).

28 ///

1 157. Plaintiff is also entitled to seek reasonable attorneys' fees and costs, in accordance
2 with Labor Code section 2699(g), Labor Code section 218.5, Code of Civil Procedure section
3 1021.5, and as otherwise permitted by applicable law, in an amount according to proof and subject
4 to court approval.

5 **THIRTEENTH CAUSE OF ACTION**
6 **For Recovery of PAGA Civil Penalties on Behalf of Plaintiff CASTRO and all Similarly**
7 **"Aggrieved Employees" as a Representative of the LWDA, pursuant to Labor Code §**
8 **2699(f)(2) and as permitted by Labor Code §§ 203, 210, and 256 for Untimely Separation**
9 **Pay**

10 158. Plaintiff re-allege and incorporate by this reference each of the foregoing
11 allegations, as though fully set forth herein.

12 159. Labor Code section 200 defines "wages" as "all amounts for labor performed by
13 employees of every description, whether the amount is fixed or ascertained by the standard of
14 time, task, piece, commission basis, or other method of calculation."

15 160. Labor Code section 204(a) states that all wages earned by a person are due and
16 payable twice during each calendar month, and further states that wages earned during the first
17 through fifteenth days of the month must be paid no later than the twenty-sixth day of the month,
18 and that wages earned between the sixteenth and last day of the month must be paid by the tenth
19 day of the following month. Labor Code section 204(d) states "[t]he requirements of this section
20 shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll
21 if the wages are paid not more than seven calendar days following the close of the payroll period."

22 161. Labor Code section 201 requires that the employer immediately pay any wages,
23 without abatement or reduction, to any employee who is discharged.

24 162. Labor Code section 202 requires that the employer pay all wages earned and
25 unpaid, without abatement or reduction, no later than 72 hours of receiving an employee's notice
26 of intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

27 163. Labor Code section 203 provides in pertinent part: "(a) If an employer willfully
28 fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9,
202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the
employee shall continue as a penalty from the due date thereof at the same rate until paid or until

1 an action therefor is commenced; but the wages shall not continue for more than 30 days.... .”

2 164. Labor Code section 210(a) provides in pertinent part:“(a) In addition to, and
3 entirely independent and apart from, any other penalty provided in this article, every person who
4 fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2,
5 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation,
6 one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent
7 violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay
8 each employee, plus 25 percent of the amount unlawfully withheld.”

9 165. Labor Code section 256 provides that “The Labor Commissioner shall impose a
10 civil penalty in an amount not exceeding 30-days pay as waiting time under the terms of Section
11 203.”

12 166. Labor Code sections 201-203 cause the unpaid wages of the employee to continue
13 as a penalty from the due date thereof at the same rate until paid or until an action therefore is
14 commenced, but the wages shall not continue for more than thirty (30) days.

15 167. Plaintiff alleges that, at all times material to this action, Defendants had a planned
16 pattern and practice of failing to timely pay to Plaintiff and certain affected aggrieved employees
17 all wages due and owing upon separation of employment as required by Labor Code sections 201
18 and 202. Consequently, pursuant to Labor Code section 203, Defendants owe Plaintiff and certain
19 affected aggrieved employees the above-described waiting time penalty, all in an amount to be
20 shown according to proof at trial and within the jurisdiction of this Court. At all relevant times,
21 Defendants failed to pay all wages due and owing to Plaintiff and certain affected aggrieved
22 employees upon separation of employment within the time required by Labor Code sections 201-
23 202. Furthermore, as a result of the failure to pay earned minimum, regular, and overtime wages
24 and rest and meal period premiums, Defendants did not pay Plaintiff and certain affected
25 aggrieved employees all wages to which they were entitled upon separation of employment.

26 168. At all times relevant during the PAGA Period, as a result of Defendants’ systematic
27 misclassification of HLCs as “outside sales” exempt employees, Defendants failed to timely pay
28 wages and failed to pay Plaintiff and other terminated employees wages owed at the time of

1 separation, and as a result, are liable for civil penalties. Because Defendants and managing agents
2 had actual knowledge that loan underwriting and processing were in the central time zone and
3 knew that such hours were necessary to process loans, and knew that HLCs were predominantly
4 spending their time inside bank branch offices, such conduct was “knowing and willful” such that
5 penalties are justified.

6 169. To the extent Plaintiff and other potentially aggrieved employees have been
7 impacted, Plaintiff is entitled to recover civil penalties on behalf of the LWDA and also to seek
8 reasonable attorneys’ fees and costs in accordance with Labor Code section 2699(g) and/or Code
9 of Civil Procedure section 1021.5, in an amount subject to court approval.

10 **FOURTEENTH CAUSE OF ACTION**
11 **For Recovery of PAGA Civil Penalties on Behalf of Plaintiff CASTRO and all Similarly**
12 **“Aggrieved Employees” as a Representative of the LWDA, Pursuant to Labor Code §**
13 **2699(f)(2) and as permitted by Labor Code §§ 226(a), 226.3, and 1174, and IWC Wage**
14 **Order 4-2001, § 7 for Inaccurate Wage Statements**

15 170. Plaintiffs re-allege and incorporate by this reference each of the foregoing
16 allegations, as though fully set forth herein.

17 171. Labor Code section 226(a) provides in pertinent part: “(a) Every employer shall,
18 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
19 as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately
20 when wages are paid by personal check or cash, an accurate itemized statement in writing showing
21 (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose
22 compensation is solely based on a salary and who is exempt from payment of overtime under
23 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,....
24 (5) net wages earned... ..and (9) all applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each hourly rate by the employee...”

26 172. Labor Code section 2699.5 lists wage statement violations pursuant to Labor Code
27 section 226(a) as a statute for which default civil penalties may be recovered under Labor Code
28 section 2699(f)(2).

173. Further, Labor Code section 226.3 provides a separate civil penalty provisions for
which Plaintiff may recover alternatively or in addition to the general civil penalty under Labor

1 Code section 2699(f)(2). Labor Code section 226.3 provides: “Any employer who violates
2 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
3 dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000)
4 per employee for each violation in a subsequent citation, for which the employer fails to provide
5 the employee a wage deduction statement or fails to keep the records required in subdivision (a) of
6 Section 226. The civil penalties provided for in this section are in addition to any other penalty
7 provided by law. In enforcing this section, the Labor Commissioner shall take into consideration
8 whether the violation was inadvertent, and in his or her discretion, may decide not to penalize an
9 employer for a first violation when that violation was due to a clerical error or inadvertent
10 mistake.”

11 174. The Defendants did not provide accurate wage statements to Plaintiff and similarly-
12 aggrieved employees. Furthermore, Defendants failed to provide wage statements containing the
13 items required by Labor Code section 226(a), including, but not limited to: gross wages earned, all
14 deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the
15 last four digits of his or her Social Security number (or employee identification number), the name
16 and address of the legal entity that is the employer, and all applicable hourly rates in effect during
17 the pay period and the corresponding number of hours worked at each hourly rate by the
18 employee. Accordingly, Plaintiff and the similarly-aggrieved employees are entitled to damages
19 under Labor Code section 226(e), including reasonable attorneys’ fees. Labor Code sections 226.3
20 and 2699 also impose a civil penalty and/or assessment for these violations.

21 175. As a result of Defendants’ misclassification of the HLCs as exempt “outside sales”
22 employees, Defendants violated the aforementioned statutes and will be subject to civil penalties
23 as to Plaintiff and all similarly-aggrieved employees, in an amount according to proof and subject
24 to court approval.

25 ///
26 ///
27 ///
28 ///

FIFTEENTH CAUSE OF ACTION

For Recovery of PAGA Civil Penalties Behalf of Plaintiff CASTRO and all Similarly “Aggrieved Employees” as a Representative of the LWDA, pursuant to Labor Code § 558(a) Based on Defendants’ Failure to Comply with IWC Wage Order 4-2001, §§ 1, 3-4, 7-9, and 11-12, and for Underpayment of Wages

176. Plaintiffs re-allege and incorporate by this reference each of the foregoing allegations, as though fully set forth herein.

177. At all times, Plaintiff and other aggrieved employees of Defendants were subject to Wage Order 4-2001 despite Defendants’ misclassification of said persons as “outside sales” exempt employees in violation of law.

178. Accordingly, in addition to the civil penalty claims outlined above, Defendants, and each of them, are liable for civil penalties pursuant to Labor Code section 558(a) for each employee and *each pay period* in the amount of \$50.00 for each initial violation and \$100.00 for each subsequent violation of any provision of IWC Wage Order 4-2001.

179. Specifically, the Wage Order provides for regular and overtime wages. Plaintiff and other aggrieved employees, despite working over 8 hours per day or over 40 hours per week, were not paid all applicable minimum and/or overtime wages. Similarly, timecards and accurate hours of work were not recorded and any such records would show that Plaintiff and other aggrieved employees worked off-the-clock and had no compliant rest or meal periods.

180. Violations of the IWC Wage Order 4-2001 are applicable to the Defendants, and each of them, and any officer, director, managing agent or person who failed to comply with the requirements and minimum standards of wages and hours of work under the Wage Order pursuant to Labor Code section 558.1.

181. To the extent permitted by law, Plaintiff, on behalf of the LWDA and other aggrieved employees in the State of California, will seek penalties for each underpaid employee as set forth in Labor Code sections 558(a)(2)-(3) as permitted under California law, in addition to reasonable attorneys’ fees and costs, in an amount according to proof.

182. Plaintiff alleges that “underpaid” wages are part of the civil penalty scheme recoverable under the PAGA. To the extent that the matter remains subject to review by the California Supreme Court, the recovery is limited to civil penalties pursuant to *Esparza v. KS*

1 *Industries, L.P.* (2017) 13 Cal.App.5th 1228, 1247. Plaintiff hereby unambiguously states that he
2 does not seek “unpaid wages [or] any other types of individualized relief” but will amend this First
3 Amended Complaint further pending the outcome of the California Supreme Court decision in
4 *Lawson v. ZB, N.A.*, 18 Cal. App. 5th 705 (Cal. Ct. App. 4th Dist. Dec. 19, 2017, as modified Dec.
5 21, 2017, Cal. Supreme Court Case No. S246711, (Oral Argument Letter Sent but Not Scheduled,
6 as of March 19, 2019).

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

9 1. That the Court issue an Order that this action may be maintained as a class action
10 and certify the Plaintiff Class and Subclasses herein, appointing the named Plaintiffs as
11 representative of all others similarly situated, and appointing the law firms representing the named
12 Plaintiffs as counsel for the members of the Class and Subclasses;

13 **As to the First Cause of Action for Failure to Reimburse Expenses:**

14 2. For reimbursement of all reasonable and necessary business expenses incurred by
15 Plaintiff and the Unreimbursed Expense Subclass, in an amount according to proof;

16 3. For pre-judgment interest as required by law;

17 4. For all reasonable costs, litigation expenses and attorneys’ fees as required by
18 Labor Code sections 2802-2804;

19 **As to the Second Cause of Action for Failure to Pay Regular/Minimum Wages:**

20 5. For damages, as set forth in Labor Code section 1194(a) and the IWC Wage
21 Order(s), including IWC Wage Order 4, section 20, regarding wages due and owing, in an amount
22 according to proof;

23 6. For liquidated damages and/or double damages, in an amount according to proof;

24 7. For pre-judgment interest as allowed by Labor Code sections 218.6 and 1194(a),
25 and Civil Code section 3287;

26 8. For an award of reasonable attorneys’ fees and litigation costs pursuant to Labor
27 Code sections 218.5 and 1194(a), and pursuant to Code of Civil Procedure section 1021.5;

28 ///

1 **As to the Third Cause of Action for Failure to Pay Overtime Wages:**

2 9. For all overtime and double-time at the requisite rate of pay as required by Labor
3 Code sections 510, 11904 and Wage Order 4-2001, in an amount according to proof;

4 10. For pre-judgment interest as allowed by Labor Code sections 218.6 and 1194(a),
5 and Civil Code section 3287;

6 11. For an award of reasonable attorneys’ fees and litigation costs pursuant to Labor
7 Code sections 218.5 and 1194(a), and pursuant to Code of Civil Procedure section 1021.5;

8 **As to the Fourth Cause of Action for Failure to Provide Compliant Meal Periods:**

9 12. For recovery of meal period premiums as authorized by Labor Code sections
10 226.7, 512, and IWC Wage Order 4-2001, section 11 in an amount according to proof;

11 **As to the Fifth Cause of Action for Failure to provide Compliant Rest Periods:**

12 13. For recovery of rest period premiums as authorized by Labor Code section 226.7
13 and IWC Wage Order 4-2001, section 12 in an amount according to proof;

14 **As to the Sixth Cause of Action for Failure to Timely Pay Wages Due:**

15 14. For recovery as authorized by Labor Code section 203, totaling 30-day’s pay at the
16 employees’ regular rate of pay as determined from Defendants’ payroll records as a statutory
17 penalty;

18 15. For attorneys’ fees and litigation costs as permitted by statute;

19 **As to the Seventh Cause of Action for Failure to Provide Accurate Wage Statements:**

20 16. For recovery as authorized by Labor Code section 226(e), for up to the greater of
21 either a maximum of actual damages according to proof, or a maximum statutory damage of
22 \$4,000 per employee within the Wage Statement Subclass;

23 17. For injunctive relief as permitted by law to ensure Defendants’ compliance with
24 Labor Code section 226 pursuant to Labor Code section 226(g);

25 18. For an award of costs and reasonable attorneys’ fees pursuant to Labor Code
26 section 226(e) and/or section 226(g) and pursuant to Code of Civil Procedure section 1021.5;

27 **As to the Eighth Cause of Action for Recordkeeping Violations:**

28 19. For actual damages, in an amount according to proof;

1 20. For equitable relief allowing for alternative forms of proof in the absence of
2 Defendants' maintenance of required employee records;

3 21. For recovery of litigation costs and attorneys' fees as required by Labor Code
4 sections 1174.5, and/or Code of Civil Procedure section 1021.5.

5 **As to the Ninth Cause of Action for Violations of the UCL:**

6 22. For an accounting, under administration of Plaintiff and/or the receiver and subject
7 to Court review, to determine the amount to be returned by Defendants, and the amounts to be
8 paid to members of the Class and Subclasses who are owed monies by Defendants;

9 23. For an Order requiring Defendants to make full restitution and payment to the
10 Plaintiff Class due to unfair competition, including disgorgement of their wrongfully withheld
11 wages pursuant to California Business and Professions Code sections 17203 and 17204;

12 24. For the creation of an administrative process, accounting, or constructive trust
13 wherein each injured member of the Plaintiff Class and Subclasses may submit a claim in order to
14 receive his/her money;

15 25. That Defendants be enjoined from further acts of restraint of trade or unfair
16 competition, and or any other proper form of injunctive, declaratory or equitable relief to the full
17 extent permitted by the UCL;

18 26. For reasonable attorneys' fees as permitted by California Code of Civil Procedure
19 section 1021.5 to the extent a public benefit is provided and subject to Court review and approval;

20 **As to the Tenth Cause of Action for PAGA Civil Penalties Related to Violations of**
21 **Labor Code section 2802 (Unreimbursed Business Expenses):**

22 27. For recovery of civil penalties related to unreimbursed and necessary business
23 expenses for each pay period during the PAGA period pursuant to Labor Code section 2699(f)(2)
24 premised on Labor Code section 2802, subject to the Court's discretion and to be distributed in a
25 manner consistent with Labor Code section 2699(i) wherein 75% is to be distributed to the LWDA
26 and 25% to the aggrieved employees, subject to Court approval;

27 ///

28 ///

1 **As to the Eleventh Cause of Action for PAGA Civil Penalties Related to Violations of**
2 **Labor Code sections 1182.12, 1194, 1194.2, 1197-1197.1, and Wage Order No. 4-2001, § 4(A)**
3 **(Unpaid Minimum, Regular, and Overtime Wages):**

4 28. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2) for each
5 pay period on the basis that Plaintiff and other aggrieved employees were not paid minimum,
6 regular, and/or overtime wages or rates of pay as required by Labor Code sections 510, 1194,
7 1194.2, 1197, and 1197.1, *et seq.*, subject to the Court’s discretion and to be distributed in a
8 manner consistent with Labor Code section 2699(i) wherein 75% is to be distributed to the LWDA
9 and 25% to the aggrieved employees, subject to Court approval;

10 **As to the Twelfth Cause of Action for PAGA Civil Penalties pursuant to Labor Code**
11 **§ 2699(f)(2) for Failure to Comply with Labor Code §§ 226.7 and 512, and IWC Wage Order**
12 **4-2001, §§ 11-12 (Failure to Provide Meal and Rest Periods or Compensation in Lieu**
13 **Thereof):**

14 29. For recovery of civil penalties related to Defendants’ collective failure to provide
15 meal and rest periods for each pay period in the PAGA period pursuant to Labor Code section
16 2699(f)(2) as premised upon Labor Code sections 226.7 and 512, subject to the Court’s discretion
17 and to be distributed in a manner consistent with Labor Code section 2699(i) wherein 75% is to be
18 distributed to the LWDA and 25% to the aggrieved employees, subject to Court approval;

19 **As to the Thirteenth Cause of Action for PAGA Civil Penalties pursuant to Labor**
20 **Code § 2699(f)(2) and as permitted by Labor Code §§ 203, 210, and 256 (Untimely**
21 **Separation Pay):**

22 30. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2) premised
23 on Labor Code sections 201, 202, 203, and 256 (a penalty of 30-days’ pay) for each aggrieved
24 employee who was not timely paid their wages for hours worked for each workweek or pay
25 period, and for those terminated or separated from employment, who were not paid their final pay
26 in at least 72 hours from the date of termination/separation, as shown by Defendants’ employment
27 records, in an amount according to proof based on the number of pay periods for all aggrieved
28 employees in the applicable limitations period. In addition, Plaintiff seeks civil penalties in a fixed

1 amount as identified in Labor Code sections 210(a) and 256. Said penalties are subject to the
2 Court's discretion and are to be distributed in a manner consistent with Labor Code section
3 2699(i) wherein 75% is to be distributed to the LWDA and 25% to the aggrieved employees,
4 subject to Court approval;

5 **As to the Fourteenth Cause of Action for PAGA Civil Penalties pursuant to Labor**
6 **Code § 226.3 (Inaccurate Wage Statements):**

7 31. For recovery of civil penalties related to Defendants' collective failure to provide
8 accurate and itemized wage statements for each pay period in the PAGA Period pursuant to Labor
9 Code section 2699(f)(2) as premised upon Labor Code section 226, and/or civil penalties as
10 required by Labor Code section 226.3, subject to the Court's discretion and to be distributed in a
11 manner consistent with Labor Code section 2699(i) wherein 75% is to be distributed to the LWDA
12 and 25% to the aggrieved employees, subject to Court approval;

13 **As to the Fifteenth Cause of Action for PAGA Civil Penalties pursuant to Labor Code**
14 **§§ 558(a)(1)-(3) for Violations of the IWC Wage Order and the Underpayment of Wages:**

15 32. For recovery of civil penalties pursuant to Labor Code section 558(a) for violation
16 of the applicable IWC Wage Order 4-2001 for each pay period that Defendants, and each of them,
17 violated Sections 3-4 (related to minimum and overtime wages) and Sections 11-12 (related to
18 compliant meal and rest periods to employees who were misclassified as outside sales employees
19 and for whom one hour of pay was not provided as required by Labor Code sections 226.7 and
20 512, and the Wage Order) of IWC Wage Order 4-2001. For each pay period, Plaintiff prays for
21 recovery of civil penalties for \$50 for the initial violation and \$100 for each subsequent violation,
22 subject to the Court's discretion and to be distributed in a manner consistent with Labor Code
23 section 2699(i) wherein 75% is to be distributed to the LWDA and 25% to the aggrieved
24 employees, subject to Court approval;

25 **As to all Causes of Action:**

26 33. For all wages, premium wages, and unpaid necessary business expenses, in an
27 amount according to proof;

28 ///

1 34. For pre- and post-judgment interest to the extent permitted by law on unpaid
2 wages and unreimbursed business expenses owed that are fixed and ascertainable at the legal rate
3 in the State of California (10% per annum);

4 35. For reasonable attorneys' fees and costs incurred, including reasonable expert fees,
5 as necessary or required to maintain a class action, administration fees, and any fees for an
6 accounting as permitted by Labor Code sections 218.5, 1194, 2802-2804, 2699(g), and/or Code of
7 Civil Procedure section 1021.5; and

8 36. For such other and further relief that the Court deems equitable, just or proper.

9
10 CLAYEO C. ARNOLD, APLC
11 THE DARREN GUEZ LAW FIRM
12 COHELAN KHOURY & SINGER

12 Dated: February 6, 2023

11 
12 By: _____
13 Isam C. Khoury
14 Attorneys for Plaintiffs

14 **DEMAND FOR JURY TRIAL**

15 Plaintiffs hereby demand trial by jury to the extent authorized by law.

16
17 CLAYEO C. ARNOLD, APLC
18 THE DARREN GUEZ LAW FIRM
19 COHELAN KHOURY & SINGER

20 Dated: February 6, 2023

19 
20 By: _____
21 Isam C. Khoury
22 Attorneys for Plaintiffs

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC*

ATTORNEYS AT LAW

605 "C" STREET, SUITE 200
SAN DIEGO, CALIFORNIA 92101-5305

Telephone: (619) 595-3001

Facsimile: (619) 595-3000

www.ckslaw.com

JEFF GERACIA
J. JASON HILL†
MARTA MANUS
KRISTINA DE LA ROSA

(† Also admitted in Illinois)
(A Of Counsel)

(*Also admitted in the District of Columbia)
(*Also admitted in Colorado)

January 14, 2019

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CAL. LABOR CODE SECTIONS 2698, *et seq.*

NOTICE VIA ONLINE SUBMISSION (PAGAfilings@dir.ca.gov)

California Labor and Workforce Development Agency

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

First Bank
c/o Liz Vandevanter
16900 Goldenwest Street
Huntington Beach, CA 92647

First Bank
Attn: Legal Department
600 James S. McDonnell Blvd.
Hazelwood, MO 63042

Re: **Notice by Marcus H. Castro, on behalf of himself and all similarly-situated aggrieved California employees of First Bank, as an individual and as a proposed Representative of the State of California**

Dear PAGA Administrator and First Bank Representatives:

Pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code sections 2698, *et seq.* ("PAGA"), Mr. Marcus H. Castro ("Mr. Castro" or "Claimant") intends to bring an action against his former employer, First Bank ("First Bank" or "the Company"), individually and on behalf of all other aggrieved employees to recover civil penalties for alleged violations of: (1) Labor Code sections 204, 510, 1171, 1194, 1197, 1197.1 and 1198 for failure to pay all minimum and/or overtime wages; (2) Labor Code sections 226.7, 512(a) and Industrial Welfare Commission ("IWC") Wage Order 4-2001, section 11, for failure to provide timely, off-duty 30-minute meal periods, or one hour of pay in lieu thereof; (3) violations of Labor Code section 226.7 and IWC Wage Order 4-2001, section 12, for failure to provide timely paid 10-minute rest periods for every four hours worked (or every major fraction thereof) or one hour of pay in lieu thereof; (4) violations of Labor Code sections 226(a) and 226.3, 1174 and IWC Wage Order 4-2001, section 7, for failure to maintain required records for all "hours worked" and failure to provide accurate and itemized wage statements; (5) violations of Labor Code sections 203, 210 and 256 for failure to timely pay all wages due to terminated/separated employees; violations of Labor Code section 2802 and IWC Wage Order 4-2001 sections 8-9 for failure to reimburse reasonable and necessary business-related expenses and (6) violations of IWC Wage Order 4-2001 and Labor Code sections 558(a)(1)-(3), including civil penalties to recover underpaid wages due to aggrieved employees.

This letter serves as Claimant's written notice pursuant to Labor Code section 2699.3(a)(A)(1) providing the Labor and Workforce Development Agency ("LWDA") the opportunity to investigate the alleged claims contained herein. If the LWDA does not intend to

investigate the alleged violations, Claimant intends to file a civil action for PAGA penalties on behalf of himself and all other aggrieved employees of First Bank in the State of California during the applicable limitations period for misclassification of all "Home Loan Consultants" ("HLCs") as exempt "outside salesperson" pursuant to IWC Wage Order section 2(M) in that First Bank's requirements systematically prevented Claimant and other aggrieved employees from "customarily and regularly working more than half the working time away from the employer's place of business." Rather, First Bank required Claimant and other aggrieved HLCs in the State of California to spend the vast majority of their working time in an assigned rotation of bank branches and thus, frustrating the purpose of the "outside sales" exemption under California law and rendering them misclassified as exempt employees as a matter of law. Further, First Bank expressly violated Labor Code section 2802 by requiring Claimant and other similarly-aggrieved HLCs to incur business expenses without any policy for reimbursement.

FACTUAL STATEMENT

Claimant Marcus H. Castro was employed by First Bank as an exempt "outside sales" Home Loan Consultant ("HLC") from approximately November 4, 2016 until approximately April 30 2018 in the Southern California region. His employee identification number was believed to be 0000170027 and his last four digits of his social security number are 0110. At the time of hire, he was provided no orientation or training as to First Bank's loan processing system, but believed that there would be sufficient loan support and processing staff to allow him to acquire customers for home loan and mortgage applications. It appears he was paid solely on a commission and advance draw basis. Within weeks after Mr. Castro's hire, it became apparent that First Bank branch managers and supervisors for assigned areas required his personal attendance in branch locations to assist in regular banking business which prevented Claimant and other similar aggrieved HLCs from actively engaging in outside sales activities, marketing, and other outside potential customer location events. Claimant estimates he, and observed others, spent upwards of 75% to 80% (or more) of their workweeks confined to assigned First Bank branch locations, while working in the range of 55-60 or more hours per week.

Further, First Bank completely disregarded Labor Code section 2802 and required HLCs to pay full price for all business use of smartphones and required home internet services without reimbursement for HLCs to monitor loan progression through the ENCOMPASS system, and thus, HLCs were also serving as their own loan processing agents. This required constant updating and monitoring of every trivial detail or else HLCs would lose the loan, lose time, and lose commissions. This was not a complaint just arising from Claimant; all HLCs for whom Castro had contact with were spending an inordinate amount of time babysitting loans and could not generate new business outside the branch offices.

First Bank also held various events that were deemed by branch managers to be must attend events, even though the likelihood of securing a new or existing client loan origination was minimal. This required travel without reimbursement of mileage and, at least once every quarter, to expend funds for overnight accommodations. There was no reimbursement by First Bank. The only reimbursement offered, which did not cover the actual cost, was a *taxable* reimbursement of \$50 per month for a smartphone, but no equipment, no hands-free device, and the general cost of at least \$100 per month given the data usage necessary to interact with the Company. All other expenses - mileage, travel, tolls, parking, meals, and entertainment - were

expected to be paid by the HLCs, despite the fact that HLCs were unable to leave the confines of the assigned branches for most of the workweek. The expectation, system-wide, was that HLCs were to provide in-branch mortgage lending coverage and to assist in other bank functions (not sales) due to high turnover. In terms of expenses, Claimant describes one intake document as stating, contrary to law: "How much of your own money are you willing to invest in your business to ensure success?"

The fact is, all business was First Bank's business and in California, those expenses, which were many, were required to have a reasonable basis for either limitation or reimbursement of actual costs. First Bank was not just considering HLCs "outside sales" employees, but in essence, illegal independent contractors under Labor Code section 226.8.

Ostensibly, First Bank expected Claimant and all similarly-situated HLCs to engage in work for at least 40 hours per week. At no time did First Bank actually record in-branch hours, though electronic records of login and password authentications would show in-branch office hours exceeding far more than 50% of weekly work time for Claimant and other HLCs. Nothing at First Bank accounted for meeting with clients at their work or home, doing intake on necessary documents and information. Claimant and similar HLCs within California worked 6-7 days per week, traveling, meeting clients, using their own internet (without reimbursement), and processing information without any substantial assistance.

In summary, Claimant and other similarly-aggrieved HLC employees classified as exempt "outside sales" employees for First Bank were:

- regularly required and expected to remain in assigned First Bank branches to assist in activities of the bank and not allowed at least more than 50% of their daily worktime to work away from the premises of First Bank;
- required to attend in-branch meetings and to remain in the branch even though new loan processing required meeting with and obtaining necessary information/documentation from loan applicants, which also undermined the HLCs' ability to engage in sales activity away from the employer's premises;
- encouraged and expected to pay money out of their own commissions without complete non-taxed reimbursement for overnight lodging, mileage, parking, tolls, travel, meals, entertainment, and client gifts/marketing materials that provided to aid and encourage customers to become First Bank clients;
- in fact impeded from engaging in activities away from First Bank facilities with monthly and quarterly meetings and events done for the benefit of bank branch managers and supervisors, that had either no or minimal prospects for generating new business or clients and usually held at First Bank premises convenient for supervisors or management;
- expected to work anywhere from 10 plus hours per day and between 55-60 (or more) hours per week and were not paid minimum wages, regular wages, or overtime wages for hours worked in excess of 8 hours per day and/or 40 hours per week;

- offered a taxable stipend of \$50 per month to use their home internet, equipment (hands free), and personal smartphones when in fact the general amount to procure and service all necessary equipment for First Bank mortgage processing was in excess of \$200 per month, with necessary small tool and equipment costs in addition to the monthly payments for services;
- required to use their personal vehicles without reimbursements for any intraday mileage, tolls, or parking;
- never paid based on their “hours worked” and spent anywhere from 75% to 80% (or more) of a traditional workweek inside First Bank branch offices;
- not provided any 30-minute, off-duty uninterrupted meal periods before the end of their fifth hour of work and were never paid an hour of pay for any non-compliant meal periods;
- not provided any 10-minute, paid rest periods for every approximate 4 hours worked (or any major fraction thereof) and were never paid an hour of pay for non-compliant rest periods;
- subject to First Bank’s practice of not keeping track of, as required by law, the number of hours worked, the amounts of pay and corresponding rates, or all on-duty time; and
- not timely paid all wages due as non-exempt employees during the time proscribed by Labor Code sections 201-204, and all formerly-employed HLCs (like Claimant) were not paid all wages due in a timely manner for terminated or separated employees.

FAILURE TO PAY ALL MINIMUM AND/OR OVERTIME WAGES

(Labor Code §§ 204, 510, 1171, 1194, 1197, and 1197.1 and IWC Wage Order 4-2001, § 2(M))

Labor Code section 204(a) provides: “All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

Labor Code section 510(a) states in pertinent part that: “Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.”

Labor Code section 1194 states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code section 1197 provides: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

IWC Wage Order 4-2001, section 2(M) defines “outside salespersons” as “any person, 18 years of age or over, who customarily and regularly works more than half the working time away from the employer’s place of business selling tangible or intangible items or obtaining orders or contracts for products, services or use of facilities.”

IWC Wage Order 4-2001, section 2(K) defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

Labor Code section 1197.1 provides in pertinent part: “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed...”

Each of these statutes is listed in Labor Code section 2699.5 as a statute for which violation of has been established as subject to the default civil penalty provisions in Labor Code section 2699(f)(2). That section provides: “(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

Here, based on the foregoing, because First Bank’s policies, procedures, and practices did not allow Claimant or other aggrieved HLCs to work more than 50% of their worktime away or outside from First Bank’s branches and/or facilities, including any home offices required by First Bank to be maintained by the Claimant and other similar HLCs, Castro and all others *failed to be exempt from California laws and applicable IWC provisions*, and were and remain “misclassified” as exempt employees.

As a consequence, First Bank not only is responsible for payment of all minimum, regular, and overtime wages for all “hours worked,” but is liable for all civil penalties flowing from each employee for each pay period as required by the PAGA. Consequently, Claimant, on behalf of himself and other aggrieved employees, intends to recover civil penalties pursuant to the PAGA for the alleged violations as provided by Labor Code section 2699(f)(2) as well as for

violation of the Wage Order, recoverable for each pay period in the amounts proscribed by Labor Code sections 558(a)(1) and (2).

FAILURE TO PROVIDE TIMELY AND COMPLIANT MEAL AND REST PERIODS
(Labor Code §§ 226.7, 512, and IWC Wage Order 4-2001, §§ 11-12)

Because Claimant and other aggrieved HLCs were deemed exempt outside sales employees (despite not having the ability to spend more than 50% of their work time away from First Bank premises), the Company was required to comply with Labor Code sections 226.7, 512, and Wage Order 4-2001, sections 11-12.

Labor Code section 226.7(b) provides:

“An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

Labor Code section 226.7(c) provides:

“If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

Labor Code section 512(a) provides:

“(a) An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

IWC Wage Order 4-2001, section 11(A) provides:

“No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the

meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the- job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

IWC Wage Order 4-2001, section 11(B) provides:

“If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

IWC Wage Order 4-2001, section 12(A) provides:

“Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.”

As a matter of California law, commissioned sales employees are required to be provided paid 10-minute duty free rest periods. *Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal. App. 5th 98. First Bank failed to do so for Claimant or other California HLCs.

During all of Claimant’s employment, he was not, nor were any of his similarly-aggrieved HLCs, provided with paid rest periods and/or unpaid 30-minute meal periods for shifts of work over 4 hours and over 6 hours, respectively, in violation of law and applicable regulations. Claimant was never paid any meal or rest period premiums, and in fact was instructed by branch managers that he was not eligible to take breaks.

As a consequence, in addition to owing meal and rest period one-hour pay premiums for each missed break period during Claimant’s tenure of employment, First Bank is subject to PAGA civil penalties.

Labor Code sections 226.7 and 512 are statutes specifically listed in Labor Code section 2699.5 as statutes for which violations have been established are subject to the default civil penalty provisions in Labor Code section 2699(f)(2). That section provides: “(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one

hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

Violations of IWC Wage Order 4-2001, sections 11 and 12 are governed by the civil penalty provisions of Labor Code section 558(a):

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

Accordingly, First Bank is subject to assessment of civil penalties pursuant to Labor Code section 2699(f)(2) for violations of statutes and subject to civil penalties for violations of the applicable Wage Order as provided by Labor Code section 558(a) in an amount according to proof.

FAILURE TO PROVIDE ACCURATE AND ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226(a), 226.3, 1174, and IWC Wage Order 4-2001 § 7)

Labor Code section 226(a) provides in pertinent part: “(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) **gross wages earned**, (2) **total hours worked by the employee**, ... (5) **net wages earned** ... and (9) **all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.**” [Emphasis added.]

Labor Code section 226.3 provides in pertinent part: “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in

subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law...”

Labor Code section 1174 provides that:

“Every person employing labor in this state shall:

(a) Furnish to the commission, at its request, reports or information that the commission requires to carry out this chapter. The reports and information shall be verified if required by the commission or any member thereof.

(b) Allow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of the person to secure any information or make any investigation that they are authorized by this chapter to ascertain or make. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of the person.

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

IWC Wage Order 4-2001, section 7 provides in pertinent part:

“(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily

hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request..”

Here, First Bank’s misclassification of HLCs as “outside sales” exempt employees resulted in inaccurate pay records and violated Labor Code section 226(a), subsections (1), (2), (5) and (9). It also violated Labor Code section 1174 and the applicable Wage Order on required recording keeping. Finally, the practices described herein violate Labor Code section 226.3, which assigns a specific civil penalty scheme for enforcement actions by the Department of Labor Standards and Enforcement (“DLSE”) or the LWDA.

Labor Code sections 226(a) and 1174(c) and (d) are statutes listed under Labor Code section 2699.5 for which civil penalties may be recovered under the default civil penalty scheme outlined in Labor Code section 2699(f)(2), cited above.

Labor Code section 226.3 provides additional recoverable penalty “in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation...” The civil penalty assessments under Section 226.3 “are in addition to any other penalty provided by law.”

Consequently, Claimant, on behalf of himself and other aggrieved employees, intends to file a representative action to recover civil penalties pursuant to the PAGA for the alleged violations of wage statement and accurate record keeping requirements.

**FAILURE TO TIMELY PAY ALL WAGES DUE TO TERMINATED/SEPARATED
EMPLOYEES**

(Labor Code §§ 203, 210, and 256)

Labor Code section 203 provides: “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, 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 therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she avoids payment.”

Labor Code section 210(a) provides: “(a) In addition to, *and entirely independent and apart from, any other penalty provided in this article*, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5,

shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

Labor Code section 256 provides: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.”

Labor Code section 203 is a statute listed under Labor Code section 2699.5 for which civil penalties may be recovered under the default civil penalty scheme outlined in Labor Code section 2699(f)(2), cited above. Labor Code sections 210 and 256 provide an independent and non-cumulative basis to collect further civil penalties for the violations claimed herein.

Here, Mr. Castro and other aggrieved hourly employees who were misclassified as “outside sales” exempt employees and who were terminated or separated from their employment within the applicable limitations period were not paid all wages due in a timely manner as a result First Bank’s policies, practices, and conduct. Consequently, Claimant, on behalf of himself and other aggrieved employees, intends to file a representative action to recover civil penalties pursuant to the PAGA for the alleged violations.

FAILURE TO MAINTAIN ACCURATE RECORDS AND UNDERPAYMENT OF WAGES

(IWC Wage Order 4-2001 and Labor Code §§ 558(a)(1)-(3) and 1174(c) and (d))

As indicated above, IWC Wage Order 4-2001 requires payment of minimum and overtime wages, and requires the employer to maintain accurate track and record of all hours worked. Based on the allegations above, First Bank’s policies and practices led to the failure to pay all wages due, either at minimum wage, regular wage, or at the overtime wage rate. The policy also violated the Wage Order’s record keeping requirements.

Labor Code section 558(a) provides:

“(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.”

As applied here, for each violation of the applicable IWC Wage Order provisions, Claimant is entitled to recover \$50 for the first violation and \$100 for each subsequent violation for all aggrieved employees in California impacted by First Bank’s misclassification policies. Further, as part of the civil penalty scheme, and to the extent permitted by law, Claimant will also seek underpaid wages on behalf of himself and other aggrieved employees in California as a representative action on behalf of the LWDA.

FAILURE TO REIMBURSE ALL REASONABLE AND NECESSARY BUSINESS EXPENSES

(Labor Code §§ 2802-2804, IWC Wage Order 4-2001, § 9)

California Labor Code section 2802 provides:

- (a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.
- (b) All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.
- (c) For purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

As indicated above, First Bank had a no reimbursement policy dictated by management for mileage, tolls, parking, small client gifts, marketing materials, full personal smartphone business use reimbursement, etc. Mr. Castro approached managers about this who stated on multiple occasions that First Bank’s policy was to require HLCs to “invest their own money” into generating loans for the bank (in order to receive commissions). This is illegal and First Bank was treating HLCs as independent contractors (likely in violation of Labor Code section 226.8), while also treating them as W-2 employees with deductions and payroll tax withholdings.


CONCLUSION

Mr. Castro requests the Labor and Workforce Development Agency (“LWDA”) initiate investigation of the violations described above. If the LWDA does not pursue enforcement within the timetable proscribed by law, Mr. Castro will pursue claims for statutory and civil penalties and will seek all remedies available for violations of the Labor Code and the applicable

California Labor and Workforce Development Agency
First Bank
January 14, 2019
Page | 13

Industrial Welfare Commission Wage Order, including all available civil penalties set forth in Labor Code section 2699(f)(2) and Labor Code sections 558(a)(1)-(3).

Very truly yours,
COHELAN KHOURY & SINGER



J. Jason Hill, Esq.



865 Howe Avenue, Sacramento, CA 95825
P: 916-777-7777 | F: 916-924-1829 | justice4you.com

CLAYEO C. ARNOLD
ANTHONY M. ONTIVEROS
KIERSTA D. PERLEE
JOHN T. STRALEN**
* Of Counsel
**Board-Certified Civil Trial
Advocate by National Board
of Trial Advocacy

JOSHUA H. WATSON
THOMAS D. NIELSEN
GINA M. BOWDEN
LESLIE GULLON
RAYMOND TUASON
MATTHEW P. VANDALL
ANTHONY J. POIDMORE*
M. ANDERSON BERRY

PERSONAL INJURY
WRONGFUL DEATH
EMPLOYMENT LAW
PRODUCT LIABILITY
CLASS ACTION
QUIL TAM

January 17, 2018

Via U.S. Certified Mail

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

Via U.S. Certified Mail

Peter Wimmer
General Counsel
First Bank and First Banks, Inc.
104 Industrial Drive
Hermann, MO 65041

Via U.S. Certified Mail

Brent M. Giddens
Carothers, DiSante & Fruedenberger
707 Wilshire Boulevard, Suite 5150
Los Angeles, CA 90017

**RE: PAGA Notice Pursuant to California Labor Code § 2699
Adam Harmoning vs. First Bank, et al.**

Dear Sir or Madam:

My firm represents Adam Harmoning in connection with his wage and hour claims against First Bank and First Banks, Inc. (collectively referred to as "First Bank"). Mr. Harmoning previously worked for First Bank as an outside sales Mortgage Loan Officer ("MLO") in California. Based on the information provided by our client, we believe First Bank violated California wage and hour laws by failing to reimburse Mr. Harmoning and other similarly situated MLOs or outside sales employees of other bank products for required business expenses in violation of California Labor Code § 2802, and also violated California Business & Professions Code §§ 17200 et seq. Mr. Harmoning seeks penalties for these violations under Labor Code § 2699 on behalf of himself and similarly situated MLOs or outside sales employees who work or worked for U.S. Bank in California during

Adam Harmoning
January 17, 2018
Page 2

the period of January 9, 2107 to present.

Attached hereto is a copy of the complaint our office filed representing Mr. Harmoning seeking reimbursement of unpaid business expenses and other damages. The allegations in the complaint and the following are the bases for the Labor Code § 2699 penalties:

1. Mr. Harmoning was employed by First Bank in California as an outside sales MLO from approximately April 2017 to December 2017.

2. Mr. Harmoning and similarly situated MLOs and other outside sales employees in California incurred daily business expenses in carrying out their duties for First Bank, including mileage, toll charges, parking charges, cell phone use, and other business expenses. U.S. Bank did not reimburse them for such expenses, in violation of Labor Code Section 2802.

3. As a result of these violations, Mr. Harmoning seeks all available penalties under Labor Code § 2699 on behalf of himself and other similarly situated MLOs and outside sales employees who work or worked for U.S. Bank in California during the period January 9, 2017 to the present. This may include, but is not limited to, penalties allowed under the following Labor Code sections: 201, 202, 203, 204, 206, 208, 210, 218.5, 218.6, 221, 222, 225, 225.6, 226, 226.3, 227.3, 432.5, 1174, 1174.5, 2802, and 2699(f).

The facts and claims contained herein are based on the limited information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Harmoning becomes aware of additional compensation or penalties owed to him and other current or former employees of First Bank, he reserves the right to revise these facts and add any new claims by amending this letter. Plaintiffs have filed a civil action to pursue claims against First Bank, and intend to amend the complaint to seek PAGA remedies for these violations, if appropriate based the Labor Commissioner's response to this letter.

This letter serves as notice of our intent to seek all available and appropriate civil penalties pursuant to the Private Attorneys General Act, California Labor Code §§ 2698, et seq. ("PAGA"), on behalf of Mr. Harmoning and a putative class of other MLOs and outside sales employees who worked for First Bank in California for violations of California Labor Code § 2802. Mr. Harmoning requests that the Labor & Workforce Development Agency notify him if it intends to investigate the above allegations pursuant to PAGA.

Adam Harmoning
January 17, 2018
Page 3

Thank you for your attention to this matter. Please direct all communications and correspondence regarding this matter to our office going forward. If you have any questions, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read 'JTS', with a stylized flourish at the end.

JOHN T. STRALEN

JTS/II

CC: Joel M. Van Parys, Esq.,
Carothers, DiSante & Fruedenberger
900 University Avenue, Suite 200,
Sacramento, CA 95825

FILED/ENDORSED

DEC 18 2017

By: G. Freeman
Deputy Clerk

1 Clayeo C. Arnold, Esq., SBN 65070
2 John T. Stralen, Esq., SBN 171227
3 **CLAYEO C. ARNOLD**
4 **A PROFESSIONAL LAW CORPORATION**
5 865 Howe Avenue
6 Sacramento, CA 95825
7 Telephone: (916) 924-3100
8 Facsimile: (916) 924-1829

9 Attorney for Plaintiff

10
11 IN AND FOR THE STATE OF CALIFORNIA
12 COUNTY OF SACRAMENTO

13 ADAM J. HARMONING,
14 Plaintiff,

15 vs.

16 FIRST BANK; FIRST BANKS, INC.; and
17 DOES 1 through 50, inclusive,
18 Defendants.

Case No.: 34-2017-00223939

CLASS ACTION COMPLAINT FOR:

(1) FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR
CODE § 2802); and

(2) UCL VIOLATIONS (BUS. & PROF.
CODE § 17200-04)

19 Plaintiff Adam Harmoning ("Plaintiff"), on behalf of himself and all other similarly
20 situated (hereinafter "Class Members"), complains and alleges as follows:

21 **A. INTRODUCTION**

22 1. This is a class action, under California Code of Civil Procedure § 382, seeking
23 reimbursement for business expenses, and interest thereon; declaratory relief; equitable
24 relief; penalties, and reasonable attorneys' fees and costs, under California Labor Code §§
25 2802, Code of Civil Procedure § 1021.5, and Business and Professions Code § 17200, et
26 seq., on behalf of Plaintiff and all other individuals who are or have been employed as Loan
27 Officers (defined below) by Defendants, First Banks, Inc. and First Bank (hereafter
28 collectively referred to as "First Bank" or "Defendant"), in California during the four years

1 prior to the filing of this action. Plaintiff and similarly situated loan officers employed by
2 Defendant during the Class Period as defined below (hereinafter "Class Members") paid
3 out-of-pocket business expenses reasonably necessary for the performance of their jobs
4 as Loan Officers employed by Defendant, for which Plaintiff and Class Members have not
5 received reimbursement from Defendant. Plaintiff, on behalf of himself and Class
6 Members, seeks damages and restitution of all unjust enrichment Defendant has enjoyed
7 from their failure to reimburse business expenses incurred by Plaintiff and Class Members.

8 2. The "Class Period" is designated as the period from December 18, 2013
9 through the date the Court grants class certification. The violations of California's
10 employee expense reimbursement law, as described more fully below, have been ongoing
11 for at least the past four years, are continuing at present, and will continue unless and until
12 enjoined by the Court.

13 3. Plaintiff and Class Members are or were engaged in the sales of residential
14 and/or commercial mortgage products on behalf of Defendant in California. Defendant
15 classified Plaintiff and class members as outside sales employees. Defendant's written
16 agreement with Plaintiff and class members and other written and unwritten company
17 policies required that most of these sales-related duties are or were performed in the field,
18 away from Defendant's offices or facilities, or the employees' home offices. Many of these
19 activities also involved travel between Defendant's offices or facilities. Defendant expects
20 and requires Plaintiff and other class members to drive their own vehicles to and from sites
21 of customers and prospective customers and to and from Defendant's offices, facilities, and
22 branches. Defendant expects and requires under a written agreement that their Loan
23 Officers spend more than half of their work time away from Defendant's locations. Plaintiff
24 and class members are expected by Defendant to pay, and have personally paid, expenses
25 incurred using their personal vehicles for business related activities. Defendant has willfully
26 failed and refused to timely and fully reimburse Plaintiff and other present and former Loan
27 Officers for these business expenses as required by Labor Code § 2802 that were incurred
28 in the regular course of their duties as Defendant's outside sales employees.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

B. JURISDICTION

4. This Court has jurisdiction over the claims for reimbursement of business expenses under Labor Code § 2802.

5. This Court has jurisdiction over the claims for injunctive relief and restitution of gains arising from Defendant's unlawful business practices, under California's Unfair Competition Law ("UCL"), Business & Professions Code §§ 17203 and 17204.

C. VENUE

6. Venue as to Defendant is proper in Sacramento County, pursuant to Code of Civil Procedure §§ 395, 395.5. Defendant maintains branches, facilities and office from which Defendant transacts business in a variety of locations throughout California, including Sacramento County. The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated within the State of California and within Sacramento County. Plaintiff resides in Sacramento County, and at times works out of a home office in Sacramento County. Defendant's obligation to reimburse Plaintiff for business expenses arose, in significant part, in Sacramento County. Defendant has employed Class Members in Sacramento County, who have also incurred unreimbursed business expenses while conducting Defendant's business in Sacramento County in the State of California during the Class Period.

D. PARTIES

7. Plaintiff resides in Sacramento, California. Plaintiff has been employed by Defendant from approximately April 2017 through December approximately December 8, 2017. During the Class Period, he worked as a Loan Officer for Defendant throughout Northern California, including his home office in Sacramento, and his home branch in San Mateo, California. During this time, Plaintiff was subject to Defendant's unlawful business expense reimbursement policies and/or practices set forth herein.

8. Defendants, First Banks, Inc. and First Bank, are business entities, form unknown, who do business throughout the United States and throughout California.

9. The true names and capacities of persons or entities, whether individual,

1 corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are
2 currently unknown to Plaintiff, who therefore sues Defendant by such fictitious names
3 under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon
4 alleges, that each of the Defendants designated herein as a DOE is legally responsible in
5 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to
6 amend this Complaint to reflect the true names and capacities of the Defendants
7 designated hereinafter as DOES when such identities become known. Hereinafter
8 Defendant and the DOE Defendants shall be referred to collectively as "Defendant."

9 10. All of Plaintiff's claims stated herein are asserted against Defendant and any
10 of their owners, predecessors, successors, subsidiaries, and/or assigns.

11 **E. FACTUAL BACKGROUND**

12 11. Defendant operates, and at all times during the liability period, has done
13 business in Sacramento County, California and throughout California.

14 12. Since at least four years prior to the filing of this action, Defendant has
15 maintained business expense policies and/or practices that unlawfully deny reimbursement
16 and/or compensation to its Loan Officers. Those policies and/or practices require, and/or
17 with knowledge thereof permit, Loan Officers to pay for expenses incurred in direct
18 consequence of discharging their sales duties on behalf of Defendant, including
19 maintenance of a motor vehicle and all travel-related expenses, including vehicle insurance,
20 mileage, gasoline, parking, and tolls incurred while driving their vehicles for business, and
21 including other expenses required to be paid for by Loan Officers, such as cell phones and
22 home office expenses.

23 13. Defendant has maintained these same business expense policies and/or
24 practices or substantially similar ones throughout the Class Period.

25 14. Defendant is aware that it requires Loan Officers to regularly incur business
26 expenses in the discharge of their duties as employees Defendant nevertheless fail and
27 refuse to reimburse Loan Officers for such business expenses incurred by them in their
28 work as they sell mortgage products to Defendant's clients and prospective clients at

1 locations through Defendant's business areas.

2 15. Plaintiff and Class Members have been harmed by defendant's unlawful
3 business expense policies and/or practices in that they have not been paid for certain
4 business expenses incurred while employed by Defendant, as alleged above, thereby
5 diminishing their agreed-upon compensation, in amounts to be proved at trial; however,
6 neither Plaintiff or any other individual class member has suffered damages of \$75,000.00
7 or more, and the total damages suffered by the Class is less than \$5,000,000.00.

8 **F. CLASS ACTION ALLEGATIONS**

9 16. Plaintiff brings this action, on behalf of himself and all others similarly
10 situated, as a class action pursuant to Code of Civil Procedure § 382. The Class that
11 Plaintiff seeks to represent is composed of and defined as follows:

12 "All persons who are or have been employed, at any time from December 18, 2013 through
13 the date of the Court's granting of class certification in this matter in California by
14 Defendant under the job titles Loan Officer, Mortgage Loan Officer, and Branch Loan
15 Officer, or Mortgage Home Loan Consultant (collectively as "Loan Officers" or "Class
16 Members")."

17 17. This action has been brought and may properly be maintained as a class
18 action under Code of Civil Procedure § 382 because there is a well-defined community of
19 interest in the litigation, the proposed class is easily ascertainable, and Plaintiff is a proper
20 representative of the Class:

21 a. Numerosity: The potential Members of the Class as defined are numerous
22 and therefore joinder of all the Members of the Class is impracticable. While the precise
23 number of Class Members has not been determined at this time, Plaintiff is informed and
24 believes the Defendant has employed hundreds of Loan Officers in California subject to
25 Defendant's business expense reimbursement policy at all times during the Class Period.
26 Joinder of all Members of the proposed class is not practicable.

27 b. Commonality: There are questions of law and fact common to the Plaintiff
28 and the Class that predominate over any questions affecting only individual Members of

1 the Class. These common questions of law and fact include, without limitation:

2 (i) Whether Plaintiff and Class Members have incurred unreimbursed business
3 expenses in the discharge of their duties as employees, included but not limited to
4 expenses for such items as motor vehicle use and maintenance, mileage, insurance,
5 parking, tolls, and other home office expenses.

6 (ii) Whether Defendant expected or required Plaintiff and Class Members to
7 spend more than half of their working time away from Defendant's branch locations.

8 (iii) Whether Defendant intended, suffered and permitted, and/or were aware
9 that Plaintiff and Class Members incurred such business expenses in the discharge of their
10 duties as employees.

11 (iv) Whether Defendant failed and/or refused to reimburse, fully or at all,
12 business expenses incurred by Plaintiff and Class Members in the discharge of their duties.

13 (v) Whether Defendant's failure to reimburse business expenses incurred by
14 Plaintiff and Class Members, fully or at all, was the result of, and/or pursuant to, a business
15 policy or regular practice of Defendant, including a written agreement requiring Loan
16 Officers to spend more than half of their time away from Defendant's office locations.

17 (vi) Whether Defendant violated Labor Code § 2802 by denying Plaintiff and other
18 Class Members reimbursement for their business expenses.

19 (vii) Whether Defendant violated Business and Professions Code § 17200 by failing
20 to pay business expenses for Plaintiff and Class Members.

21 (viii) The proper formula(s) for calculating restitution, damages, and interest owed
22 to Plaintiff and the Class Members.

23 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both
24 Plaintiff and Class Members sustained injuries and damages, and were deprived of property
25 rightly belonging to them, arising out of and caused by Defendant's common course of
26 conduct in violation of law alleged herein, in similar ways and for the same types of
27 expenses.

28 d. Adequacy of Representation: Plaintiff is a member of the Class and will fairly

1 and adequately represent and protect the interests of the Class Members. Plaintiff's
2 interests do not conflict with those of Class Members. Counsel who represent the Plaintiff
3 are competent and experienced in litigating wage and hour class actions, including business
4 expense reimbursement cases and other employment class actions, and will devote
5 sufficient time and resources to the case and otherwise adequately represent the Class.

6 e. Superiority of Class Action: A class action is superior to other available means
7 for the fair and efficient adjudication of this controversy. Individual joinder of all Class
8 Members is not practicable, and questions of law and fact common to the Class
9 predominate over any questions affecting only individual Members of the Class. Each Class
10 Member has been damaged or may be damaged in the future by reason of Defendant's
11 unlawful policies and/or practices of not reimbursing business expenses. Certification of
12 this case as a class action will allow those similarly situated persons to litigate their claims
13 in the manner that is most efficient and economical for the parties and the judicial system.
14 Certifying this case as a class action is superior because the Plaintiff seeks relief that will
15 affect all Class Members in a common way, and will also allow for efficient and full
16 disgorgement of the ill-gotten gains Defendant has enjoyed by maintaining their unlawful
17 business expense reimbursement policy and practice, and will thereby effectuate
18 California's strong public policy of protecting employees from deprivation or offsetting of
19 compensation earned in their employment. If this action is not certified as a Class Action,
20 it will be impossible as a practical matter for many or most Class Members to bring
21 individual actions to recover monies unlawfully withheld from their lawful compensation
22 due from Defendant, due to the relatively small amounts of such individual recoveries
23 relative to the costs, burdens, and risks of litigation.

24 **FIRST CAUSE OF ACTION**

25 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

26 **(LABOR CODE § 2802)**

27 18. The allegations of Paragraphs 1 through 17 are re-alleged and incorporated
28 herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself

1 and the above-described class of similarly situated Loan Officers.

2 19. Labor Code § 2802 provides that "[a]n employer shall indemnify his or him
3 employee for all necessary expenditures or losses incurred by the employee in direct
4 consequence of the discharge of his or him duties."

5 20. In order to discharge their sales-related duties for Defendant, Plaintiff and
6 similarly situated Loan Officers were required and/or expected by Defendant to use their
7 own personal motor vehicles for work-related travel and other home office expenses, such
8 as a cell phone and printer. However, Defendant did not fully pay for expenses incurred
9 as a result of Plaintiff and Class Members' use of their own motor vehicles for work
10 including for liability insurance, mileage, gas, parking, tolls, and other travel-related
11 expenses, or other office expenses such as a cell phone or use of a printer.

12 21. Plaintiff and similarly situated Loan Officers are entitled to reimbursement for
13 these necessary expenditures, plus interest and attorneys' fees and costs, under Labor
14 Code § 2802.

15 22. As a result of Defendant's violations of Labor Code § 2802, Defendant is also
16 liable for attorney's fees and costs under Labor Code § 2802(c).

17 23. Plaintiff, on behalf of himself and Class Members, request relief as described
18 below.

19 **SECOND CAUSE OF ACTION**
20 **UNFAIR COMPETITION LAW VIOLATIONS**
21 **(BUS. & PROF. CODE § 17200)**

22 24. The allegations of paragraphs 1 through 23 are re-alleged and incorporated
23 herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself
24 and the above-described class of similarly situated Loan Officers.

25 25. Business & Professions Code § 17200 (the "UCL") prohibits unfair competition
26 in the form of any unlawful, unfair, or fraudulent business act or practice. Business &
27 Professions Code § 17204 allows "any person who has suffered injury in fact and has lost
28 money or property" to prosecute a civil action for violation of the UCL.

1 26. Beginning at an exact date unknown to Plaintiff, but at least four years prior
2 to the filing of this action, and continuing to the present, Defendant has committed
3 unlawful, unfair, and/or fraudulent business acts and practices as defined by Business &
4 Professions Code § 17200, by failing to reimburse and indemnify Plaintiff and similarly
5 situated Loan Officers for employment-related business expenses and losses, in violation
6 of Labor Code § 2802.

7 27. In order to discharge their sales-related duties as employees working for
8 Defendant, Plaintiff and similarly situated Loan Officers were required, expected, and/or
9 permitted by Defendant to use their own personal motor vehicles for work-related travel
10 and cell phones, printers, and internet. However, Defendant did not fully pay for expenses
11 incurred as a result of Plaintiff's and Class Members' use of their own property or
12 expenditures for services used in the course of their work for Defendant.

13 28. As a direct and proximate result of Defendant's unlawful, unfair, and/or
14 fraudulent acts and practices described herein, Defendant has received and continues to
15 hold ill-gotten gains belonging to Plaintiff and Class Members in the form of unreimbursed
16 employee business expenses that reduced or offset compensation earned by Plaintiff and
17 Class Members. As a direct and proximate result of Defendant's unlawful business
18 practices, Plaintiff and Class Members have suffered economic injuries including, but not
19 limited to out-of-pocket business expenses, and resulting reductions or offsets to earned
20 compensation. Defendant has profited from their unlawful, unfair, and/or fraudulent acts
21 and practices in the amount of those business expenses and interest accrued thereon.

22 29. Plaintiff and similarly situated Loan Officers are entitled to restitution pursuant
23 to Business & Professions Code §§ 17203 and 17208 for all unpaid business expenses, and
24 interest thereon accruing, from four years prior to the filing of this action to the date of
25 such restitution, and Defendant should be required to disgorge all the profits and gains
26 they have reaped and restore such profits and gains to Plaintiff and Class Members, from
27 whom they were unlawfully taken.

28 30. Plaintiff has assumed the responsibility of enforcement of the laws and public

1 policies specified herein by suing on behalf of himself and other similarly situated Members
2 of the public previously and presently employed by Defendant in California. Plaintiff's
3 success in this action will enforce important rights affecting the public interest. Plaintiff will
4 incur a financial burden in pursuing this action in the public interest. Therefore, an award
5 of reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil Procedure
6 § 1021.5.

7 31. Plaintiff, on behalf of himself and similarly situated Loan Officers, requests
8 relief as describe below.

9 **ALLEGATIONS RELATED TO THE LABOR CODE PRIVATE**
10 **ATTORNEYS GENERAL ACT OF 2004**
11 **(Labor Code §§ 2699 et seq.)**

12 **(Potential Future Claim on behalf of the Class)**

13 32. Plaintiff incorporates the allegations contained in the previous paragraphs of
14 this Complaint as if fully set forth herein.

15 33. As alleged above, Defendant failed to comply with the California Labor Code.
16 As such, Plaintiff is an "aggrieved employee" as defined in Labor Code § 2699(a). Pursuant
17 to Labor Code § 2699, the Labor Code Private Attorneys General Act of 2004, Plaintiff
18 intends to seek permission to bring and may in the future bring this action on behalf of
19 himself and other current and former Loan Officers against Defendant, and upon receipt
20 of permission by the State of California may in the future seek recovery of applicable civil
21 penalties as follows:

22 a. where civil penalties are specifically provided in the Labor Code for each of
23 the violations alleged herein, Plaintiff seeks recovery of such penalties;

24 b. where civil penalties are not established in the Labor Code for each of the
25 violations alleged herein, Plaintiff seeks recovery of the penalties established in § 2699(e)
26 of the Labor Code Private Attorneys General Act of 2004, and in accordance with § 200.5
27 of the Labor Code.

28 34. Plaintiff intends to serve written notice, via certified mail or through required

1 method, to the Labor and Workforce Development Agency and to Defendant of Plaintiff's
2 intent to amend the complaint to add a cause of action pursuant to Labor Code §§ 2699
3 et seq. Plaintiff will included with the notice this complaint.

4 35. If the Labor and Workforce Development Agency declined to issue notice of
5 its intention to pursue penalties, the Labor Code § 2699(a)(2)(C) authorizes Plaintiff, as a
6 matter of right, to amend the existing complaint to add a claim arising under PAGA within
7 60 days of the specified time periods. Accordingly, Plaintiff intends to commence this PAGA
8 claim for civil remedies as provided for under Labor Code § 2699, if permission to do so is
9 given.

10 36. Plaintiff requests relief as described below.

11 **JURY DEMAND**

12 Plaintiff hereby requests a trial by jury.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff requests the following relief:

15 1. That the Court determine that this action may be maintained as a class action
16 under Code of Civil Procedure § 382, and define the Class as requested herein;

17 2. That the Court find and declare that Defendant's business expense policies
18 and/or practices violate California law, including Labor Code § 2802 by refusing and/or
19 failing to reimburse all business expenses incurred by Plaintiff and other Loan Officers in
20 the discharge of their duties as employees of Defendant;

21 3. That the Court find and declare that Defendant has violated Business and
22 Professions Code § 17200 and committed unfair and unlawful business practices by failing
23 to reimburse Plaintiff and similarly situated Loan Officers for business expenses incurred
24 by them in the course of their duties for the benefit of Defendant, their employers;

25 4. That the Court declare that Defendant's business expense policies and/or
26 practices violate California law by causing a denial or forfeiture of compensation, including
27 earned wages.

28 5. That the Court award to Plaintiff and Class Members all unreimbursed

1 business expenses, and interest thereon, that they are owed, pursuant to Labor Code §
2 2802, in an amount to be proved at trial;

3 6. That Defendant be ordered to pay restitution to Plaintiff and the Class, due
4 to Defendant's UCL violations, pursuant to Business and Professions Code §§ 17200-17205,
5 in the amount of their unreimbursed business expenses and interest thereon;


6 7. That the Court award civil penalties to Plaintiff and the Class as provided by
7 California Labor Code § 2699;

8 8. That Plaintiff and the Class be awarded reasonable attorneys' fees and costs
9 pursuant to Labor Code § 2802 and Code of Civil Procedure § 1201.5, and/or other
10 applicable law;

11 9. That the Court award such other and further relief as this Court may deem
12 appropriate.

13
14 Dated: December 15, 2017

CLAYEO C. ARNOLD
A Professional Law Corporation

15
16
17 By: 
18 John T. Stralen, Esq.
19 Attorney for Plaintiff
20
21
22
23
24
25
26
27
28