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behalf of all others similarly situated

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF VENTURA

10 CYNTHIA GARCIA-ESPINOZA, individually
and on behalf of all others similarly situated,

11 Plaintiffs,

12 v.

13 MUFG UNION BANK N.A., a Delaware
14 Corporation, and DOES 1-50, inclusive,

15 Defendants.

Case No.
Assigned for all Purposes to:
Hon.
Dept.

16 CLASS ACTION COMPLAINT
PURSUANT TO CALIFORNIA CODE
OF CIVIL PROCEDURE §382 FOR:

- 17 (1) FAILURE TO PAY WAGES INCLUDING OVERTIME;
- 18 (2) FAILURE TO PROVIDE MEAL PERIODS;
- 19 (3) FAILURE TO PROVIDE REST PERIODS;
- 20 (4) FAILURE TO TIMELY PAY WAGES;
- 21 (5) FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS;
- 22 (6) FAILURE TO REIMBURSE EXPENSES; AND
- 23 (7) UNFAIR COMPETITION

24 DEMAND FOR JURY TRIAL

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1 COMES NOW plaintiff CYNTHIA GARCIA-ESPINOZA ("Plaintiff"),
2 individually and on behalf of others similarly situated, asserts claims against defendants MUFG
3 UNION BANK, N.A., a Delaware Corporation, and Does 1-50, inclusive (collectively
4 "Defendants") as follows:

5 **JURISDICTION AND VENUE**

6 1. This class action is brought pursuant to California Code of Civil Procedure §382.
7 The monetary damages and restitution sought by Plaintiffs exceed the minimum jurisdiction
8 limits of the California Superior Court and will be established according to proof at trial.

9 2. This Court has jurisdiction over this action pursuant to the California Constitution
10 Article VI §10, which grants the California Superior Court original jurisdiction in all causes
11 except those given by statute to other courts. The statutes under which this action is brought do
12 not give jurisdiction to any other court.

13 3. This Court has jurisdiction over Defendants because, upon information and belief,
14 each Defendant is either a resident of California, has sufficient minimum contacts in California,
15 or otherwise intentionally avails itself of the California market so as to render the exercise of
16 jurisdiction over it by the California Courts consistent with traditional notions of fair play and
17 substantial justice.

18 4. The California Superior Court also has jurisdiction in this matter because there is no
19 federal question at issue, as the issues herein are based solely on California statutes and law,
20 including the Labor Code, IWC Wage Orders, CCP, California Civil Code ("CC") and B&PC.

21 5. Venue is proper in this Court because upon information and belief, one or more of
22 the Defendants, reside, transact business, or have offices in this County and the acts or omissions
23 alleged herein took place in this County.

24
25 **PARTIES**

26 6. Plaintiff, CYNTHIA GARCIA-ESPINOZA is, and at all times relevant to this
27 action, a resident of Fillmore, California. Plaintiff was employed by Defendants approximately in
28 February of 1984 through approximately April 2016 as a Non-Exempt Branch Service Manager

1 performing duties relating Defendants' financial/banking business.

2 7. Defendants, MUFG UNION BANK, N.A., own and operate various full service
3 banks across the United States, including California.

4 8. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
5 mentioned herein, Defendants are organized and existing under the laws of California, and were
6 at all times mentioned herein licensed and qualified to do business in California. On information
7 and belief, Plaintiff alleges that at all relevant times referenced herein Defendants did and
8 continue to transact business throughout California.

9 9. Whenever in this complaint reference is made to any act, deed, or conduct of
10 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or
11 through one or more of its officers, directors, agents, employees, or representatives, who was
12 actively engaged in the management, direction, control, or transaction of the ordinary business
13 and affairs of Defendants.

14 10. Plaintiff is ignorant of the true names and capacities, whether individual,
15 corporate, associate, or otherwise, of the Defendants sued herein as Does 1 through 50, inclusive
16 and therefore sues said Defendants (the "Doe Defendants") by such fictitious names. Plaintiff
17 will amend this complaint to insert the true names and capacities of the Doe Defendants at such
18 time as the identities of the Doe Defendants have been ascertained.

19 11. Plaintiff is informed and believes, and thereon alleges, that the Doe Defendants are
20 the partners, agents, or principals and co-conspirators of Defendants, and of each other; that
21 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
22 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the
23 benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent
24 of the liability of the Defendants as alleged herein.

25 12. Plaintiff is further informed and believes, and thereon alleges, that at all times
26 herein material, each Defendant was completely dominated and controlled by its co-Defendants
27 and each was the alter ego of the other. Whenever and wherever reference is made in this
28 complaint to any conduct by Defendant or Defendants, such allegations and references shall also

1 be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and
2 severally. Whenever and wherever reference is made to individuals who are not named as
3 Defendants in this complaint, but were employees and/or agents of Defendants, such individuals,
4 at all relevant times acted on behalf of Defendants named in this complaint within the scope of
5 their respective employments.

6 **CLASS ACTION ALLEGATIONS**

7 13. Plaintiff brings this action individually as well as on behalf of each and all other
8 persons similarly situated, and thus, seeks class certification under California Code of Civil
9 Procedure §382.

10 14. All claims alleged herein arise under California law for which Plaintiff seeks relief
11 as authorized by California law.

12 15. The proposed class is comprised of and defined as:

13 Any and all persons who are or were employed in non-exempt positions, however
14 titled, by Defendants in the state of California within four (4) years prior to the
15 filing of the complaint in this action until resolution of this lawsuit (hereinafter
16 collectively referred to as the "Class" or "Class Members").

16 16. Plaintiff also seeks to represent the Subclass(es) composed of and defined as
17 follows:

18 All Class Members who have been employed by Defendant in non-exempt
19 positions within the State of California at any time between February 2014 and
20 the present and have separated their employment.

20 17. Plaintiff reserves the right under California Rule of Court 3.765(b) and other
21 applicable laws to amend or modify the class definition with respect to issues or in any other
22 ways.

23 18. The term "Class" includes Plaintiff and all members of the Class and each of the
24 subclasses, if applicable. Plaintiff seeks class-wide recovery based on the allegations set forth in
25 this complaint.

26 19. There is a well-defined community of interest in this litigation and the members of
27 the Class are easily ascertainable as set forth below:

28 a. **Numerosity**: The members of the Class and Subclass are so numerous that

1 joinder of all members of the Class and/or Subclass would be unfeasible and impractical. The
2 membership of the entire Class and/or Subclass is unknown to Plaintiff at this time, however, the
3 Class is estimated to be greater than one hundred (100) individuals, and the identity of such
4 membership is readily ascertainable by inspection of Defendants' employment records.

5 b. Typicality: Plaintiff is qualified to, and will fairly and adequately protect
6 the interests of each member of the Class and/or subclass with whom he has a well-defined
7 community of interest. Plaintiff's claims herein alleged are typical of those claims which could
8 be alleged by any member of the Class and/or Subclass, and the relief sought is typical of the
9 relief which would be sought by each member of the Class and/or Subclass in separate actions.
10 All members of the Class and/or Subclass have been similarly harmed by not being provided meal
11 periods, authorized and permitted rest periods or paid premium wages in lieu thereof, and not paid
12 all wages due and owing including overtime wages as Plaintiff and the putative class worked off
13 the clock while clocked out for lunch, Defendant had an unlawful policy of deducting 30 minutes
14 for a meal period that was less than the lawful 30 minutes, and on information and belief an
15 unlawful rounding policy all due to Defendants' own policies and practices that affected each
16 member of the Class and/or Subclass similarly. Further, Defendants benefited from the same type
17 of unfair and/or wrongful acts as to each member of the Class and/or Subclass.

18 c. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect
19 the interests of each member of the Class and/or Subclass with whom she has a well defined
20 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges
21 an obligation to make known to the Court any relationships, conflicts, or differences with any
22 member of the Class and/or Subclass. Plaintiff's attorneys and the proposed Counsel for the
23 Class and Subclass are versed in the rules governing class action discovery, certification,
24 litigation, and settlement and experienced in handling such matters. Other former and current
25 employees of Defendants may also serve as representatives of the Class and Subclass if needed.

26 d. Superiority: The nature of this action makes the use of class action
27 adjudication superior to other methods. A class action will achieve economies of time, effort,
28 judicial resources, and expense compared to separate lawsuits. The prosecution of separate

1 actions by individual members of the Class and/or Subclass would create a risk of inconsistent
2 and/or varying adjudications with respect to the individual members of the Class and/or Subclass,
3 establishing incompatible standards of conduct for the Defendants, and resulting in the
4 impairment of the rights of the members of the Class and/or Subclass and the disposition of their
5 interests through actions to which they were not parties.

6 e. Public Policy Considerations: Employers in the state of California violate
7 employment and labor laws everyday. Current employees are often afraid to assert their rights
8 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
9 because they believe their former employers may damage their future endeavors through negative
10 references and/or other means. The nature of this action allows for the protection of current and
11 former employees' rights without fear or retaliation or damage.

12 f. Commonality: There are common questions of law and fact as to the Class
13 that predominate over questions affecting only individual members including, but not limited to:

14 1. Whether Defendants failed to pay Plaintiff and the Class for time spent
15 working off the clock during meal periods, including regular hours and for hours Plaintiff and
16 Class Members worked in excess of eight (8) hours per day and/or forty (40) hours per week;

17 2. Whether Defendants failed to pay Plaintiff and the Class for time spent
18 working off the clock and or during unlawfully rounded times while under the control of
19 Defendants including regular hours and for hours Plaintiff and Class Members worked in excess
20 of eight (8) hours per day and/or forty (40) hours per week, and double time wages for work over
21 twelve (12) hours in a day;

22 3. Whether Defendants rounded time policies and practices resulted in wages
23 owed that was more than de minimis and a detriment to Plaintiff and other non-exempt
24 employees.

25 4. Whether Defendants failed to pay Plaintiff and the Class for time spent
26 working when meal periods were less than 30 minutes, yet were deducted 30 minutes of time for
27 a short meal period, and not paid for this time, including regular hours and for hours Plaintiff and
28 Class Members worked in excess of eight (8) hours per day and/or forty (40) hours per week, and

1 double time wages for work over twelve (12) hours in a day;

2 5. Whether Defendants failed to pay all wages including overtime wages to
3 **Plaintiff and Class Members** for all the time they have actually worked; and/or due to an unlawful
4 policy deducting 30 minutes of pay for a meal period which was less than 30 minutes; and/or due
5 to an unlawful policy of failing to pay for time spent working off the clock during alleged meal
6 periods.

7 6. Whether Defendants failed to pay Plaintiff and members of the Class all
8 wages earned either at the time of discharge, or within seventy-two (72) hours of their voluntarily
9 leaving Defendants' employ;

10 7. Whether Defendants failed to provide meal periods and authorize and
11 permit rest breaks in accordance with the applicable Labor Codes and applicable Industrial
12 Welfare Commission ("IWC") wage order;

13 8. Whether Defendants failed to provide accurate itemized wage statements in
14 accordance with the applicable Labor Codes and applicable Industrial Welfare Commission
15 ("IWC") wage order;

16 9. Whether Defendants failed to reimburse Plaintiff and members of the Class
17 for all business expenses incurred by them in direct consequence of their duties such as use of
18 personal cellphones and personal vehicles;

19 10. Whether Defendants engaged in unfair competition in violation of
20 California Business & Professions Code §§17200, et seq.; and

21 11. The appropriate amount of damages, restitution, and/or monetary penalties
22 resulting from Defendants' violations of California law.

23
24 **FACTUAL ALLEGATIONS**

25 20. At all times set forth herein, Defendants employed Plaintiff and other persons in
26 the capacity of non-exempt positions, however titled, throughout the state of California.

27 21. Defendants employed Plaintiff as a Non-Exempt Bank Service Manager working
28 as a non-exempt hourly paid employee during the liability period until her separation in

1 approximately April 2016.

2 22. Defendants continue to employ non-exempt employees, however titled, throughout
3 the state of California.

4 23. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
5 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
6 of the requirements of California's wage and employment laws.

7 24. During the relevant time frame, Defendants compensated Plaintiff and Class
8 Members based upon a salary and then later an hourly rate.

9 25. On information and belief, during the relevant time frame, Plaintiff and Class
10 Members frequently worked well over eight (8) hours in a day and forty (40) hours in a work
11 week.

12 26. On information and belief, during the relevant time frame, Plaintiff and Class
13 Members worked off the clock by commencing work prior to clocking in and/or punching out for
14 lunch but continuing to work due to the demands placed upon them by Defendants. Defendants
15 knew or should have known this was occurring on a common and regular basis.

16 27. On information and belief, during the relevant time frame, Plaintiff and Class
17 Members were deducted a full 30 minutes of time despite recorded meal periods being less than
18 30 minutes and or working while clocked out for a meal period due to the demands placed upon
19 them by Defendants.

20 28. On information and belief, during the relevant time frame, Plaintiff and Class
21 Members were required to clock in and perform work yet Defendant's unlawful rounding policy
22 and practice resulted in time and wages owed to Plaintiff and the class which over time was not
23 de minimis.

24 29. During the relevant time frame, Plaintiff, and on information and belief the Class
25 Members were systematically denied meal periods and not permitted or authorized rest breaks or
26 not provided meal periods or rest periods within the legally required time frames. Nevertheless,
27 Defendants never paid Plaintiff, and on information and belief, never paid Class Members an
28 extra hour of pay as required by California law where all meal periods and rest breaks were not

1 provided, or not provided within the legally required time frames.

2 30. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
3 should know, knew, and/or should have known that Plaintiff and the other Class Members were
4 entitled to receive accurate wages including overtime compensation, and premium wages
5 including but not limited to Labor Code §§201-203, 226.7, 510, 512, 558, 1194 and applicable
6 IWC Wage Orders and California Code of Regulations, but were not paid all regular and overtime
7 wages and not paid all meal and rest period premiums due.

8 31. During the relevant time frame, Plaintiff, and on information and belief the Class
9 Members, were not paid all wages due and owing at the time of separation for meal and rest
10 period premiums, wages and overtime wages for off the clock work. Defendants also failed to pay
11 for business expenses incurred while under the control of Defendants.

12 32. On information and belief, during the relevant time frame, Defendants failed to
13 adequately reimburse Plaintiff and Class Members business expenditures incurred in direct
14 consequence of their duties pursuant to Labor Code § 2802. On information and belief,
15 Defendants required Plaintiff and Class Members to use their cell phones and personal vehicles to
16 conduct business on behalf of Defendants.

17 33. Plaintiff is informed and believes, and thereon alleges, that at all times herein
18 mentioned, Defendants knew that they had a duty to compensate Plaintiff and Class Members
19 premium wages, and that Defendants had the financial ability to pay such compensation, but
20 willfully, knowingly, recklessly, and/or intentionally failed to do so.

21 34. Plaintiff and Class Members they seek to represent are covered by, and Defendants
22 are required to comply with, applicable California Labor Codes, IWC Wage Orders and
23 corresponding applicable provisions of California Code of Regulations, Title 8, 11000 et seq.

24 **CLASS ACTION CLAIMS**

25 **FIRST CAUSE OF ACTION FOR FAILURE TO PAY WAGES INCLUDING**
26 **OVERTIME**

27 **By Plaintiff and Class Against All Defendants**

28 35. Plaintiff repeats and incorporates herein by reference each and every allegation set

1 forth above, as though fully set forth herein.

2 36. At all times relevant, the IWC wage orders applicable to Plaintiff's and Class
3 Members' employment by Defendants provided that employees working for more than eight (8)
4 hours in a day or forty (40) hours in a work week are entitled to overtime compensation at the rate
5 of one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours
6 in a day or forty (40) hours in a work week. An employee who works more than twelve (12)
7 hours in a day is entitled to overtime compensation at a rate of twice the regular rate of pay.

8 37. At all times relevant, the IWC wage orders applicable to Plaintiff's and the Class
9 require employers to pay its employees for each hour worked at least minimum wage. "Hours
10 worked" means the time during which an employee is subject to the control of an employer, and
11 includes all the time the employee is suffered or permitted to work, whether or not required to do
12 so, and in the case of an employee who is required to reside on the employment premises, that
13 time spent carrying out assigned duties shall be counted as hours worked.

14 38. Labor Code §510 codifies the right to overtime compensation at the rate of one
15 and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a
16 day or forty (40) hours in a work week and to overtime compensation at twice the regular rate of
17 pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a
18 day on the seventh day of work in a particular work week.

19 39. At all times relevant, Plaintiff and Class Members consistently worked in excess of
20 eight (8) hours in a day and/or forty (40) hours in a week.

21 40. At all times relevant, Defendants failed to pay regular wages and overtime wages
22 to Plaintiff and Class Members by failing to pay for hours worked off the clock all while subject
23 to Defendant's control.

24 41. On information and belief, at all times relevant, Defendants failed to pay regular
25 wages and overtime wages to Plaintiff and Class Members by deducting 30 minutes wages for
26 meal periods less than 30 minutes, and having an unlawful rounding policy in place that over time
27 resulted in time and therefore wages owed which was not de minimis.

28 42. On information and belief, at all times relevant, Defendants failed to pay regular

1 wages and overtime wages to Plaintiff and Class Members for off the clock work during meal
2 periods all while subject to the control of Defendants. Defendants knew or should have known
3 this was occurring. Yet Defendant failed to pay for all time worked and subject to the control of
4 Defendant.

5 43. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
6 regular and overtime compensation violates the provisions of Labor Code §510 and §1194, and
7 the applicable IWC wage orders and is therefore unlawful.

8 44. Accordingly, Defendants owe Plaintiff and Class Members regular and overtime
9 wages.

10 **SECOND CAUSE OF ACTION FOR FAILURE TO PROVIDE MEAL PERIODS**

11 **By Plaintiff and Class Against All Defendants**

12 45. Plaintiff repeats and incorporates herein by reference each and every allegation set
13 forth above, as though fully set forth herein.

14 46. Pursuant to Labor Code §512, no employer shall employ an employee for a work
15 period of more than five (5) hours without providing a meal break of not less than thirty (30)
16 minutes in which the employee is relieved of all of his or her duties. An employer may not
17 employ an employee for a work period of more than ten (10) hours per day without providing the
18 employee with a second meal period of not less than thirty (30) minutes, except that if the total
19 hours worked is no more than twelve (12) hours, the second meal period may be waived by
20 mutual consent of the employer and the employee only if the first meal period was not waived.

21 47. Pursuant to the IWC wage orders applicable to Plaintiff's and Class Members'
22 employment by Defendants, in order for an "on duty" meal period to be permissible, the nature of
23 the work of the employee must prevent an employee from being relieved of all duties relating to
24 his or her work for the employer and the employees must consent in writing to the "on duty" meal
25 period.

26 48. Plaintiff and Class Members did not consent in writing to an "on duty" meal
27 period. Further, the nature of the work of Plaintiff and Class Members was not such that Plaintiff
28 and Class Members are prevented from being relieved of all duties. Despite said requirements of

1 the IWC wage orders applicable to Plaintiff's and Class Members' employment by Defendants
2 and Labor Code §512 and §226.7, Plaintiff and Class Members were not provided with duty free
3 meal periods, and/or not provided meal periods within the required time frames, or the legally
4 required length of times.

5 49. For the four (4) years preceding the filing of this lawsuit, Defendants failed to
6 provide Plaintiff and Class Members, in their non-exempt positions, however titled, meal breaks
7 of not less than thirty (30) minutes and not provided meal periods within the required time frames
8 pursuant to the IWC wage orders applicable to Plaintiff's and Class Members' employment by
9 Defendants.

10 50. As a proximate result of the aforementioned violations, Plaintiff and Class
11 Members have been damaged in an amount according to proof at time of trial.

12 51. Pursuant to Labor Code §226.7, Plaintiff and Class Members are entitled to
13 recover one (1) hour of premium pay for each day in which a meal period was not provided and
14 not provided within the required time frames.

15 **THIRD CAUSE OF ACTION FOR FAILURE TO AUTHORIZE REST PERIODS**

16 **By Plaintiff and Class Against All Defendants**

17 52. Plaintiff repeats and incorporates herein by reference each and every allegation set
18 forth above, as though fully set forth herein.

19 53. Pursuant to the IWC wage orders applicable to Plaintiff's and Class Members'
20 employment by Defendants, "Every employer shall authorize and permit all employees to take
21 rest periods, which insofar as practicable shall be in the middle of each work period.... [The]
22 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
23 minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest
24 period time shall be counted as hours worked, for which there shall be no deduction from wages."
25 Labor Code §226.7(a) prohibits an employer from requiring any employee to work during any
26 rest period mandated by an applicable order of the IWC.

27 54. Defendants were required to authorize and permit employees such as Plaintiff and
28 Class Members to take rest periods, based upon the total hours worked at a rate of ten (10)

1 minutes net rest per four (4) hours, or major fraction thereof, with no deduction from wages.
2 Despite said requirements of the IWC wage orders applicable to Plaintiff's and Class Members'
3 employment by Defendants, Defendants failed to permit and authorize Plaintiff and Class
4 Members, in their roles as on-exempt employees, or equivalent positions with similar job duties,
5 however titled, to take ten (10) minute rest periods for every four (4) hours worked, or major
6 fraction thereof.

7 55. For the four (4) years preceding the filing of this lawsuit, Defendants failed to
8 provide Plaintiff and Class Members the required rest periods pursuant to the IWC wage orders
9 applicable to Plaintiff's and Class Members' employment by Defendants and Labor Code §226.7.
10 As a proximate result of the aforementioned violations, Plaintiff and Class Members have been
11 damaged in an amount according to proof at time of trial.

12 56. Pursuant to Labor Code §226.7, Plaintiff and Class Members are entitled to
13 recover one (1) hour of premium pay for each day in which a rest period was not provided.

14 **FOURTH CAUSE OF ACTION FOR FAILURE TO TIMELY PAY WAGES DUE**

15 **By Plaintiff and Class Against All Defendants**

16 57. Plaintiff repeats and incorporates herein by reference each and every allegation set
17 forth above, as though fully set forth herein.

18 58. Labor Code §§201-202 requires an employer who discharges an employee to pay
19 compensation due and owing to said employee immediately upon discharge and that if an
20 employee voluntarily leaves his or her employment, his or her wages shall become due and
21 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
22 two (72) hours previous notice of his or her intention to quit, in which case the employee is
23 entitled to his or her wages on their last day of work.

24 59. Labor Code §203 provides that if an employer willfully fails to pay compensation
25 promptly upon discharge, as required by Labor Code §§201-202, the employer is liable for
26 waiting time penalties in the form of continued compensation for up to thirty (30) work days.

27 60. During the relevant time period, Defendants willfully failed and refused, and
28 continue to willfully fail and refuse, to pay Plaintiff and members of the Class their wages, earned

1 and unpaid wages, either at the time of discharge, or within seventy-two (72) hours of their
2 voluntarily leaving Defendants' employ. These wages include the wages for off the clock work,
3 wages due for unlawful rounding, and meal and rest break premiums, but upon separation
4 Defendants failed to pay wages due and owing within the time frame specified by Labor Code
5 §§201-202.

6 61. Defendants' willful failure to pay Plaintiff and Class Members their wages earned
7 and unpaid at the time of discharge, or within seventy-two (72) hours of their voluntarily leaving
8 Defendants' employ, violates Labor Code §§201-202.

9 62. As a result, Defendants are liable to Plaintiff and members of the Class for waiting
10 time penalties pursuant to Labor Code §203, in an amount according to proof at the time of trial.

11 **FIFTH CAUSE OF ACTION FOR FAILURE TO PROVIDE ACCRUATE ITEMIZED**
12 **WAGE STATEMENT**

13 **By Plaintiff and Class Against All Defendants**

14 62. Plaintiff repeats and incorporates herein by reference each and every allegation set
15 forth above, as though fully set forth herein.

16 63. Section 226(a) of the California Labor Code requires Defendants to itemize in
17 wage statements all deductions from payment of wages and to accurately report total hours
18 worked by Plaintiff and the Class including applicable hourly rates and reimbursement expenses
19 among other things. Defendants have knowingly and intentionally failed to comply with Labor
20 Code section 226 and 204 on wage statements that have been provided to Plaintiff and the Class.

21 64. IWC Wage Orders require Defendants to maintain time records showing, among
22 others, when the employee begins and ends each work period, meal periods, split shift intervals
23 and total daily hours worked in an itemized wage statement, and must show all deductions and
24 reimbursements from payment of wages, and accurately report total hours worked by Plaintiff and
25 the Class. On information and belief, Defendants have failed to record all or some of the items
26 delineated in Industrial Wage Orders and Labor Code §226.

27 65. Defendants have also failed to accurately record the meal and rest period
28 premiums owed and all wages owed per pay period.

1 66. Plaintiff and the Class have been injured as they were unable to determine whether
2 they had been paid correctly for all hours worked per pay period among other things.

3 67. Pursuant to LC section 226, Plaintiff and the Class are entitled up to a maximum
4 of \$4,000 each for record keeping violations.

5 **SIXTH CAUSE OF ACTION FOR FAILURE TO INDEMNIFY NECESSARY BUSINESS**
6 **EXPENSES**

7 **By Plaintiff and Class Against All Defendants**

8 68. Plaintiff repeats and incorporates herein by reference each and every allegation set
9 forth above, as though fully set forth herein.

10 69. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Class Members
11 for necessary expenditures incurred in direct consequences of the discharge of his or her duties.
12 As a necessary part of employment, Plaintiff and on information and belief Class Members, were
13 not adequately reimbursed by Defendants for expenses related to all expenses incurred as results
14 of personal cell phone usage and personal vehicle usage, which were incurred as a direct
15 consequence of the discharge of duties by Plaintiff and Class Members. For instance, Plaintiff and
16 Class Members were required to use their personal cell phones in cases when the phones lines
17 were down or in the event they needed to contact the Defendants' IT department. Plaintiff and
18 Class Members were also required to use their personal cellphones to document damage around
19 the bank's premises, including graffiti and broken glass. Plaintiff and Class Members were
20 required to use their personal cell phones to regularly communicate between the upper and lower
21 floors of the bank. Additionally, Plaintiff and Class Members were required to use their personal
22 vehicles to delivery mail to a local post office or to go purchase stamps for the bank. Despite
23 these realities of the job, Defendants failed to provide reimbursements for the use of personal cell
24 phones and the use of personal vehicles necessary to carry out their job duties.

25 70. Labor Code §2804 states in pertinent part: "Any contract or agreement, express or
26 implied, made by any employee to waive the benefits of this article or any part thereof is null and
27 void, and this article shall not deprive any employee or his or her personal representative of any
28 right or remedy to which he is entitled under the laws of this State.

1 71. As a result of the unlawful acts of Defendants, Plaintiff and the Class Members
2 have been deprived of un-reimbursed expense amounts to be determined at trial, and are entitled
3 to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
4 pursuant to Labor Code §§ 226, and 2802

5 **SEVENTH CAUSE OF ACTION FOR UNFAIR COMPETITION**

6 **By Plaintiff and Class Against All Defendants**

7 72. Plaintiff repeats and incorporates herein by reference each and every allegation set
8 forth above, as though fully set forth herein.

9 73. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
10 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
11 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
12 meaning of the California Code of Civil Procedure §1021.5.

13 74. Defendants' policies, activities, and actions as alleged herein, are violations of
14 California law and constitute unlawful business acts and practices in violation of California
15 Business and Professions Code §§17200, et seq.

16 75. A violation of California Business and Professions Code §§17200, et seq., may be
17 predicated on the violation of any state or federal law. In the instant case, Defendants' policy and
18 practice of failing to pay wages including overtime for unlawful rounding and off the clock work
19 over the past four (4) years violates Labor Code §§ 201, 202, 203, 510, and 1194. Defendants'
20 policy of failing to provide Plaintiff and the Class with meal periods and rest breaks or the one (1)
21 hour of premium pay when a meal or rest break period was not provided or provided outside of
22 the required time frames, violates Labor Code §512, and §226.7 and applicable IWC Wage
23 Orders and California Code of Regulations.

24 76. Plaintiff and Class Members have been personally aggrieved by Defendants'
25 unlawful and unfair business acts and practices alleged herein by the loss of money and/or
26 property.

27 77. Pursuant to California Business and Professions Code §§17200, et seq., Plaintiff
28 and Class Members are entitled to restitution of the wages withheld and retained by Defendants

1 during a period that commences four (4) years prior to the filing of this complaint; an award of
2 attorneys' fees, interest; and an award of costs.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

5 **Class Certification**

- 6 1. That this action be certified as a class action;
7 2. That Plaintiff be appointed as the representative of the Class;
8 3. That Plaintiff be appointed as the representative of the Subclass; and
9 4. That counsel for Plaintiff is appointed as counsel for the Class and Subclass.

10 **On the First Cause of Action**

- 11 1. For compensatory damages in an amount equal to the amount of unpaid wages
12 including overtime and double time compensation owed to Plaintiff and Class Members;
13 3. For pre-judgment interest on any unpaid overtime compensation due from the day
14 that such amounts were due;
15 3. For reasonable attorneys' fees and costs pursuant to Labor Code §1194; and
16 4. For such other and further relief as the Court deems proper.

17 **On the Second Cause of Action**

- 18 1. For one (1) hour of premium pay for each day in which a required meal period was
19 not provided or not provided in a timely manner; and
20 2. For such other and further relief as the Court deems proper.

21 **On the Third Cause of Action**

- 22 1. For one (1) hour of premium pay for each day in which a required rest period was
23 not authorized or permitted; and
24 2. For such other and further relief as the Court deems proper.

25 **On the Fourth Cause of Action**

- 26 1. For statutory penalties pursuant to Labor Code §203;
27 2. For interest for wages untimely paid; and
28 3. For such other and further relief as the Court deems proper.

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On the Fifth Cause of Action

1. For statutory penalties pursuant to Labor Code §226;
2. For interest for wages untimely paid; and
3. For such other and further relief as the Court deems proper.

On the Sixth Cause of Action

1. For statutory penalties pursuant to Labor Code §2802;
2. For interest for wages untimely paid; and
3. For such other and further relief as the Court deems proper.

On the Seventh Cause of Action

1. That Defendants, jointly and/or severally, pay restitution of sums to Plaintiff and Class Members for their past failure to pay all regular and wages and overtime wages due over the last four (4) years in an amount according to proof;
2. That Defendants, jointly and/or severally, pay restitution of sums to Plaintiff and Class Members for their past failure to pay wages, premium wages for meal and/or rest periods, that were not provided as described herein to Plaintiff and Class Members over the last four (4) years in an amount according to proof;
3. For pre-judgment interest on any unpaid wages due from the day that such amounts were due;
4. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to recover;
5. For costs of suit incurred herein; and
6. For such other and further relief as the Court deems proper.

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DEMAND FOR JURY TRIAL

Plaintiff and members of the Class and Subclass request a jury trial in this matter.

Dated: February 1, 2017

JAMES HAWKINS APLC

By: 

JAMES R. HAWKINS, ESQ.
GREGORY MAURO, ESQ.
Attorneys for Plaintiff CYNTHIA GARCIA-
ESPINOZA, individually and on behalf of all
others similarly situated.