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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF KERN**

ANA HERNANDEZ; ANTONELLA  
RANDAZZO; individually, and on behalf of  
other members of the general public  
similarly situated;

Plaintiff,

v.

RABOBANK NATIONAL  
ASSOCIATION (N.A.), and unknown  
business entity; and DOES 1 through 100,  
inclusive,

Defendants; and

DANIEL ROSE and SANDY STINSON, on  
behalf of themselves, the general public, and  
all others similarly situated,

Intervenors.

**CASE NO. S-1500-cv-284159 LHB**

**CLASS ACTION, CCP §382**

**SECOND AMENDED CLASS AND  
REPRESENTATIVE ACTION COMPLAINT  
IN INTERVENTION:**

- (1) VIOLATION OF STATE AND FEDERAL  
OVERTIME LAWS;
- (2) CAL. LABOR CODE VIOLATIONS;
- (3) REST PERIOD VIOLATIONS;
- (4) ITEMIZED WAGE STATEMENT  
VIOLATIONS;
- (5) WAITING TIME PENALTIES;
- (6) UNFAIR BUSINESS PRACTICES;
- (7) CALIFORNIA LABOR CODE PRIVATE  
ATTORNEYS GENERAL ACT, CAL.  
LABOR CODE §§ 2698 ET SEQ.

**JURY TRIAL DEMAND**

1 Come now Intervenor DANIEL ROSE and SANDY STINSON on behalf of themselves  
2 and all others similarly situated, the general public, and all aggrieved employees (hereinafter  
3 “Intervenor”) and hereby complain against the Defendant RABOBANK NATIONAL  
4 ASSOCIATION (hereinafter “Rabobank” and/or “Defendant”), a foreign corporation that reports  
5 its principal place of business in California to be in City of Roseville, County of Placer,  
6 California, and ANA HERNANDEZ and ANTONELLA RANDAZZO, an employees of  
7 RABOBANK. Intervenor do and hereby allege as follows:

8 **I.**

9 **PROCEDURAL BACKGROUND**

10 1. Intervenor Daniel Rose’s Complaint in Intervention was granted on May 16, 2017.

11 2. Rabobank’s Motion to Strike Intervenor Daniel Rose’s Complaint in Intervention  
12 was denied on June 16, 2017. In denying Rabobank’s Motion to Strike, the Court accepted, in the  
13 spirit of economy of judicial resources, Intervenor Rose’s offer to dismiss his class and PAGA  
14 action complaint against Rabobank that was pending in Placer County so that Intervenor Rose’s  
15 claims from the Placer County action could be resolved in the instant action in lieu of a motion  
16 for judicial coordination.

17 3. Intervenor Rose has voluntarily dismissed the Placer County action without  
18 prejudice and hereby amends his Complaint in Intervention to fully assert all those claims that  
19 were pending in the Placer County action and to add Plaintiff Sandy Stinson as a named-  
20 Intervenor to this action.

21 **II.**

22 **SUMMARY OF CLAIMS**

23 4. Intervenor herein seek relief from this Court for Rabobank’s deliberate and  
24 willful attempt to avoid paying minimum wages and premium pay for overtime hours worked by  
25 Mortgage Loan Officers, Loan Officers, and all other inside commissioned employees, who are  
26 not eligible for the inside sales exemption under Section 7(i) of the Federal Fair Labor Standards  
27 Act (“FLSA”, 29 U.S.C. §207(i)) on the grounds, *inter alia*, that financial institutions lack a retail  
28 concept *per se*, and who are not paid the correct premium wages (half the regular rate) on  
commissions paid during pay periods in which they earn commissions, and not paid the minimum

1 wages and overtime premium pay “free and clear” in all other pay periods, as required under both  
2 California and federal law. None of the Rabobank’s pay practices are properly disclosed as  
3 required by California Labor Code Section 226(a)(9), *inter alia*.

4         5. Rabobank maintains a complicated and sophisticated scheme to avoid payment of  
5 statutorily required minimum wages and overtime premium wages due to its commissioned  
6 employees in violation of California Labor Code §§ 221 and 223. Under California law,  
7 commissions can only cover wages due for the pay period for which they are paid. *Peabody v.*  
8 *Time Warner Cable, Inc.*, 59 Cal. 4th 662, 328 P.3d 1028 (2014). For those pay periods when  
9 commissions are not paid, Rabobank purports to pay an hourly rate of \$10, with an overtime  
10 premium pay of \$15 an hour. However, the Rabobank secretly pays a lower wage while  
11 purporting to pay the minimum wages by unlawfully deducting from commission wage payments  
12 these statutory minimum wages and overtime payments in the very next pay period. Despite  
13 appearances, Rabobank pays its commissioned employees nothing for those pay periods when it  
14 does not pay strictly commissions. This violates both the anti-kickback provisions of California  
15 Labor Code 221 and the prohibition of secret payment rebates provisions of California Labor  
16 Code 223.

17         6. For those pay periods in which it pays commissions, Rabobank fails to pay  
18 overtime pay at the correct premium rate. Because financial institutions like banks and mortgage  
19 lenders are deemed by the United States Secretary of Labor to lack a “retail concept,” Rabobank  
20 must pay overtime premium pay for all hours worked in excess of forty per week and is not  
21 eligible for the “retail sales exemption” of section 7(i) of the FLSA. The overtime premium due  
22 is one half the regular rate for all hours worked in excess of forty per workweek.” See 29 C.F.R.  
23 778.117-.118. The regular rate for all employees paid on a commission basis is one half the  
24 commission divided by the hours worked during the pay period covered by the commissions. 29  
25 C.F.R. 778.109 states that “[t]he regular hourly rate of pay of an employee is determined by  
26 dividing his total remuneration for employment (except statutory exclusions) in any workweek by  
27 the total number of hours actually worked by him in that workweek for which such compensation  
28 was paid.

1           7.       Rather than pay an overtime premium of half the regular rate for the periods  
2 covered by the commission payment, and pay hourly with overtime premiums when applicable  
3 for periods not included in the commission payments, Rabobank subtracts the previously paid  
4 hourly payments and then pays a half-time rate on the remaining sum. The half time rate is not  
5 half the rate of the commission payments divided by the hours worked during that commission  
6 paid time period, but based upon the full month rather than the pay period covered by the  
7 commissions, thereby lowering the hourly premium rate of pay. Rabobank's policy states that  
8 "The additional amount will be calculated by allocating the commission (less the base pay,  
9 including overtime) evenly to each week or partial week in the month."

10           8.       In other words, Rabobank calculates the regular rate upon which commissions are  
11 based by dividing the commissions earned by the entire monthly hours worked, or some variation  
12 thereof, rather than by the time period covered by the commissions. If the employee works more  
13 overtime in the non-commission portion of the month which is covered by the first pay period, the  
14 employee's overtime rate for the commissioned portion of the month is disproportionally less  
15 than if the employee had worked the same amount of overtime in the second half of the month  
16 which is covered by the commission payment. Thus, the half time rate used to pay for overtime is  
17 incorrect as a matter of law.

18           9.       Rabobank's pay scheme violates state and federal wage and hour laws by willfully  
19 avoiding Rabobank's obligation to pay Intervenors and all other similarly situated employees  
20 their legally mandated wages. Rabobank's pay scheme also deprives Intervenors and all other  
21 similarly situated employees payment for rest periods, which is a direct violation of California's  
22 wage-hour laws recognized in Vaquero v. Stoneledge Furniture LLC, 9 Cal. App. 5th 98, 214 Cal.  
Rptr. 3d 661 (Ct. App. 2017), as modified (Mar. 20, 2017), review denied (June 21, 2017).

23           10.      As a direct result of Rabobank's unlawful pay scheme, Intervenors and all other  
24 similarly situated employees were forced to under-report their hours worked and are owed wages,  
25 both regular rate and overtime wages, for the additional unreported hours that they worked.  
26 Intervenors and all other similarly situated employees regularly worked approximately 60 hours  
27 per week, but were instructed by Rabobank to only report approximately 40 hours per week. The  
28 reason, they were told, was that they would receive less compensation if they reported their actual

1 hours worked, because their pay was only a draw on future commissions, and their overtime rate  
2 on the commissions would decrease proportional to the amount of hours worked. For this reason,  
3 Intervenor and others similarly situated have been deprived the minimum rate, regular rate, and  
4 overtime rate, for all the hours that they actually worked.

5 **III.**

6 **JURISDICTION AND VENUE**

7 11. The Superior Court of the State of California, for the County of Kern, has  
8 jurisdiction over this case because Defendant has consented to jurisdiction of this court for all  
9 actions arising out of the overtime claims of its employees during the last six years. Defendant  
10 has a significant presence within the County of Kern and Intervenor Rose consents to bringing  
11 this action in this court as well.

12 **IV.**

13 **PARTIES**

14 12. At all times relevant herein, Intervenor DANIEL ROSE was a California resident  
15 employed by Rabobank to work as a loan officer within the State of California.

16 13. At all times relevant herein, Intervenor SANDY STINSON was a California  
17 resident employed by Rabobank to work as a loan officer within the State of California.

18 14. Intervenor Stinson and Rose bring this action on behalf of all Mortgage Loan  
19 Officers, Loan Officers, and all other inside commissioned employees who were employed by  
20 Defendant RABOBANK NATIONAL ASSOCIATION (N.A.)'s pursuant to a written Mortgage  
21 Loan Representative Employment Agreement ("MLR Agreement"), separate and apart from the  
22 wage hour claims of other employees represented by Plaintiff HERNANDEZ in this lawsuit..

23 15. At all times relevant herein, Defendant RABOBANK NATIONAL  
24 ASSOCIATION (also known as "Rabobank NA ") has been registered with California Secretary  
25 of State as a foreign corporation with its principal place of business within California and  
26 California Corporate headquarters located at 915 Highland Pointe Dr. #190, Roseville, CA  
27 95678, within the County of Placer and is doing business as a Bank (commercial and savings),  
28 Credit company, including small loan and personal loan companies, and/or a finance company,

1 and therefore lacks a retail concept within the meaning of 29 C.F.R. 770.317 and *Mitchell v.*  
2 *Kentucky Fin. Co.*, 359 U.S. 290, 79 S. Ct. 756, 3 L. Ed. 2d 815 (1959).

3 16. Intervenors are ignorant of the true names and capacities, whether individual,  
4 corporate or otherwise, of the fictitiously named defendants designated as DOES 1-10, inclusive.  
5 Intervenors are informed and believe, and thereon allege, that each fictitiously named defendant  
6 was in some way responsible for, participated in, or contributed to the matters and things  
7 complained of herein, and is legally responsible for the damages complained of herein.

8 17. Intervenors are informed and believe, and thereon allege, that at all times herein  
9 mentioned, each of the defendants, including each of the fictitiously named defendants, was the  
10 agent, principal, employer or employee of each other defendant, and they were acting within the  
11 course and scope of such relationship in doing the things herein alleged, or they ratified,  
12 acquiesced in, consented to, aided, abetted and/or approved each and all of the acts of each of the  
13 other defendants, so that each defendant is jointly and severally responsible and liable for the acts  
14 alleged herein.

## 15 V.

### 16 CLASS ACTION ALLEGATIONS

17 18. Pursuant to California Code of Civil Procedure ("CCP") §382 and the common  
18 law related thereto, a case should be treated as a class action when a court finds: (a) that the  
19 predominant issues raised in the case are of a common interest; (b) that the parties are so  
20 numerous that it is impracticable to bring them all before this Court; (c) that the proposed Class  
21 and Subclass are clearly and easily ascertainable; (d) that the named representatives' claims are  
22 typical of the claims of the proposed classes; (e) that the Class representatives will adequately  
23 represent the interests of the classes; and (e) that a class action is superior to other methods of  
24 adjudicating the claims alleged herein. Intervenors herein allege that each and every one of the  
25 foregoing can and will be demonstrated at the time for hearing on Intervenors' motion for class  
certification.

26 19. Intervenors bring this suit as a class action pursuant to CCP §382, on behalf of the  
27 **Class** of individuals: All persons who were employed by Defendant within the State of  
28 California as a Mortgage Loan Officer, Loan Officers, and/or other inside commissioned

employees (collectively “MLRs”) at any time from February 18, 2011, through the date of entry of judgment (the “Class Period”).

20. Intervenor further seek Certification of the following Subclasses: (a) **Rest Period Subclass**: All members of the Class who were employed at any time from February 18, 2012, through the date of entry of judgment; (b) **Itemized Wage Statement Subclass**: All members of the Class who were employed at any time from February 18, 2014, through the date of entry of judgment; and (c) **Waiting Time Penalty Subclass**: All members of the Class who are former employees and who were employed at any time from February 18, 2012, through the date of entry of judgment.<sup>1</sup>

21. Members of the Class and Subclasses will hereinafter be referred to as “class members.”

22. Intervenor reserve the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

23. **Numerosity**: Intervenor are informed and believe and based on such information and belief, allege that, in conformity with CCP § 382, the potential membership in the Class and the subclass is so numerous that joinder of all members is impractical. While the exact number of members in each of the classes is presently unknown to Intervenor, they estimate membership in the Class to exceed 50. The exact number and specific identities of the members of the Class and the subclass, may be readily ascertained through inspection of Rabobank’s business records. Moreover, the disposition of class members’ claims by way of a class action will provide substantial benefits to the parties and the Court.

24. **Commonality**: Intervenor are informed and believe and based on such information and belief allege that numerous questions of law and/or fact are common to all members of the class, including, without limitation:

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<sup>1</sup> The Rest Period, Itemized Wage Statement, and Waiting Time Penalty Subclasses are comprised of the same persons as the Class but are limited in time (a 3-year statute of limitations for Rest Period and Waiting Time Penalty claims and a 1-year statute of limitations for an Itemized Wage Statement claim) and employee classification (Waiting Time Penalty claims are only available to former employees).

- 1 a. Whether the offset against commissions for wages ostensibly paid on an hourly  
2 basis during non-commission pay periods means that these hourly payments  
3 were not “free and clear” and thus the class members were not paid anything  
4 during those pay period, which is less than the minimum wages and overtime  
5 premium rates required under California Labor Code California Labor Code  
6 section 510 and California Wage Order 4–2001. (8 Cal.Code Regs. § 11040).  
7 b. Whether the deductions from payments previously paid on an hourly basis for  
8 non-commission pay periods and/or the inclusion of non-commission pay  
9 periods in the calculation of the regular rate resulted in an incorrect overtime  
10 premium rate such that class members did not receive the proper overtime  
11 premium pay for commission paid pay periods.  
12 c. Whether Rabobank complied with the wage reporting requirements of Labor  
13 Code § 226 (a)(9);  
14 d. Whether Rabobank failed to timely pay Intervenors and putative class  
15 members the wages due them during their employment;  
16 e. Whether Rabobank failed to pay Intervenors and putative class members  
17 wages during their rest periods;  
18 f. Whether Rabobank failed to timely pay wages due to Intervenors and class  
19 members upon their discharge;  
20 g. Whether Rabobank’s failure to pay all wages due in accordance with the  
21 federal wage laws or the California Labor Code was willful or reckless;  
22 h. Whether Rabobank engaged in unfair business practices in violation of  
23 California Business & Professions Code §§ 17200, et seq.; and,  
24 i. The appropriate amount of damages, restitution, or monetary penalties  
25 resulting from Rabobank’s violations of law.

25 25. **Typicality:** Intervenors claims are typical of those of the class members, because  
26 Intervenors suffered the violations set forth in this Complaint.

27 26. **Adequacy:** Intervenors will adequately protect the interests of class members.  
28 Intervenors have no interests that are adverse to or in conflict with class members and they are

1 committed to the vigorous prosecution of this lawsuit. To that end, Intervenor has retained  
2 counsel who are competent and experienced in handling class actions on behalf of employees.

3       27. **Superiority:** A class action is superior to all other available methods for the fair  
4 and efficient adjudication of this controversy, since joinder of all members is impracticable.  
5 Furthermore, as the amount suffered by individual class members may be relatively small, the  
6 expense and burden of individual litigation make it impossible for members of the Class to  
7 individually redress the wrongs done to them. There will be no inordinate difficulty in the  
8 management of this case as a class action. The class is geographically disbursed throughout  
9 California but Rabobank's policies and decisions affecting the class all emanated from its central  
10 offices. Intervenor is informed and believes and based on such information and belief alleges  
11 that this action is properly brought as a class action, not only because the prerequisites of CCP  
12 §382 and common law related thereto are satisfied (as outlined above), but also because of the  
13 following:

- 14       a. The prosecution of separate actions by or against individual members of the Class  
15       would create risk of inconsistent or varying adjudications with respect to  
16       individual members of the Class which would establish incompatible standards of  
17       conduct for the party opposing the Class;
- 18       b. Adjudications with respect to individual members of the Class would, as a  
19       practical matter, be dispositive of the interests of the other members not parties to  
20       the adjudications or substantially impair or impede their ability to protect their  
21       interests;
- 22       c. Rabobank has acted or refused to act on grounds generally applicable to all  
23       members of the Class, making declaratory relief appropriate with respect to all of  
24       the Class;
- 25       d. Questions of law or fact common to the members of the Class predominate over  
26       any questions affecting only individual members; and, Class action treatment is  
27       superior to other available methods for the fair and efficient adjudication of the  
28       controversy.

## VI.

**PAGA ENFORCEMENT ACTION ALLEGATIONS**

28. At all times set forth herein, PAGA was applicable to Intervenor's employment by Rabobank as the employer.

29. At all times set forth herein, PAGA states that any provision of law under the California labor code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California labor code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of him or herself and other current or former employees pursuant to procedures outlined in Labor Code § 2699.3.

30. Pursuant to PAGA, a civil action under PAGA may be brought by any "aggrieved employee," who is a person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

31. Rabobank employed Intervenor and other employees and committed the alleged violations against Intervenor and said employees in connection with their employment. Thus, Intervenor and these other employees are "aggrieved employees" as that term is defined in Labor Code section 2699(c).

32. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Intervenor, may pursue a civil action arising under PAGA after the following requirements have been met:

- a. The aggrieved employee shall give written notice electronically to the LWDA with copy to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.
- b. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within thirty (30) calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within thirty-three (33) calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action

pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

33. Intervenor Stinson provided written notice as required by law to the LWDA and to Rabobank of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, pursuant to California Labor Code section 2699.3. A true and correct copy of Intervenor Stinson's PAGA letter is attached hereto as Exhibit A.

34. Over 60 days have passed since Intervenor Stinson sent the LWDA Notice described above.

35. Intervenor Stinson therefore brings this action as a PAGA Representative action on behalf of the following aggrieved employees: All members of the Class who were employed at any time from March 27, 2016, through the date of entry of judgment.

## VII.

### **STATEMENT OF COMMON FACTS**

36. Intervenor and all class members are not paid on a salary basis and must be paid the minimum wage and overtime premium pay as required by law for all non-exempt employees.

37. The Industrial Wage Commission for the State of California, has fixed the minimum hourly wage for non-exempt workers as set forth below:

<b>effective date</b>	<b>new minimum wage</b>	<b>old minimum wage</b>
<b>January 1, 2016</b>	\$10.00	\$9.00
<b>July 1, 2014</b>	\$9.00	\$8.00
January 1, 2008	\$8.00	\$7.50
January 1, 2007	\$7.50	\$6.75

38. California Labor Code § 1197 states "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

1 employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section  
2 does not change the applicability of local minimum wage laws to any entity.”

3 39. California Labor Code § 1194 states that “Notwithstanding any agreement to work  
4 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime  
5 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance  
6 of the full amount of this minimum wage or overtime compensation, including interest thereon,  
7 reasonable attorney's fees, and costs of suit.”

8 40. California Labor Code § 221 (also referred to as the anti-kickback provision)  
9 states: “It shall be unlawful for any employer to collect or receive from an employee any part of  
10 wages theretofore paid by said employer to said employee.”

11 41. California Labor Code § 223 (also known as the anti-secret rebate provision) states,  
12 “Where any statute or contract requires an employer to maintain the designated wage scale, it  
13 shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by  
14 statute or by contract.”

15 42. California Labor Code § 510(a), in pertinent part states that:

16 Eight hours of labor constitutes a day’s work. Any work in excess of eight  
17 hours in one workday and any work in excess of 40 hours in any one  
18 workweek and the first eight hours worked on the seventh day of work in  
19 any one workweek shall be compensated at the rate of no less than one and  
20 one-half times the regular rate of pay for an employee. Any work in excess  
21 of 12 hours in one day shall be compensated at the rate of no less than  
22 twice the regular rate of pay for an employee. In addition, any work in  
23 excess of eight hours on any seventh day of a workweek shall be  
24 compensated at the rate of no less than twice the regular rate of pay of an  
25 employee. Nothing in this section requires an employer to combine more  
26 than one rate of overtime compensation in order to calculate the amount to  
27 be paid to an employee for any hour of overtime work.

28 43. California Labor Code § 558 states in part “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. . .”

44. California Labor Code § 226(a)(9) provides in relevant part:

1 Every employer shall, semimonthly or at the time of each payment of  
2 wages, furnish each of his or her employees, either as a detachable part of  
3 the check, draft, or voucher paying the employee's wages, or separately  
4 when wages are paid by personal check or cash, an accurate itemized  
5 statement in writing showing . . . all applicable hourly rates in effect  
6 during the pay period and the corresponding number of hours worked at  
7 each hourly rate by the employee. . ."

8 45. Intervenor and all class members are employed by Rabobank as Mortgage Loan  
9 Officers, Loan Officers and/or commissioned inside employees. Rabobank pays Intervenor and  
10 each class member a base hourly pay, semi-monthly. In addition, Rabobank pays a commission,  
11 minus the base pay previously paid, once a month.

12 46. The Compensation section of the employment agreement applicable to Intervenor  
13 Rose and, with minor variations not relevant herein, to all other class members states as follows:

14 Base Pay. Employee shall be paid at a rate of \$10.00 per hour for hours  
15 worked in any given work week (the work week is from 12:00 midnight  
16 Monday to 11 :59 p.m. Sunday) up to 40 hours and shall be paid overtime  
17 for overtime hours worked in accordance with federal and state wage and  
18 hour laws. Payment will be made on the 15th and the 30th of each month in  
19 accordance with the Bank's regular payroll procedures for non-exempt  
20 employees. Hourly wages and overtime paid to Employee are an advance  
21 or draw against future commissions. The draw will be reconciled against  
22 future commissions, meaning that Employee is not entitled to earn  
23 commission compensation until and unless potential commissions exceed  
24 the draw. The draw will be paid for each week the Employee works even if  
25 commissions for that week do not equal or exceed the amount of the draw.

26 Commissions. Employee is also eligible for commission compensation.  
27 Commissions will be calculated, reconciled with base pay, and paid on the  
28 15th of each month, for the previous month. Generally, a commission is  
earned after a loan is closed, and when commission reconciliations can be  
reasonably calculated. A commission for a brokered loan is earned on the  
date of receipt of the HUD-1 and broker check, and when commission  
reconciliations can be reasonably calculated. Eligibility to receive  
commissions is based on the following calculation: Hourly wages  
(including overtime) paid to Employee during the previous calendar month  
shall be deducted from commissions due to Employee on the 15th of the  
following month and Employee shall be paid the difference, assuming  
commissions exceed wages. In addition, if Employee worked overtime  
during the previous month and is being paid a commission, pursuant to  
federal and state law, Employee will receive additional compensation for  
overtime hours. The additional amount will be calculated by allocating the  
commission (less the base pay, including overtime) evenly to each week or

1 partial week in the month. No commission shall be paid if commissions  
2 earned do not exceed the previous month's wages paid.

3 47. The wage statement does not reflect the hourly pay rate for Intervenor Rose and  
4 other class members.

5 48. Intervenor and other similarly situated class members were required to record less  
6 hours than they actually worked. Rabobank had knowledge that Intervenor and other class  
7 members routinely worked 50 or more hours per week. Regardless, Intervenor and other class  
8 members were instructed to under-report their actual hours worked, because any overtime pay  
9 was deducted from their commission pay, and had they reported their actual hours worked,  
10 Rabobank informed Intervenor and other class members that their pay would decrease, due to the  
draw set forth in Rabobank's compensation plan.

## 11 **VIII.**

### 12 **FIRST CAUSE OF ACTION**

#### 13 **Failure to Pay the Correct Overtime Premium Rate on Commissions**

14 49. Intervenor re-allege and incorporate by reference the allegations contained in  
15 preceding paragraphs as though fully set forth herein.

16 50. As set forth hereinabove, Defendant is obligated to pay Intervenor and other class  
17 members premium pay on overtime under both state and federal law. Intervenor and class  
18 members routinely worked more than forty hours in a week, often working at home or attending  
19 meetings out of the office, before and after normal bank operation hours. But, as previously  
20 stated, money paid for hours worked on an hourly basis was merely a "draw against commission"  
21 – a loan to the employee to be paid back later. The only money paid "free and clear" by  
22 Defendant to Intervenor and other class members as wages was commissions based upon "sales"  
23 of banking products like mortgages and other loans, which under federal law, are classified non-  
24 retail. Therefore, Defendant is not entitled to the retail sales exemption from overtime  
requirements of Section 7(i) of the Fair Labor Standards Act.

25 51. In other words, Defendant owed Intervenor and class members overtime  
26 premium pay for all hours worked in excess of 40 per week at one and one half the so-called  
27 "regular rate." In this case, the regular rate was the commissions earned during the pay period  
28

1 divided by the non-overtime hours worked during that same period. Defendant further failed to  
2 compensate Plaintiffs and class members wages, regular and overtime wages, for the time they  
3 spent actually working due to Defendant's instructions to under-report the hours actually worked.

4 52. Instead of paying premium overtime on these commissions, Rabobank engaged in  
5 a complicated scheme to avoid payment of this overtime premium rate.

6 53. Rabobank calculates the overtime premium rate for commissions paid by dividing  
7 by the hours worked each month by the net of commissions earned minus the amount of the  
8 hourly base rate previously paid in the prior pay period. As stated in the compensation section of  
9 the employment agreement with emphasis supplied:

10 In addition, if Employee worked overtime during the previous month and is  
11 being paid a commission, pursuant to federal and state law, Employee will  
12 receive additional compensation for overtime hours. **The additional**  
13 **amount will be calculated by allocating the commission (less the base**  
14 **pay, including overtime) evenly to each week or partial week in the**  
15 **month.**

16 54. To correctly calculate the overtime premium rate for commission paid employees,  
17 an employer must simply divide the total amount earned in the pay period by the hours worked in  
18 that same pay period, times half (since the commissions cover the straight time rate), times the  
19 hours worked overtime in that pay period. Here, the employer uses a lower number than the total  
20 earned in the pay period and divides by more hours worked in that pay period, resulting in an  
21 artificially low overtime premium rate for pay periods covered by commission payments.

22 55. In this case, Rabobank violates the requirement that overtime premium be one and  
23 one-half times the "regular rate" in two ways. First, by subtracting the wages fictitiously paid in  
24 the previous pay period, the Rabobank lowers the total for which commissions are paid such that  
25 the entire earnings for the pay period is calculated based upon a number that is less than what is  
26 actually earned for that pay period. Second, by allocating the commissions "evenly to each week  
27 or partial week in the month" Rabobank is actually dividing the commissions by the entire month,  
28 rather than by the pay period, thus violating the rule of *Peabody v. Time Warner Cable, Inc.*, 59  
Cal. 4th 662, 328 P.3d 1028 (2014), that one pay period cannot be used to offset another, and  
reducing the regular rate significantly.

56. Intervenor and the class members seek damages in the amounts improperly withheld in an amount to be proved at time of trial, along with all appropriate penalties, including but not limited to the remedies made available under, *inter alia*, California Labor Code §§ 203, 225.5, and 558, as well as prejudgment interest pursuant to Labor Code §§ 218.6 and 1194(a), Civil Code §§ 3287 and §3289, and reasonable attorneys' fees pursuant to Labor Code § 1194.

57. Rabobank is also subject to civil penalties and restitution of wages payable to Intervenor and all Class Members pursuant to Labor Code § 558 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.

These penalties are in addition to any other penalty provided by law and are recoverable by private individuals on behalf of the state of California under the Private Attorney General Act, Labor Code § 2699, et. seq.

## IX.

## SECOND CAUSE OF ACTION

### **Failure to Pay Minimum Wages And Overtime Without Subsequent Deduction In Non-Commission Pay Periods**

58. Intervenor re-allege and incorporate by reference the allegations contained in preceding paragraphs as though fully set forth herein.

59. As set forth hereinabove, Rabobank pays its commissioned employees twice a month. The first monthly payment is based upon hours worked at the minimum wage rate. Thus, it appears that the Rabobank has paid the minimum wage and overtime required by statute.

60. But then, Rabobank subtracts the minimum wages and overtime it paid in the first monthly pay period from the commission payments made in the second pay period. As the compensation section of the employment agreement states: “Hourly wages (including overtime)

1 paid to Employee during the previous calendar month shall be deducted from commissions due to  
2 Employee on the 15th of the following month and Employee shall be paid the difference,  
3 assuming commissions exceed wages.”

4 61. By deducting the wages paid in the first pay period from the wages earned in the  
5 second pay period, Rabobank has violated Labor Code § 221 which prohibits an employer from  
6 recovering wages paid. This provision prohibits an employer from receiving from an employee  
7 any wage paid by the employer to the employee either by deduction or recovery after payment of  
8 the wage. By appearing to have paid the wages required by statute in the first pay period, but  
9 receiving a concealed rebate of such wages in the second pay period, Rabobank has violated the  
10 provisions of California Labor Code § 223.

11 62. In reality, Rabobank has totally failed to pay the wages and overtime premium pay  
12 required by statute in the first pay period. The compensation section of the employment  
13 agreement states “Hourly wages and overtime paid to Employee are an advance or draw against  
14 future commissions.” A draw is a loan, and therefore Rabobank does not actually pay the  
15 employees anything for the first pay period of each month.

16 63. Defendant further failed to compensate Plaintiffs and class members wages,  
17 regular and overtime wages, for the time they spent actually working due to Defendant’s  
18 instructions to under-report the hours actually worked.

19 64. Intervenors and the class members seek damages in the amounts earned in the first  
20 monthly pay period and improperly deducted from second pay period, plus liquidated damages  
21 for failing to pay minimum wages under Labor Code § 1194.2 as well as interest thereon,  
22 reasonable attorney’s fees, and costs of suit fees pursuant to Labor Code § 1194.

23 65. Rabobank is also subject to civil penalties and restitution of wages payable to  
24 Intervenors and all Class Members pursuant to Labor Code § 1179.1 as follows:

25 (1) For any initial violation that is intentionally committed, one hundred dollars (\$100)  
26 for each underpaid employee for each pay period for which the employee is underpaid.  
This amount shall be in addition to an amount sufficient to recover underpaid wages.

27 (2) For each subsequent violation for the same specific offense, two hundred fifty dollars  
28 (\$250) for each underpaid employee for each pay period for which the employee is  
underpaid regardless of whether the initial violation is intentionally committed. This

1 amount shall be in addition to an amount sufficient to recover underpaid wages.

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

3  
4 These penalties are in addition to any other penalty provided by law and are recoverable by  
5 private individuals on behalf of the state of California under the Private Attorney General Act,  
6 Labor Code § 2699, et. seq.

7 66. Rabobank is also subject to civil penalties and restitution of wages payable to  
8 Intervenors and all Class Members pursuant to Labor Code § 558 for violating the applicable  
9 Wage Order as follows:

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

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

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

17 These penalties are in addition to any other penalty provided by law and are recoverable by  
18 private individuals on behalf of the state of California under the Private Attorney General Act,  
19 Labor Code § 2699, et. seq.

## 20 X.

### 21 THIRD CAUSE OF ACTION

#### 22 **Failure to Pay Wages for Rest Periods**

23 67. Intervenors reallege and incorporate by this reference all the paragraphs above in  
24 this Complaint as though fully set forth herein.

25 68. Section 226.7 provides: “An employer shall not require an employee to work during  
26 a meal or rest or recovery period mandated pursuant to an applicable statute, or ... order of the  
27 [IWC].” (§ 226.7, subd. (b).) “If an employer fails to provide an employee a meal or rest or recovery  
28 period in accordance with a state law, including, but not limited to, an ... order of the [IWC], ... the  
employer shall pay the employee one additional hour of pay at the employee's regular rate of

1 compensation for each workday that the meal or rest or recovery period is not provided.” (§ 226.7,  
2 subd. (c).)

3 69. Wage Order No. 7 applies “to all persons employed in the mercantile industry  
4 whether paid on a time, piece rate, commission, or other basis.” (Cal. Code Regs. tit. 8, § 11070,  
5 subd. 1.). Wage Order No. 7 provides: “Every employer shall authorize and permit all employees  
6 to take rest periods, which insofar as practicable shall be in the middle of each work period. The  
7 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)  
8 minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not  
9 be authorized for employees whose total daily work time is less than three and one-half (3 1/2)  
10 hours. *Authorized rest period time shall be counted as hours worked for which there shall be no*  
11 *deduction from wages.*” (Cal. Code Regs. tit. 8, § 11070, subd. 12(A), italics added.) Like section  
12 226.7, subdivision (c), Wage Order No. 7 further requires an employer who fails to provide an  
13 employee a rest period in accordance with the wage order's provisions to pay the employee one  
14 hour of pay at the employee's regular rate of compensation for each work day the employer did not  
15 provide the employee with the rest period. (*Id.*, § 11070, subd. 12(B).)

16 70. The plain language of Wage Order No. 7 requires employers to count “rest period  
17 time” as “hours worked *for which there shall be no deduction from wages.*” (Cal. Code Regs. tit.  
18 8, § 11070, subd. 12(A), italics added.)

19 71. Rabobank’s pay scheme did not compensate for rest periods taken by Intervenors  
20 and other class members. As stated above, the minimum and overtime wages paid to Intervenors  
21 and class members were not wages at all, they were merely draws against future commissions.

22 72. The appellate court in Vaquero v. Stoneledge Furniture LLC, 9 Cal. App. 5th 98,  
23 115, 214 Cal. Rptr. 3d 661, 674 (Ct. App. 2017), as modified (Mar. 20, 2017), review denied (June  
24 21, 2017) held that this type of pay scheme does not properly compensate employees for their rest  
25 periods. In *Stoneledge*, the court stated,

26 The advances or draws against future commissions were not  
27 compensation for rest periods because they were not compensation  
28 at all. At best they were interest-free loans. *Stoneledge* cites no  
authority for the proposition that a loan for time spent resting is  
compensation for a rest period. To the contrary, taking back money

1 paid to the employee effectively reduces either rest period  
2 compensation or the contractual commission rate, both of which  
3 violate California law. (See § 221 [prohibiting employers from  
4 collecting or receiving from an employee “any part of wages  
5 theretofore paid by said employer”]; § 222 [prohibiting employers  
6 from withholding any part of a wage agreed upon]; § 223  
7 [prohibiting employers from “secretly pay[ing] a lower wage while  
8 purporting to pay the wage designated by statute or by contract”];  
9 cf. *Armenta, supra*, 135 Cal.App.4th at p. 323, 37 Cal.Rptr.3d 460  
10 [averaging wages across pay periods to satisfy minimum wage  
11 requirements “effectively reduces [employees'] contractual hourly  
12 rate”].)

13 73. This case is no different than the *Stoneledge*. Accordingly, Intervenor and class  
14 members are entitled to recover, and hereby demand, (1) their wages for each unpaid rest period  
15 for each and every shift worked and (2) a penalty for each and every unpaid rest period pursuant to  
16 Labor Code 226.7, in addition to attorneys’ fees, costs, and interest.

## 17 **XI.**

### 18 **FOURTH CAUSE OF ACTION**

#### 19 **Failure to Provide Accurate Wage Statements**

20 74. Intervenor reallege and incorporate by this reference all the paragraphs above in  
21 this Complaint as though fully set forth herein.

22 75. Rabobank knowingly and intentionally failed to provide timely, accurate, itemized wage  
23 statements showing, inter alia, hours worked, to Intervenor and Class Members in accordance with Labor  
24 Code § 226(a) and applicable Wage Order No. 9. Such failure caused injury to Intervenor and Class  
25 Members by, among other things, impeding them from knowing the amount of wages to which they are  
26 and were legally entitled.

27 76. Intervenor’s good faith estimate of the number of pay periods in which Rabobank failed  
28 to provide accurate itemized wage statements to Intervenor and Class Members is each and every pay  
period during the Class Period.

77. Intervenor and the Class Members are entitled to and seek injunctive relief requiring  
Rabobank to comply with Labor Code §§ 226(a) and further seek the amount provided under Labor Code  
§ 226(e), including the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which

1 a violation occurred and one hundred dollars (\$100) per employee for each violation in a subsequent pay  
2 period.

3 78. Rabobank is also subject to civil penalties for Labor Code §§ 226(a) violations “in the  
4 amount of two hundred and fifty dollars (\$250) per employee per violation in an initial citation and  
5 one thousand (\$1,000) per employee for each violation in a subsequent citation . . . .” as provided  
6 by Labor Code §§ 226.3. These penalties are in addition to any other penalty provided by law and  
7 are recoverable by private individuals on behalf of the state of California under the Private Attorney  
8 General Act, Labor Code § 2699, et. seq.

9 79. Because Rabobank’s conduct described immediately above is an act of unfair  
10 competition and a business practice in violation of California Business & Professions Code Section  
11 17200, Intervenor further demand the Rabobank be enjoined from continuing to provide inaccurate  
12 pay statements that fail to include the amount of hours worked by each employee, the hourly rate  
13 of pay, and the amount of all overtime hours worked at the corresponding hourly rate.

## 14 XII.

### 15 **FIFTH CAUSE OF ACTION**

#### 16 **Waiting Time Penalties**

17 80. Intervenor re-allege and incorporate by reference the allegations contained in the  
18 preceding paragraphs as though fully set forth herein.

19 81. California Labor Code §201 requires an employer who discharges an employee to  
20 pay all compensation due and owing to the employee immediately upon the employee's discharge  
21 from employment. California Labor Code § 202 requires an employer promptly pay all  
22 compensation due and owing to an employee within 72 hours after that employee's employment  
23 terminates, including by resignation. California Labor Code § 204 requires an employer to pay  
24 all wages due to its employees when those wages are due. California Labor Code § 203 provides  
25 that if an employer willfully fails to pay all compensation due promptly upon discharge or  
26 resignation, as required by §§ 201 and 202, the employer shall be liable for waiting time penalties  
27 in the form of continued compensation for up to 30 work days.

28 82. As noted hereinabove, Rabobank’s failure to pay minimum wages and overtime  
properly in non-commission pay periods, and Rabobank’s failure to properly calculate overtime

1 premium rates in commission paid weeks, results in an underpayment of wages to all terminated  
2 employees in violation of Labor Code § 203.

3 83. Rabobank has willfully failed to make timely payment of the full wages due to  
4 these employees who have quit or have been discharged, thereby violating California Labor Code  
5 §§ 201-202.

6 84. The failure to completely compensate these employees means that Rabobank has  
7 not only violated, but they also continue to violate California Labor Code § 204, which requires  
8 employers, including many of the Defendants herein, to pay their employees their full wages  
9 when due.

10 85. On behalf of waiting penalties Subclass of terminated employees, Intervenor seek  
11 the penalties to which they are entitled pursuant to Labor Code §203, in the amount of each  
12 members' daily wage multiplied by thirty (30) days, the exact amount of which is to be  
13 determined at trial.

### 14 XIII.

#### 15 **SIXTH CAUSE OF ACTION**

##### 16 **Unfair Business Practices**

17 86. Intervenor re-allege and incorporate by reference the allegations contained in the  
18 preceding paragraphs as though fully set forth herein.

19 87. As described above, Rabobank has engaged in unfair business practices in  
20 California by utilizing and engaging in an unlawful pattern and practice of failing to properly pay  
21 employee compensation.

22 88. Rabobank's use of such practices constitutes an unfair business practice, unfair  
23 competition, and provides an unfair advantage over Rabobank's competitors. Intervenor and  
24 other similarly situated members of the general public seek full restitution on account of the  
25 economic injuries they have suffered along with disgorgement of ill-gotten gains from Rabobank  
26 as necessary and according to proof, to restore any and all monies withheld, acquired and/or  
27 converted by Rabobank by means of the unfair business practices complained of herein.  
28

1           89.     Intervenors seek on their own behalf and on behalf of the general public, the  
2 appointment of a receiver, as necessary, to oversee said restitution, including all wages earned  
3 and unpaid, including interest thereon.

4           90.     The acts complained of herein, occurred, at least in part, within the last four (4)  
5 years preceding the Complaint for damages originally filed in this action.

6           91.     Further, if Rabobank is not enjoined from the unlawful conduct described above,  
7 Rabobank will continue unabated in their unlawful conduct, which will continue to result in  
8 irreparable injury to members of the general public, including, but not limited to all members of  
9 the Class who are current employees of the Rabobank, and for which there is no adequate remedy  
10 at law. Thus, Intervenors request that the Court issue a preliminary and permanent injunction  
11 prohibiting Rabobank from engaging in the foregoing conduct.

12           92.     Intervenors, on behalf of the general public and members of the Class, seek full  
13 restitution from Rabobank, as necessary and according to proof, to restore all monies withheld,  
14 acquired and/or converted by Rabobank by means of the unfair practices complained of herein.

#### 15                                   XIV.

#### 16                                   SEVENTH CAUSE OF ACTION

#### 17                                   California Labor Code Private Attorneys General Act,

#### 18                                   Cal. Labor Code §§ 2698 Et Seq.

19           93.     Intervenors re-allege and incorporate by reference the allegations contained in the  
20 preceding paragraphs as though fully set forth herein.

21           94.     Intervenor Stinson on behalf of herself, all aggrieved employees, and/or on behalf  
22 of the putative classes herein, as well as the general public of the State of California alleges that  
23 Rabobank here has violated the following provisions of the California Labor Code in the  
24 following provisions of the applicable IWC Wage Order in which violations are actionable  
25 through the PAGA, as previously alleged herein: California Labor Code §§ 201, 202, 203, 204,  
26 204a, 204b, 221, 223, 225.5, 226.7, 510, 558 1194 and 1197 as well as the orders of the Industrial  
27 Wage Commission.  
28

1           95. Each of these violations entitles Intervenor Stinson, as a private attorney general,  
2 to recover the applicable statutory civil penalties on her own behalf, on behalf of all aggrieved  
3 employees, and on behalf of the general public.

4           96. California Labor Code §2699 (a), which is part of PAGA, provides in pertinent  
5 part:

6                       notwithstanding any other provision of law, any provision of this  
7 code that provides for a civil penalty to be assessed and collected  
8 by the Labor and Workforce Development Agency or any of its  
9 departments, divisions, commissions, boards, agencies, or  
10 employees, for a violation of this code, may, as an alternative, be  
11 recovered through a civil action brought by an aggrieved employee  
12 on behalf of himself or herself and other current or former  
13 employees pursuant to the procedures specified in Section 2699.3.

14           97. California Labor Code § 2699 (F), which is part of PAGA, provides in pertinent  
15 part:

16                       for all provisions of this code except for those for which a civil  
17 penalty is specifically provided, there is established a civil penalty  
18 for a violation of these provisions, as follows: ...

19                       (2) If, at the time of the alleged violation, the person  
20 employs one or more employees, the civil penalty is one  
21 hundred dollars (\$100) for each aggrieved employee per  
22 pay period for the initial violation and two hundred (\$200)  
23 for each for each aggrieved employee per pay period for  
24 each subsequent violation.

25           98. Intervenor and the Class are entitled to civil penalties, to be paid by Rabobank  
26 and allocated as PAGA requires, pursuant to California Labor Code § 2699(a) for Rabobank's  
27 violations of the California Labor Code and IWC Wage Orders for which violations a civil  
28 penalty is already specifically provided by law; and Intervenor Stinson is entitled to civil  
penalties, to be paid by Rabobank and allocated as PAGA requires, pursuant to California Labor  
Code §2699 for Rabobank's violations of the California Labor Code and IWC Wage Orders for  
which violations a civil penalty is not already specifically provided.

## **XV.**

### **PRAYER FOR RELIEF**

1                   **WHEREFORE**, Intervenor's pray this Court enter a judgment against Rabobank as  
2 follows:

- 3           1. For the First Cause of Action for Failure to Pay the Correct Overtime Premium Rate  
4 on Commissions:
- 5               a. Damages in the amounts Rabobank improperly failed to pay Intervenor's and  
6 the Class' overtime premiums in an amount to be proved at time of trial,  
7               b. All appropriate penalties, including but not limited to the remedies made  
8 available under, inter alia, California Labor Code §§ 203, 558 and 1194.2,  
9               c. Prejudgment interest pursuant to Labor Code §§218.6 and 1194(a), Civil Code  
10 §§ 3287 and §3289, and  
11               d. Reasonable attorney's fees pursuant to Labor Code §§ 1194.
- 12           2. For the Second Cause of Action for Failure to Pay Minimum Wages And Overtime  
13 Without Subsequent Deduction In Non-Commission Pay Periods:
- 14               a. Damages in the amounts Rabobank improperly failed to pay Intervenor's and  
15 the Class' minimum wages, regular wages, and overtime wages in an amount  
16 to be proved at time of trial,  
17               b. All appropriate penalties, including but not limited to the remedies made  
18 available under, inter alia, California Labor Code §§ 203, 558 and 1194.2,  
19               c. Prejudgment interest pursuant to Labor Code §§218.6 and 1194(a), Civil Code  
20 §§ 3287 and §3289, and  
21               d. Reasonable attorney's fees pursuant to Labor Code §§ 1194 and 1194.3.
- 22           3. For the Third Cause of Action for Rest Period Violations:
- 23               a. Damages in the amount of all unpaid wages for each and every unpaid rest  
24 period for each and every shift worked; and  
25               b. Penalties to which Intervenor's and the Meal Period Subclass are entitled  
26 pursuant to Labor Code §226.7 against Rabobank, in the amount of on hours  
27 pay for each and every unpaid rest period;  
28               c. Prejudgment interest pursuant to Labor Code §§218.6 and 1194(a), Civil Code  
§§ 3287 and §3289; and

- 1 d. Reasonable attorney's fees pursuant to Labor Code §§ 1194 and 1194.3.
- 2 4. For the Fourth Cause of Action for Waiting Time Penalties:
- 3 e. Penalties to which Intervenor and the Waiting Time Penalty Subclass are
- 4 entitled pursuant to Labor Code §203 against Rabobank, in the amount of each
- 5 Waiting Time Penalty subclass members' daily wage multiplied by thirty (30)
- 6 days, the exact amount of which is to be determined at trial.
- 7 5. For the Fifth Cause of Action for Itemized Wage Statement Violations:
- 8 f. Penalties to which Intervenor and the Itemized Wage Statement Subclass are
- 9 entitled pursuant to Labor Code §226 against Rabobank, the exact amount of
- 10 which is to be determined at trial.
- 11 6. For the Sixth Cause of Action for Unfair Business Practices:
- 12 g. For an accounting, under administration of Intervenor and/or the receiver and
- 13 subject to Court review, to determine the amount to be returned by Rabobank,
- 14 and the amounts to be refunded to members of the classes who are owed
- 15 monies by Rabobank;
- 16 h. For an Order requiring Rabobank to make full restitution and payment
- 17 pursuant to California law;
- 18 i. For an Order for a preliminary and/or permanent injunction prohibiting
- 19 Rabobank from engaging in the acts complained of herein;
- 20 j. For all other appropriate injunctive, declaratory and equitable relief;
- 21 k. For interest to the extent permitted by law;
- 22 l. For an award of reasonable attorneys' fees and costs incurred in the
- 23 investigation, filing and prosecution of this action pursuant to CCP §1021.5,
- 24 B&PC §17200, et seq., Labor Code §1194 and/or any other applicable
- 25 provision of law;
- 26 m. Appointment of a receiver, as necessary to oversee the restitution and/or
- 27 disgorgement of profits obtained by Rabobank by way of the unfair business
- 28 practices complained of above in the eighth cause of action; and,
- n. For all other relief as the Court may deem proper.

1 7. For the Seventh Cause of Action for California Labor Code Private Attorneys General  
2 Act, Cal. Labor Code §§ 2698 Et Seq.:

- 3 a. That after the exhaustion of all administrative proceedings, the Court allows  
4 the complaint to be amended and then to declare, adjudge and decree that  
5 Rabobank violated the following California Labor Code sections as to  
6 Intervenor and aggrieved employees: Labor Code §§ 201, 202, 203, 204,  
7 204a, 204b, 212, 221, 222, 223, 226, 226.7, 450, and 558;  
8 b. For civil penalties and unpaid wages pursuant to California Labor Code  
9 sections 2699(a) and/or 2699(f) and (g) and 558, plus costs and attorneys' fees,  
10 for violations of, *inter alia*, California Labor Code §§ 201, 202, 203, 204,  
11 204a, 204b, 212, 221, 222, 223, 225.5, 226, 226.7, 450; and  
12 c. For such other and further relief as the Court may deem equitable and  
13 appropriate.

14 8. For the costs incurred in this action, including reasonable attorneys' fees and  
15 expenses, pursuant to Labor Code § 1194, Government Code § 1021.5 as well as any  
16 other code section authorizing attorney fees;

17 9. An order requiring Rabobank to immediately cease their wrongful conduct as set forth  
18 above;

19 10. For pre-judgment and post-judgment interest at the legal rate;

20 11. For an order certifying the case as a class action, designating Intervenor as class  
21 representative and Intervenor's counsel as Class Counsel; and

22 12. Such further legal and equitable relief as this Court may deem just and proper.

23 Dated: July \_\_, 2017

THIERMAN BUCK LLP

24  
25 By: /s/ Joshua D. Buck  
26 Joshua D. Buck  
27 Attorneys for Intervenor  
28

# **EXHIBIT 1**

***PAGA Letter Dated March 27, 2017***

**EXHIBIT 1**

March 27, 2017

**VIA E-FILING**

California Labor and Workforce Development Agency  
801 K Street, Suite 2101  
Sacramento, California 95814

Subject:           PAGA Claim Notice: *Sandy Stinson v. Rabobank National Association*

Dear Representative:

This office represents Sandy Stinson (“Ms. Stinson”), on behalf of herself and all other similarly situated and aggrieved employees (“Plaintiff”), in connection with her claims under the California Labor Code against her former employer Rabobank National Association (N.A.) (“Rabobank”). Plaintiff intends to seek penalties for certain violations of the California Labor Code (hereinafter referred to as “Labor Code”), detailed below, which are recoverable under Labor Code §§ 2699, *et seq.* (“the Private Attorneys General Act”). Ms. Stinson is seeking penalties on behalf of the State of California and all other aggrieved employees. This letter is sent in compliance with the reporting requirements of Labor Code § 2699.3.

Counsel for Ms. Stinson have already instituted a legal action against Rabobank in the Superior Court of the State of California, County of Placer. That action is entitled *Daniel Rose, on behalf of himself and all others similarly situate, Plaintiff, v. Rabobank National Association (N.A.)*, Case No. SCV0038802 (“*Rose Action*”). A true and correct copy of the *Rose Action* is enclosed herein as Exhibit A.

Ms. Stinson will seek to join the *Rose Action* as a named-Plaintiff and representative for the PAGA action following the administrative exhaustion with your office. The *Rose Action* sets forth all of the factual and legal theories that support Mr. Stinson’s claim for unpaid wages and penalties pursuant to PAGA. Together with Mr. Rose, Ms. Stinson alleges that Rabobank failed to pay herself and all other Mortgage Loan Officers, Loan Officers, and all other inside commissioned employees, minimum wages and overtime wages according to law. Rabobank maintains a complicated and sophisticated scheme to avoid payment of statutorily required minimum wages and overtime premium wages due to its commissioned employees in violation of California Labor Code §§ 221 and 223. Under California law, commissions can only cover wages due for the pay period for which they are paid. *Peabody v. Time Warner Cable, Inc.*, 59 Cal. 4th 662, 328 P.3d 1028 (2014). For those pay periods when commissions are not paid, Rabobank

purports to pay an hourly rate of \$10, with an overtime premium pay of \$15 an hour. However, Rabobank secretly pays a lower wage while purporting to pay the minimum wages by unlawfully deducting from commission wage payments these statutory minimum wages and overtime payments in the very next pay period. Despite appearances, Rabobank pays its commissioned employees nothing for those pay periods when it does not pay strictly commissions. This violates both the anti-kickback provisions of California Labor Code § 221 and the prohibition of secret payment rebates provisions of California Labor Code § 223.

For those pay periods in which it pays commissions, Rabobank fails to pay overtime pay at the correct premium rate. Because financial institutions like banks and mortgage lenders are deemed by the United States Secretary of Labor to lack a “retail concept,” Rabobank must pay overtime premium pay for all hours worked in excess of forty per week and is not eligible for the “retail sales exemption” of section 7(i) of the FLSA. The overtime premium due is one half the regular rate for all hours worked in excess of forty per workweek.” *See* 29 C.F.R. 778.117-.118. The regular rate for all employees paid on a commission basis is one half the commission divided by the hours worked during the pay period covered by the commissions. 29 C.F.R. 778.109 states that “The regular hourly rate of pay of an employee is determined by dividing his total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by him in that workweek for which such compensation was paid.

Rather than pay an overtime premium of half the regular rate for the periods covered by the commission payment, and pay hourly with overtime premiums when applicable for periods not included in the commission payments, Rabobank subtracts the previously paid hourly payments and then pays a half time rate on the remaining sum. The half time rate is not half the rate of the commission payments divided by the hours worked during that commission paid time period, but based upon the full month rather than the pay period covered by the commissions, thereby lowering effective hourly premium rate of pay. Rabobank’s policy states that “The additional amount will be calculated by allocating the commission (less the base pay, including overtime) evenly to each week or partial week in the month.”

In other words, Rabobank calculates the regular rate upon which commissions are based by dividing the commissions earned by the entire monthly hours worked, or some variation thereof, rather than by the time period covered by the commissions. If the employee works more overtime in the non-commission portion of the month which is covered by the first pay period, the employee’s overtime rate for the commissioned portion of the month is disproportionately less than if the employee had worked the same amount of overtime in the second half of the month which is covered by the commission payment. Thus, the half time rate used to pay for overtime is incorrect as a matter of law.

In addition, as a result of having “advanced” commissions to cover the hourly rate payments in both the pay period, Rabobank has also failed to abide by California’s rest period requirements.<sup>1</sup> Wage Order No. 7 applies “to all persons employed in the mercantile industry whether paid on a time, piece rate, **commission**, or other basis.” (Cal. Code Regs. tit. 8, § 11070,

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<sup>1</sup> Mr. Rose will add this cause of action to an amended complaint together with Ms. Stinson upon the expiration of the PAGA exhaustion requirement.

subd. 1.) (emphasis added). With respect to rest periods, Wage Order No. 7 provides: “*Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.*” (Cal. Code Regs. tit. 8, § 11070, subd. 12(A), italics added.) Like section 226.7, subdivision (c), “Wage Order No. 7 requires employers to separately compensate employees for rest periods if an employer’s compensation plan does not already include a minimum hourly wage for such time.” *Vaquero v. Stoneledge Furniture LLC*, No. B269657, 2017 WL 770635, at \*6 (Cal. Ct. App. Feb. 28, 2017) *as modified* (Mar. 20, 2017); *Perez v. Sun Pacific Farming Co-op., Inc.* (E.D. Cal., June 8, 2015, No. 1:15-CV-00259-KJM-SKO) 2015 WL 3604165, pp. 5-7; *Ridgeway v. Wal-Mart Stores, Inc.* (N.D. Cal. 2015) 107 F.Supp.3d 1044, 1053; *Reinhardt v. Gemini Motor Transport* (E.D. Cal. 2012) 869 F.Supp.2d 1158, 1168; *Carrillo v. Schneider Logistics, Inc.* (C.D. Cal. 2011) 823 F.Supp.2d 1040, 1044; *Cardenas v. McLane FoodServices, Inc.* (C.D. Cal. 2011) 796 F.Supp.2d 1246, 1252; *Ontiveros v. Zamora* (E.D. Cal., Feb. 20, 2009, No. CIV.S-08-567 LKK/DAD) 2009 WL 425962, p. 3. Here, by fronting the minimum wage and overtime amounts worked in pay pay period from commissions, Rabobank never compensated Ms. Stinson nor any other similarly situated employee for their rest breaks. *See Vaquero*, 2017 WL 770635, at \*6. Accordingly, Rabobank has violated Labor Code § 226.7.

Based on the aforementioned facts, Ms. Stinson and all other aggrieved employees are entitled to recover civil penalties in addition to any and all other wages, penalties, and interest. Therefore, Ms. Stinson seeks the recovery of civil penalties under PAGA’s general penalty provision found at Labor Code § 2699(f) for violations of Labor Code §§ 201, 202, 203, 204, 204a, 204b, 221, 223, 510, 1194 and 1197, and the following other civil penalty provisions: 225.5, 226(a), 226(e), 226.3, 558, 1174.5, 1197.1. In sum, Plaintiff seeks all applicable penalties related to these violations of the California Labor Code pursuant to the Private Attorneys General Act.

Ms. Stinson’s former employer, Rabobank, may be contacted directly at the following address:

915 Highland Pointe Drive  
#190  
Roseville, CA 95678

This is also the address of Rabobank’s Registered Agent, Robin Thompson (a copy of this communication is also being sent to its registered agent)<sup>2</sup>.

Rabobank is represented by the following attorneys in the Rose Action.

Charles Post, Esq.  
Jessica Schoendienst, Esq.  
Weintraub Tobin  
400 Capitol Mall

---

<sup>2</sup> In addition to the Registered Agent information obtained from the California Secretary of State listed above, as of November 25, 2016, the California Department of Business Oversight lists a Designation for Service of Legal Process at 2100 S. Blosser Road, Santa Maria, CA 93458. A copy of this claim is being sent to this address as well.

CONFIDENTIAL

11<sup>th</sup> Floor  
Sacramento, CA 95814

Counsel for Rabobank in the Rose Action have been copied on this letter

Thank you for your attention to this matter. If you have any questions, or if we may be of any further assistance, please contact me at (775) 284-1500.

Very truly yours,

  
Joshua D. Buck

cc: Sandy Stinson  
Charles Post, Esq.  
Jessica Schoendienst, Esq

**EXHIBIT A**

**EXHIBIT A**

Mark R. Thierman Cal SB# 72913  
Joshua D. Buck Cal SB# 258325  
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Email: RStephan@stephanzouras.com

Attorneys for Plaintiff Daniel Rose on behalf of  
himself and all others similarly situated.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF PLACER**

DANIEL ROSE, on behalf of himself and  
all others similarly situated

Plaintiff,

v.

RABOBANK NATIONAL  
ASSOCIATION (N.A.), a foreign  
corporation and DOES 1 through 10,  
inclusive,

Defendants.

CASE NO.

SCV0038802

CLASS ACTION, CCP §382

**CLASS ACTION COMPLAINT AND  
ENFORCEMENT ACTION UNDER THE  
PRIVATE ATTORNEYS GENERAL ACT,  
CALIFORNIA LABOR CODE §§2698 ET  
SEQ.:**

- (1) VIOLATION OF STATE AND FEDERAL  
OVERTIME LAWS;
- (2) CAL. LABOR CODE VIOLATIONS;
- (3) WAITING TIME PENALTIES;
- (4) UNFAIR BUSINESS PRACTICES;
- (5) CALIFORNIA LABOR CODE PRIVATE  
ATTORNEYS GENERAL ACT, CAL.  
LABOR CODE §§ 2698 ET SEQ.

**JURY TRIAL DEMAND**

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF PLACER

DEC 20 2016

JAKE CHATTERS  
EXECUTIVE OFFICER & CLERK  
By: C. Waggoner, Deputy

BY FAX

1 Comes now Plaintiff DANIEL ROSE on behalf of himself and all others similarly situated  
2 the general public, and all aggrieved employees (hereinafter “Rose” and/or “Plaintiff”) and  
3 hereby complains against the Defendant RABOBANK NATIONAL ASSOCIATION (hereinafter  
4 “Rabobank, N.A.” and/or Defendant), a foreign corporation that reports its principal place of  
5 business in California to be in City of Roseville, County of Placer, California, and alleges as  
6 follows:

7 **I.**

8 **INTRODUCTION**

9 1. Plaintiff herein seeks relief from this Court for Defendant’s deliberate and willful  
10 attempt to avoid paying minimum wages and premium pay for overtime hours worked by  
11 Mortgage Loan Officers, Loan Officers, and all other inside commissioned employees, who are  
12 not eligible for the inside sales exemption under Section 7(i) of the Federal Fair Labor Standards  
13 Act (“FLSA”, 29 U.S.C. §207(i)) on the grounds, *inter alia*, that financial institutions lack a retail  
14 concept *per se*, and who are not paid the correct premium wages (half the regular rate) on  
15 commissions paid during pay periods in which they earn commissions, and not paid the minimum  
16 wages and overtime premium pay “free and clear” in all other pay periods, as required under both  
17 California and federal law. None of the Defendant’s pay practices are properly disclosed as  
18 required by California Labor Code Section 226(a)(9), *inter alia*. At an appropriate time, Plaintiff  
19 also will amend this complaint to seek damages and penalties under the Private Attorney General  
20 Act, Labor Code Section 2699, for the violations alleged herein as well.

21 2. Defendant maintains a complicated and sophisticated scheme to avoid payment of  
22 statutorily required minimum wages and overtime premium wages due to its commissioned  
23 employees in violation of California Labor Code §§ 221 and 223. Under California law,  
24 commissions can only cover wages due for the pay period for which they are paid. *Peabody v.*  
25 *Time Warner Cable, Inc.*, 59 Cal. 4th 662, 328 P.3d 1028 (2014). For those pay periods when  
26 commissions are not paid, the Defendant purports to pay an hourly rate of \$10, with an overtime  
27 premium pay of \$15 an hour. However, the Defendant secretly pays a lower wage while  
28 purporting to pay the minimum wages by unlawfully deducting from commission wage payments  
these statutory minimum wages and overtime payments in the very next pay period. Despite

1 appearances, Defendant pays its commissioned employees nothing for those pay periods when it  
2 does not pay strictly commissions. This violates both the anti-kickback provisions of California  
3 Labor Code 221 and the prohibition of secret payment rebates provisions of California Labor  
4 Code 223.

5 3. For those pay periods in which it pays commissions, Defendant fails to pay  
6 overtime pay at the correct premium rate. Because financial institutions like banks and mortgage  
7 lenders are deemed by the United States Secretary of Labor to lack a “retail concept,” Defendant  
8 must pay overtime premium pay for all hours worked in excess of forty per week and is not  
9 eligible for the “retail sales exemption” of section 7(i) of the FLSA. The overtime premium due  
10 is one half the regular rate for all hours worked in excess of forty per workweek.” See 29 C.F.R.  
11 778.117-.118. The regular rate for all employee paid on a commission basis is one half the  
12 commission divided by the hours worked during the pay period covered by the commissions. 29  
13 C.F.R. 778.109 states that “The regular hourly rate of pay of an employee is determined by  
14 dividing his total remuneration for employment (except statutory exclusions) in any workweek by  
15 the total number of hours actually worked by him in that workweek for which such compensation  
16 was paid.

17 4. Rather than pay an overtime premium of half the regular rate for the periods  
18 covered by the commission payment, and pay hourly with overtime premiums when applicable  
19 for periods not included in the commission payments, Defendant subtracts the previously paid  
20 hourly payments and then pays a half time rate on the remaining sum. The half time rate is not  
21 half the rate of the commission payments divided by the hours worked during that commission  
22 paid time period, but based upon the full month rather than the pay period covered by the  
23 commissions, thereby lowering effective hourly premium rate of pay. The Defendant’s policy  
24 states that “The additional amount will be calculated by allocating the commission (less the base  
pay, including overtime) *evenly to each week or partial week in the month.*”

25 5. In other words, Defendant calculates the regular rate upon which commissions are  
26 based by dividing the commissions earned by the entire monthly hours worked, or some variation  
27 thereof, rather than by the time period covered by the commissions. If the employee works more  
28 overtime in the non-commission portion of the month which is covered by the first pay period, the

1 employee's overtime rate for the commissioned portion of the month is disproportionally less  
2 than if the employee had worked the same amount of overtime in the second half of the month  
3 which is covered by the commission payment. Thus, the half time rate used to pay for overtime is  
4 incorrect as a matter of law.

## 5 **II.**

### 6 **JURISDICTION AND VENUE**

7 6. The Superior Court of the State of California, for the County of Placer, has  
8 jurisdiction over this case because Defendant has designated with the California Secretary of  
9 State that it is a foreign corporation with its principle place of business within California is at 915  
10 Highland Pointe Drive in Roseville, California, and because many of the alleged violations of the  
11 Labor Code and the violations of B&PC §§17200 et seq. occurred in whole or in part at its  
12 California corporate headquarters in Roseville.

13 7. Venue is proper in the Placer County Superior Court pursuant to Code of Civil  
14 Procedure §395 (a) and 395.5, because Roseville is within the County of Placer.

## 15 **III.**

### 16 **PARTIES**

17 8. At all times relevant herein, Plaintiff DANIEL ROSE was a California resident  
18 employed by Defendant to work as a loan officer within the State of California.

19 9. At all times relevant herein, Defendant RABOBANK NATIONAL  
20 ASSOCIATION (also known as "Rabobank NA ") has been registered with California Secretary  
21 of State as a foreign corporation with its principal place of business within California and  
22 California Corporate headquarters located at 915 Highland Pointe Dr. #190, Roseville, CA  
23 95678, within the County of Placer and is doing business as a Bank (commercial and savings),  
24 Credit company, including small loan and personal loan companies, and/or a finance company,  
25 and therefore lacks a retail concept within the meaning of 29 C.F.R. 770.317 and *Mitchell v.*  
*Kentucky Fin. Co.*, 359 U.S. 290, 79 S. Ct. 756, 3 L. Ed. 2d 815 (1959).

26 10. Plaintiff is ignorant of the true names and capacities, whether individual, corporate  
27 or otherwise, of the fictitiously named defendants designated as DOES 1 - 10, inclusive. Plaintiff  
28 is informed and believes, and thereon alleges, that each fictitiously named defendant was in some

1 way responsible for, participated in, or contributed to the matters and things complained of  
2 herein, and is legally responsible for the damages complained of herein.

3 11. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
4 mentioned, each of the defendants, including each of the fictitiously named defendants, was the  
5 agent, principal, employer or employee of each other defendant, and they were acting within the  
6 course and scope of such relationship in doing the things herein alleged, or they ratified,  
7 acquiesced in, consented to, aided, abetted and/or approved each and all of the acts of each of the  
8 other defendants, so that each defendant is jointly and severally responsible and liable for the acts  
9 alleged herein.

#### 10 IV.

#### 11 CLASS ACTION ALLEGATIONS

12 12. Pursuant to California Code of Civil Procedure (“CCP”) §382 and the common  
13 law related thereto, a case should be treated as a class action when a court finds: (a) that the  
14 predominant issues raised in the case are of a common interest; (b) that the parties are so  
15 numerous that it is impracticable to bring them all before this Court; (c) that the proposed Class  
16 and Subclass are clearly and easily ascertainable; (d) that the named representatives’ claims are  
17 typical of the claims of the proposed classes; (e) that the Class representatives will adequately  
18 represent the interests of the classes; and (e) that a class action is superior to other methods of  
19 adjudicating the claims alleged herein. Plaintiff herein alleges that each and every one of the  
20 foregoing can and will be demonstrated at the time for hearing on Plaintiff’s motion for class  
21 certification.

22 13. Plaintiff brings this suit as a class action pursuant to CCP §382, on behalf of the  
23 Class of individuals which are defined as follows: All persons who were employed by Defendant  
24 within the State of California as a Mortgage Loan Officer, Loan Officers, and/or other inside  
25 commissioned employees who are not eligible for the inside sales exemption within the four years  
26 prior to the initial filing of the Complaint until the date of judgment herein.

27 14. Plaintiff also seeks to establish a Subclass of all persons in the class described  
28 above who were not paid hourly wages “free and clear” for those pay periods when they were not  
paid commissions, also referred to herein as the minimum wage subclass.

1           15. Plaintiff also seeks to establish a Subclass of all persons in the class described  
2 above who were paid overtime on commissions only after the hourly payments were subtracted  
3 from amounts due, and /or were paid a half time rate as overtime premium pay based upon a  
4 regular rate period of time longer than allowed to be covered by commissions under California  
5 law, also referred to herein as the overtime rate class.

6           16. Plaintiff also seeks to establish a Subclass of all persons in the class described  
7 above whose pay statement failed to explain the actual rate of pay they received for all times  
8 worked, also known as the Labor Code Section 226(a)(9) class.

9           17. Plaintiff also seeks to establish the Subclass of all persons of the class described  
10 above who terminated from employment with Defendant within three years of the initial filing of  
11 the Complaint until the date of judgement herein, also referred to as the “Waiting penalties”  
12 subclass.

13           18. Members of the Class and Subclass will hereinafter be referred to as “class  
14 members.”

15           19. Plaintiffs reserve the right to redefine the Class and Subclass and to add additional  
16 subclasses as appropriate based on further investigation, discovery, and specific theories of  
17 liability.

18           20. **Numerosity:** Plaintiffs are informed and believe and based on such information  
19 and belief, allege that, in conformity with CCP § 382, the potential membership in the Class and  
20 the subclass is so numerous that joinder of all members is impractical. While the exact number of  
21 members in each of the classes is presently unknown to Plaintiffs, Plaintiffs estimate membership  
22 in the Class to exceed 50. The exact number and specific identities of the members of the Class  
23 and the subclass, may be readily ascertained through inspection of Defendants’ business records.  
24 Moreover, the disposition of class members’ claims by way of a class action will provide

25           21. **Commonality:** Plaintiff is informed and believes and based on such information  
26 and belief alleges that numerous questions of law and/or fact are common to all members of the  
27 class, including, without limitation:  
28

- a. Whether the offset against commissions for wages ostensibly paid on an hourly basis during non-commission pay periods means that these hourly payments were not “free and clear” and thus the class members were not paid anything during those pay period, which is less than the minimum wages and overtime premium rates required under California Labor Code California Labor Code section 510 and California Wage Order 4–2001. (8 Cal.Code Regs. § 11040).
- b. Whether the deductions from payments previously paid on an hourly basis for non-commission pay periods and/or the inclusion of non-commission pay periods in the calculation of the regular rate resulted in an incorrect overtime premium rate such that class members did not receive the proper overtime premium pay for commission paid pay periods.
- c. Whether Defendants complied with the wage reporting requirements of Labor Code § 226 (a)(9);
- d. whether Defendants failed to timely pay Plaintiff and putative class members the wages due them during their employment;
- e. whether Defendants failed to timely pay wages due to Plaintiff and class members upon their discharge;
- f. whether Defendants’ failure to pay all wages due in accordance with the federal wage laws or the California Labor Code was willful or reckless;
- g. whether Defendants engaged in unfair business practices in violation of California Business & Professions Code §§ 17200, et seq.; and,
- h. the appropriate amount of damages, restitution, or monetary penalties resulting from Defendants’ violations of law.

22. **Typicality:** Plaintiff’s claims are typical of those of the class members, because plaintiff suffered the violations set forth in this Complaint.

23. **Adequacy:** Plaintiff will adequately protect the interests of class members. Plaintiff has no interests that are adverse to or in conflict with class members and is committed to the vigorous prosecution of this lawsuit. To that end, plaintiff has retained counsel who are competent and experienced in handling class actions on behalf of employees.

24. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, as the amount suffered by individual class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no inordinate difficulty in the management of this case as a class action. The class is geographically disbursed throughout California but the Defendant's policies and decisions affecting the class all emanated from its central offices located in Roseville, California. Plaintiff is informed and believes and based on such information and belief alleges that this action is properly brought as a class action, not only because the prerequisites of CCP §382 and common law related thereto are satisfied (as outlined above), but also because of the following:

- a. The prosecution of separate actions by or against individual members of the Class would create risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class;
- b. Adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;
- c. Defendants have acted or refused to act on grounds generally applicable to all members of the Class, making declaratory relief appropriate with respect to all of the Class;
- d. Questions of law or fact common to the members of the Class predominate over any questions affecting only individual members; and, Class action treatment is superior to other available methods for the fair and efficient adjudication of the controversy.

**V.**

## **PAGA ENFORCEMENT ACTION ALLEGATIONS**

1           25.     At all times set forth herein, PAGA was applicable to Plaintiff's employment by  
2 Defendant as the employer.

3           26.     At all times set forth herein, PAGA states that any provision of law under the  
4 California labor code that provides for a civil penalty to be assessed and collected by the LWDA  
5 for violations of the California labor code may, as an alternative, be recovered through a civil  
6 action brought by an aggrieved employee on behalf of him or herself and other current or former  
7 employees pursuant to procedures outlined in Labor Code § 2699.3.

8           27.     Pursuant to PAGA, a civil action under PAGA may be brought by any "aggrieved  
9 employee," who is a person that was employed by the alleged violator and against whom one or  
10 more of the alleged violations was committed.

11           28.     Defendants employed Plaintiff and other employees and committed the alleged  
12 violations against Plaintiff and said employees in connection with their employment. Thus,  
13 Plaintiff and these other employees are "aggrieved employees" as that term is defined in Labor  
14 Code section 2699(c).

15           29.     Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved  
16 employee, including Plaintiffs, may pursue a civil action arising under PAGA after the following  
17 requirements have been met:

- 18           e.     The aggrieved employee shall give written notice electronically to the LWDA  
19 with copy to the employer of the specific provisions of the California Labor Code  
20 alleged to have been violated, including the facts and theories to support the  
21 alleged violations.
- 22           f.     The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer  
23 and the aggrieved employee by certified mail that it does not intend to investigate  
24 the alleged violation within thirty (30) calendar days of the postmark date of the  
25 Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice  
26 is not provided within thirty-three (33) calendar days of the postmark date of the  
27 Employee's Notice, the aggrieved employee may commence a civil action  
28 pursuant to California Labor Code section 2699 to recover civil penalties in  
addition to any other penalties to which the employee may be entitled.

30. Upon the filing of this complaint, Plaintiff has or will provide written notice as required by law to the LWDA and to Defendant of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, pursuant to California Labor Code section 2699.3.

31. Over 33 days has not passed since Plaintiffs each sent the LWDA Notice described above. Therefore, Plaintiff intends to amend this complaint at the appropriate time to show the exhaustion of all administrative remedies required by PAGA.

32. A copy of this complaint has been, or will, be included in the notification to the LWDA and Defendant, so that the Plaintiff will have supplied the factual and legal basis upon which the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties and unpaid wages against Defendants, in addition to other remedies, for violations of California Labor Code will have been made.

## VI.

## STATEMENT OF COMMON FACTS

33. Plaintiff and all class members are not paid on a salary basis and must be paid the minimum wage and overtime premium pay as required by law for all non-exempt employees.

34. The Industrial Wage Commission for the State of California, has fixed the minimum hourly wage for non-exempt workers as set forth below:

effective date	new minimum wage	old minimum wage
January 1, 2016	\$10.00	\$9.00
July 1, 2014	\$9.00	\$8.00
January 1, 2008	\$8.00	\$7.50
January 1, 2007	\$7.50	\$6.75

35. California Labor Code § 1197 states “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

1 employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section  
2 does not change the applicability of local minimum wage laws to any entity.”

3 36. California Labor Code § 1194 states that “Notwithstanding any agreement to work  
4 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime  
5 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance  
6 of the full amount of this minimum wage or overtime compensation, including interest thereon,  
7 reasonable attorney's fees, and costs of suit.”

8 37. California Labor Code § 221(also referred to as the anti-kickback provision) states:  
9 “It shall be unlawful for any employer to collect or receive from an employee any part of wages  
10 theretofore paid by said employer to said employee.”

11 38. California Labor Code §223 (also known as the anti-secret rebate provision) states,  
12 “Where any statute or contract requires an employer to maintain the designated wage scale, it  
13 shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by  
14 statute or by contract.”

15 39. California Labor Code § 510(a), in pertinent part states that:

16 Eight hours of labor constitutes a day’s work. Any work in excess of eight  
17 hours in one workday and any work in excess of 40 hours in any one  
18 workweek and the first eight hours worked on the seventh day of work in  
19 any one workweek shall be compensated at the rate of no less than one and  
20 one-half times the regular rate of pay for an employee. Any work in excess  
21 of 12 hours in one day shall be compensated at the rate of no less than  
22 twice the regular rate of pay for an employee. In addition, any work in  
23 excess of eight hours on any seventh day of a workweek shall be  
24 compensated at the rate of no less than twice the regular rate of pay of an  
25 employee. Nothing in this section requires an employer to combine more  
26 than one rate of overtime compensation in order to calculate the amount to  
27 be paid to an employee for any hour of overtime work.

24 40. California Labor Code § 558 states in part “Any employer or other person acting  
25 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any  
26 provision regulating hours and days of work in any order of the Industrial Welfare Commission  
27 shall be subject to a civil penalty. . .”

28 41. California Labor Code § 226(a)(9) provides in relevant part:

1  
2 Every employer shall, semimonthly or at the time of each payment of  
3 wages, furnish each of his or her employees, either as a detachable part of  
4 the check, draft, or voucher paying the employee's wages, or separately  
5 when wages are paid by personal check or cash, an accurate itemized  
6 statement in writing showing . . . all applicable hourly rates in effect  
7 during the pay period and the corresponding number of hours worked at  
8 each hourly rate by the employee. . ."

9 42. Plaintiff and all class members are employed by Defendants as Mortgage Loan  
10 Officers, Loan Officers and/or commissioned inside employees. Defendant pays Plaintiff and  
11 each class member a base hourly pay semi-monthly. In addition, Defendant pays a commission  
12 minus the base pay previously paid once a month.

13 43. The Compensation section of the employment agreement applicable to Plaintiff  
14 and, with minor variations not relevant herein, to all other class members states as follows:

15 Base Pay. Employee shall be paid at a rate of \$10.00 per hour for hours  
16 worked in any given work week (the work week is from 12:00 midnight  
17 Monday to 11 :59 p.m. Sunday) up to 40 hours and shall be paid overtime  
18 for overtime hours worked in accordance with federal and state wage and  
19 hour laws. Payment will be made on the 15th and the 30th of each month in  
20 accordance with the Bank's regular payroll procedures for non-exempt  
21 employees. Hourly wages and overtime paid to Employee are an advance  
22 or draw against future commissions. The draw will be reconciled against  
23 future commissions, meaning that Employee is not entitled to earn  
24 commission compensation until and unless potential commissions exceed  
25 the draw. The draw will be paid for each week the Employee works even if  
26 commissions for that week do not equal or exceed the amount of the draw.

27 Commissions. Employee is also eligible for commission compensation.  
28 Commissions will be calculated, reconciled with base pay, and paid on the  
15th of each month, for the previous month. Generally, a commission is  
earned after a loan is closed, and when commission reconciliations can be  
reasonably calculated. A commission for a brokered loan is earned on the  
date of receipt of the HUD-1 and broker check, and when commission  
reconciliations can be reasonably calculated. Eligibility to receive  
commissions is based on the following calculation: Hourly wages  
(including overtime) paid to Employee during the previous calendar month  
shall be deducted from commissions due to Employee on the 15th of the  
following month and Employee shall be paid the difference, assuming  
commissions exceed wages. In addition, if Employee worked overtime  
during the previous month and is being paid a commission, pursuant to  
federal and state law, Employee will receive additional compensation for

1 overtime hours. The additional amount will be calculated by allocating the  
2 commission (less the base pay, including overtime) evenly to each week or  
3 partial week in the month. No commission shall be paid if commissions  
4 earned do not exceed the previous month's wages paid.

5 44. The wage statement does not reflect the hourly pay rate for Plaintiff and other  
6 class members.

7 **VII.**  
8 **FIRST CAUSE OF ACTION**

9 **Failure to Pay Minimum Wages And Overtime Without Subsequent Deduction In Non-**  
10 **Commission Pay Periods**

11 45. Plaintiff re-alleges and incorporates by reference the allegations contained in  
12 preceding paragraphs as though fully set forth herein.

13 46. As set forth hereinabove, Defendant pays its commissioned employees twice a  
14 month. The first monthly payment is based upon hours worked at the minimum wage rate. Thus,  
15 it appears that the Defendant has paid the minimum wage and overtime required by statute.

16 47. But then, Defendant subtracts the minimum wages and overtime it paid in the first  
17 monthly pay period from the commission payments made in the second pay period. As the  
18 compensation section of the employment agreement states: "Hourly wages (including overtime)  
19 paid to Employee during the previous calendar month shall be deducted from commissions due to  
20 Employee on the 15th of the following month and Employee shall be paid the difference,  
21 assuming commissions exceed wages."

22 48. By deducting the wages paid in the first pay period from the wages earned in the  
23 second pay period, the Defendant has violated Labor Code § 221 which prohibits an employer  
24 from recovering wages paid. This provision prohibits an employer from receiving from an  
25 employee any wage paid by the employer to the employee either by deduction or recovery after  
26 payment of the wage. By appearing to have paid the wages required by statute in the first pay  
27 period, but receiving a concealed rebate of such wages in the second pay period, the Defendant  
28 has violated the provisions of California Labor Code § 223.

49. In reality, the Defendant has totally failed to pay the wages and overtime premium  
pay required by statute in the first pay period. The compensation section of the employment

1 agreement states “Hourly wages and overtime paid to Employee are an advance or draw against  
2 future commissions.” A draw is a loan, and therefore the Defendant does not actually pay the  
3 employees anything for the first pay period of each month.

4 50. Plaintiff and the class members seek damages in the amounts earned in the first  
5 monthly pay period and improperly deducted from second pay period, plus liquidated damages  
6 for failing to pay minimum wages under Labor Code § 1194.2 as well as interest thereon,  
7 reasonable attorney’s fees, and costs of suit fees pursuant to Labor Code § 1194.

8 51. Defendant is also subject to civil penalties and restitution of wages payable to  
9 Plaintiff and all Class Members pursuant to Labor Code § 1179.1 as follows:

10 (1) For any initial violation that is intentionally committed, one hundred dollars (\$100)  
11 for each underpaid employee for each pay period for which the employee is underpaid.  
12 This amount shall be in addition to an amount sufficient to recover underpaid wages.

13 (2) For each subsequent violation for the same specific offense, two hundred fifty  
14 dollars (\$250) for each underpaid employee for each pay period for which the  
15 employee is underpaid regardless of whether the initial violation is intentionally  
16 committed. This amount shall be in addition to an amount sufficient to recover  
17 underpaid wages.

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

19 These penalties are in addition to any other penalty provided by law and are recoverable by  
20 private individuals on behalf of the state of California under the Private Attorney General Act,  
21 Labor Code § 2699, et. seq.

22 52. Defendant is also subject to civil penalties and restitution of wages payable to  
23 Plaintiff and all Class Members pursuant to Labor Code § 558 for violating the applicable  
24 Wage Order as follows:

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

28 (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.

1  
2 These penalties are in addition to any other penalty provided by law and are recoverable by  
3 private individuals on behalf of the state of California under the Private Attorney General Act,  
4 Labor Code § 2699, et. seq.

5 **XIII.**

6 **SECOND CAUSE OF ACTION**

7 **Failure to Pay the Correct Overtime Premium Rate on Commissions**

8 53. Plaintiff re-alleges and incorporates by reference the allegations contained in  
9 preceding paragraphs as though fully set forth herein.

10 54. As set forth hereinabove, Defendant calculates the overtime premium rate for  
11 commissions paid by dividing by the hours worked each month by the net of commissions earned  
12 minus the amount of the hourly base rate previously paid in the prior pay period. As stated in the  
13 compensation section of the employment agreement with emphasis supplied:

14 In addition, if Employee worked overtime during the previous month and is  
15 being paid a commission, pursuant to federal and state law, Employee will  
16 receive additional compensation for overtime hours. **The additional  
amount will be calculated by allocating the commission (less the base  
pay, including overtime) evenly to each week or partial week in the  
month.**

17 55. To correctly calculate the overtime premium rate for commission paid employees,  
18 an employer must simply divide the total amount earned in the pay period by the hours worked in  
19 that same pay period, times half (since the commissions cover the straight time rate), times the  
20 hours worked overtime in that pay period. Here, the employer uses a lower number than the total  
21 earned in the pay period and divides by more hours worked in that pay period, resulting in an  
22 artificially low overtime premium rate for pay periods covered by commission payments.

23 56. In this case, the Defendant violates the requirement that overtime premium be one  
24 and one half times the “regular rate” in two ways. First, by subtracting the wages fictitiously paid  
25 in the previous pay period, the Defendant lowers the total for which commissions are paid such  
26 that the entire earnings for the pay period is calculated based upon a number that is less than what  
27 is actually earned for that pay period. Second, by allocating the commissions “evenly to each  
28 week or partial week in the month” the Defendant is actually dividing the commissions by the

1 entire month, rather than by the pay period, thus violating the rule of *Peabody v. Time Warner*  
2 *Cable, Inc.*, 59 Cal. 4th 662, 328 P.3d 1028 (2014), that one pay period cannot be used to offset  
3 another, and reducing the regular rate significantly.

4 57. Plaintiff and the class members seek damages in the amounts improperly withheld  
5 in an amount to be proved at time of trial, along with all appropriate penalties, including but not  
6 limited to the remedies made available under, *inter alia*, California Labor Code §§ 203, 225.5,  
7 and 558, as well as prejudgment interest pursuant to Labor Code §§ 218.6 and 1194(a), Civil  
8 Code §§ 3287 and §3289, and reasonable attorneys' fees pursuant to Labor Code § 1194

9 58. Defendant is also subject to civil penalties and restitution of wages payable to  
10 Plaintiff and all Class Members pursuant to Labor Code § 558 as follows:

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

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

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

18 These penalties are in addition to any other penalty provided by law and are recoverable by  
19 private individuals on behalf of the state of California under the Private Attorney General Act,  
20 Labor Code § 2699, et. seq.

## 21 IX.

### 22 THIRD CAUSE OF ACTION

#### 23 Failure to Provide Accurate Wage Statements

24 59. Plaintiff realleges and incorporates by this reference all the paragraphs above in  
25 this Complaint as though fully set forth herein.

26 60. Defendant knowingly and intentionally failed to provide timely, accurate, itemized wage  
27 statements showing, *inter alia*, hours worked, to Plaintiff and Class Members in accordance with Labor  
28 Code § 226(a) and applicable Wage Order No. 9. Such failure caused injury to Plaintiff and Class

1 Members by, among other things, impeding them from knowing the amount of wages to which they are  
2 and were legally entitled.

3 61. Plaintiff's good faith estimate of the number of pay periods in which Defendant failed  
4 to provide accurate itemized wage statements to Plaintiff and Class Members is each and every pay  
5 period during the Class Period.

6 62. Plaintiff and the Class Members are entitled to and seek injunctive relief requiring  
7 Defendant to comply with Labor Code §§ 226(a) and further seek the amount provided under Labor  
8 Code § 226(e), including the greater of all actual damages or fifty dollars (\$50) for the initial pay period  
9 in which a violation occurred and one hundred dollars (\$100) per employee for each violation in a  
10 subsequent pay period.

11 63. Defendant is also subject to civil penalties for Labor Code §§ 226(a) violations "in  
12 the amount of two hundred and fifty dollars (\$250) per employee per violation in an initial  
13 citation and one thousand (\$1,000) per employee for each violation in a subsequent citation . . .  
14 ." as provided by Labor Code §§ 226.3. These penalties are in addition to any other penalty  
15 provided by law and are recoverable by private individuals on behalf of the state of California under  
16 the Private Attorney General Act, Labor Code § 2699, et. seq.

17 64. Because Defendant's conduct described immediately above is an act of unfair  
18 competition and a business practice in violation of California Business & Professions Code  
19 Section 17200, Plaintiff further demands the Defendant be enjoined from continuing to provide  
20 inaccurate pay statements that fail to include the amount of hours worked by each employee, the  
21 hourly rate of pay, and the amount of all overtime hours worked at the corresponding hourly  
22 rate.

## 23 X.

### 24 FOURTH CAUSE OF ACTION

#### 25 Waiting Time Penalties

26 65. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
27 preceding paragraphs as though fully set forth herein.

28 66. California Labor Code §201 requires an employer who discharges an employee to  
pay all compensation due and owing to the employee immediately upon the employee's discharge

1 from employment. California Labor Code § 202 requires an employer promptly pay all  
2 compensation due and owing to an employee within 72 hours after that employee's employment  
3 terminates, including by resignation. California Labor Code § 204 requires an employer to pay  
4 all wages due to its employees when those wages are due. California Labor Code § 203 provides  
5 that if an employer willfully fails to pay all compensation due promptly upon discharge or  
6 resignation, as required by §§ 201 and 202, the employer shall be liable for waiting time penalties  
7 in the form of continued compensation for up to 30 work days.

8 67. As noted hereinabove, Defendant's failure to pay minimum wages and overtime  
9 properly in non-commission pay periods, and Defendant's failure to properly calculate overtime  
10 premium rates in commission paid weeks, results in an underpayment of wages to all terminated  
11 employees in violation of Labor Code § 203.

12 68. Defendant has willfully failed to make timely payment of the full wages due to  
13 these employees who have quit or have been discharged, thereby violating California Labor Code  
14 §§ 201-202.

15 69. The failure to completely compensate these employees means that Defendants  
16 have not only violated, but they also continue to violate California Labor Code § 204, which  
17 requires employers, including many of the Defendants herein, to pay their employees thier full  
18 wages when due.

19 70. On behalf of waiting penalties Subclass of terminated employees, Plaintiff seeks  
20 the penalties to which they are entitled pursuant to Labor Code §203, in the amount of each  
21 members' daily wage multiplied by thirty (30) days, the exact amount of which is to be  
22 determined at trial.

## 23 **XI.**

### 24 **FIFTH CAUSE OF ACTION**

#### 25 **Unfair Business Practices**

26 71. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
27 preceding paragraphs as though fully set forth herein.  
28

72. As described above, Defendant has engaged in unfair business practices in California by utilizing and engaging in an unlawful pattern and practice of failing to properly pay employee compensation.

73. Defendant's use of such practices constitutes an unfair business practice, unfair competition, and provides an unfair advantage over Defendant's competitors. Plaintiff and other similarly situated members of the general public seek full restitution on account of the economic injuries they have suffered along with disgorgement of ill-gotten gains from the Defendant as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendant by means of the unfair business practices complained of herein.

74. Plaintiff seeks on her own behalf and on behalf of the general public, the appointment of a receiver, as necessary, to oversee said restitution, including all wages earned and unpaid, including interest thereon.

75. The acts complained of herein, occurred, at least in part, within the last four (4) years preceding this Complaint for Damages.

76. Further, if Defendant is not enjoined from the unlawful conduct described above, Defendant will continue unabated in their unlawful conduct, which will continue to result in irreparable injury to members of the general public, including, but not limited to all members of the Class who are current employees of the Defendant, and for which there is no adequate remedy at law. Thus, Plaintiff requests that the Court issue a preliminary and permanent injunction prohibiting Defendant from engaging in the foregoing conduct.

77. Plaintiff, on behalf of the general public and members of the Class, seeks full restitution from Defendant, as necessary and according to proof, to restore all monies withheld, acquired and/or converted by Defendant by means of the unfair practices complained of herein.

## XII.

## SIXTH CAUSE OF ACTION

**California Labor Code Private Attorneys General Act,**

**Cal. Labor Code §§ 2698 Et Seq.**

78. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

1           79. Plaintiff on behalf of himself, all aggrieved employees and/or on behalf of the  
2 putative classes herein, as well as the general public of the State of California alleges that  
3 Defendants here have violated the following provisions of the California Labor Code in the  
4 following provisions of the applicable IWC Wage Order in which violations are actionable  
5 through the PAGA, as previously alleged herein: California Labor Code §§ 201, 202, 203, 204,  
6 204a, 204b, 221, 223, 225.5, 510, 558 1194 and 1197 as well as the orders of the Industrial Wage  
7 Commission.

8           80. Each of these violations entitles Plaintiff, as a private attorney general, to recover  
9 the applicable statutory civil penalties on her own behalf, on behalf of all aggrieved employees,  
10 and on behalf of the general public.

11           81. California Labor Code §2699 (a), which is part of PAGA, provides in pertinent  
12 part:

13                   notwithstanding any other provision of law, any provision of this code that  
14 provides for a civil penalty to be assessed and collected by the Labor and Workforce  
15 Development Agency or any of its departments, divisions, commissions, boards, agencies,  
16 or employees, for a violation of this code, may, as an alternative, be recovered through a  
17 civil action brought by an aggrieved employee on behalf of himself or herself and other  
18 current or former employees pursuant to the procedures specified in Section 2699.3.

19                   California Labor Code § 2699 (F), which is part of PAGA, provides in pertinent  
20 part:

21                   for all provisions of this code except for those for which a civil penalty is  
22 specifically provided, there is established a civil penalty for a violation of these  
23 provisions, as follows:...

24                   (2) If, at the time of the alleged violation, the person employs one or more  
25 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee  
26 per pay period for the initial violation and two hundred (\$200) for each for each aggrieved  
27 employee per pay period for each subsequent violation.

28           82. Plaintiff and the Class are entitled to civil penalties, to be paid by Defendants and  
allocated as PAGA requires, pursuant to California Labor Code § 2699(a) for Defendants'

1 violations of the California Labor Code and IWC Wage Orders for which violations a civil  
2 penalty is already specifically provided by law; and Plaintiff is entitled to civil penalties, to be  
3 paid by Defendants and allocated as PAGA requires, pursuant to California Labor Code §2699 for  
4 Defendants' violations of the California Labor Code and IWC Wage Orders for which violations  
5 a civil penalty is not already specifically provided.

6 83. Plaintiff is in the process of exhausting all administrative remedies as required by  
7 California Labor Code 2699.3 and will seek to amend this section to demand actual penalties and  
8 damages as soon as practical.

### 9 XIII.

#### 10 PRAYER FOR RELIEF

11 **WHEREFORE**, Plaintiff prays this Court enter a judgment against Defendant as follows:

12 1. For the First Cause of Action for Failure to Pay Minimum Wages And Overtime

13 Without Subsequent Deduction In Non-Commission Pay Periods:

- 14 a. Damages in the amounts Defendant improperly failed to pay Plaintiff and the  
15 class' as minimum wages and overtime in an amount to be proved at time of  
16 trial,  
17 b. all appropriate penalties, including but not limited to the remedies made  
18 available under, inter alia, California Labor Code §§ 203, 558 and 1194.2,  
19 c. prejudgment interest pursuant to Labor Code §§218.6 and 1194(a), Civil Code  
20 §§ 3287 and §3289, and  
21 d. reasonable attorney's fees pursuant to Labor Code §§ 1194 and 1194.3.

22 2. For the Second Cause of Action for Failure to Pay the Correct Overtime Premium

Rate on Commissions:

- 23 a. Damages in the amounts Defendant improperly failed to pay Plaintiff and the  
24 class' as overtime premiums in an amount to be proved at time of trial,  
25 b. all appropriate penalties, including but not limited to the remedies made  
26 available under, inter alia, California Labor Code §§ 203, 558 and 1194.2,  
27 c. prejudgment interest pursuant to Labor Code §§218.6 and 1194(a), Civil Code  
28 §§ 3287 and §3289, and

- 1 d. reasonable attorney's fees pursuant to Labor Code §§ 1194.
- 2
- 3 3. For the Third Cause of Action for Waiting Time Penalties: penalties to which Plaintiff
- 4 and the class are entitled pursuant to Labor Code §203 against Defendant Employer, in
- 5 the amount of each Waiting Penalty subclass members' daily wage multiplied by
- 6 thirty (30) days, the exact amount of which is to be determined at trial;
- 7 4. For the Fourth Cause of Action for Unfair Business Practices:
- 8 a. For an accounting, under administration of Plaintiff and/or the receiver and
- 9 subject to Court review, to determine the amount to be returned by Defendant,
- 10 and the amounts to be refunded to members of the classes who are owed
- 11 monies by Defendant;
- 12 b. For an Order requiring Defendant to make full restitution and payment
- 13 pursuant to California law;
- 14 c. For an Order for a preliminary and/or permanent injunction prohibiting
- 15 Defendant from engaging in the acts complained of herein;
- 16 d. For all other appropriate injunctive, declaratory and equitable relief;
- 17 e. For interest to the extent permitted by law;
- 18 f. For an award of reasonable attorneys' fees and costs incurred in the
- 19 investigation, filing and prosecution of this action pursuant to CCP §1021.5,
- 20 B&PC §17200, et seq., Labor Code §1194 and/or any other applicable
- 21 provision of law;
- 22 g. Appointment of a receiver, as necessary to oversee the restitution and/or
- 23 disgorgement of profits obtained by Defendants by way of the unfair business
- 24 practices complained of above in the eighth cause of action; and,
- 25 h. For all other relief as the Court may deem proper.
- 26 5. For the Fourth Cause of Action for California Labor Code Private Attorneys General
- 27 Act, Cal. Labor Code §§ 2698 Et Seq.:
- 28 a. That after the exhaustion of all administrative proceedings, the Court allows
- the complaint to be amended and then to declare, adjudge and decree that
- Defendant Employer violated the following California Labor Code sections as

1 to Plaintiff and aggrieved employees: Labor Code §§ 201, 202, 203, 204, 204a,  
2 204b, 212, 221, 222, 223, 226, 450, and 558;

3 b. For civil penalties and unpaid wages pursuant to California Labor Code  
4 sections 2699(a) and/or 2699(f) and (g) and 558, plus costs and attorneys' fees,  
5 for violations of, *inter alia*, California Labor Code §§ 201, 202, 203, 204,  
6 204a, 204b, 212, 221, 222, 223, 225.5, 226, 450; and

7 c. For such other and further relief as the Court may deem equitable and  
8 appropriate.

- 9 6. For the costs incurred in this action, including reasonable attorneys' fees and  
10 expenses, pursuant to Labor Code § 1194, Government Code § 1021.5 as well as any  
11 other code section authorizing attorney fees;  
12 7. An order requiring Defendant to immediately cease their wrongful conduct as set forth  
13 above;  
14 8. For pre-judgment and post-judgment interest at the legal rate;  
15 9. For an order certifying the case as a class action, designating Plaintiff as class  
16 representative and Plaintiff's counsel as Class Counsel; and  
17 10. Such further legal and equitable relief as this Court may deem just and proper.

18 Dated: December 19, 2016

Thierman Buck, LLP

19 By: 

20 Mark R. Thierman  
21 Attorneys for Plaintiff Rose  
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