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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 12 FOR THE COUNTY OF ALAMEDA

13
 14 Coordination Proceeding
 Special Title (Rule 3.550)
 15 **WELLS FARGO WAGE AND HOUR CASES**
 16 *Ramirez et al. v. Wells Fargo Bank, Alameda*
 17 *County, No. RG10496146,*
 18 *Richard v. Wells Fargo Bank, Alameda County,*
No. RG13690969, and
 19 *Hanesoghlyan et al. v. Wells Fargo Bank, Los*
 20 *Angeles County, No. BC470634*

) Case No. JCCP004821
)
) Assigned to Hon. George C. Hernandez, Jr.
) Department 17
) Case Filed: January 28, 2010
) Trial Date: None set
)
) **SECOND CONSOLIDATED AMENDED**
) **CLASS ACTION COMPLAINT**
)
) (1) **FAILURE TO PAY OVERTIME;**
) (2) **FAILURE TO PAY WAGES OWED;**
) (3) **MEAL PERIOD VIOLATIONS;**
) (4) **WAITING TIME PENALTIES;**
) (5) **RECORD-KEEPING VIOLATIONS;**
) (6) **UNLAWFUL BUSINESS**
) **PRACTICES; and**
) (7) **LABOR CODE PRIVATE**
) **ATTORNEY GENERAL ACT**
) **PUBLIC ENFORCEMENT CLAIM**

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1 On behalf of themselves and all others similarly situated, individual and representative
2 Plaintiffs Bernadette Richard, Michael Devito, Yvette Ramirez, Henry Marroquin, Jeremy
3 Uzqueda, Ani Hanesoghlyan, Maria Teresa Arguelles, and Kimia Arya allege against Wells Fargo
4 Bank, N.A. (“Wells Fargo”), and DOES 1-50 (collectively, “Defendants”), as follows:

5 **NATURE OF THE CASE**

6 1. This action is brought on behalf of a proposed class of current and former
7 hourly banking employees who worked for Defendant Wells Fargo in California. The proposed
8 class includes 4 subclasses: Business Specialty Bankers, Personal Bankers, Premier Bankers, and
9 Customer Sales and Service Representatives (“CSSRs”).

10 2. Wells Fargo is a corporation with its principal place of business in San
11 Francisco, California. Defendants provide banking, mortgage, investing, credit card, insurance,
12 and consumer and commercial financial services.

13 3. Plaintiffs allege that Wells Fargo had a policy and practice of requiring its
14 hourly banking employees to work more than 8 hours in a day and more than 40 hours in a week
15 but failed to compensate employees for all hours worked. Plaintiffs’ action is brought under the
16 Industrial Welfare Commission (“IWC”) Wage Orders, California Code of Regulations, California
17 Labor Code, California Unfair Competition Law (“UCL”), and Private Attorneys General Act
18 (“PAGA”). Among other remedies, Plaintiffs seek unpaid overtime wages and interest thereon,
19 compensation for failure to pay for all hours worked, statutory penalties, and reasonable attorneys’
20 fees and costs.

21 **JURISDICTION AND VENUE**

22 4. This Court has jurisdiction over all causes of action asserted herein pursuant
23 to the California Constitution, Article VI, § 10, which grants the Superior Court original
24 jurisdiction in all cases except those given to other trial courts. Plaintiffs seek damages in this case
25 in an amount exceeding the jurisdictional minimum of this Court. The Court also has jurisdiction
26 over certain causes of action pursuant to Business & Professions Code §§ 17203 and 17204, which
27 provide for exclusive jurisdiction for enforcement of this statute in any court of competent
28 jurisdiction.

1 5. Venue in Alameda County is proper under Business & Professions Code §
2 17203 and California Code of Civil Procedure § 395.5 because Defendants’ unlawful conduct
3 occurred in this County, Defendants conduct substantial business in this County, a substantial part
4 of the transactions at issue took place in this County, and Defendants’ liability arose in this County.

5 6. On August 19, 2015, the Chair of the Judicial Council issued an order
6 assigning this coordinated action to Alameda County. On August 25, 2015, the Honorable George
7 C. Hernandez, Jr. was assigned to sit as coordination trial judge.

8 **PARTIES**

9 7. Plaintiffs were employed during the applicable statute of limitations as
10 hourly banking employees by Wells Fargo in California, and have resided in California at all
11 relevant times. As hourly banking employees, Plaintiffs provided customer support, prepared
12 documents, serviced and maintained accounts, acted as authorized signers, balanced cash drawers,
13 balanced the bank’s vault, solicited new accounts, sold Wells Fargo products and services, and
14 processed customer transactions. Plaintiffs’ class includes 4 subclasses of hourly banking
15 employees, defined as follows:

- 16 a. **Personal Bankers**: Plaintiffs Michael Devito, Yvette Ramirez, Ani Hanesoghlyan,
17 and Jeremy Uzqueda are part of the subclass of all hourly banking employees who
18 worked for Wells Fargo in California at any time from August 2008 to the present in the
19 position of Personal Banker or performed the duties of a Personal Banker.
 - 20 i. Plaintiff Michael Devito worked for Wells Fargo as a Personal Banker from
21 approximately 2010 until March 2013 in Rancho Cordova and Fair Oaks,
22 California. He resides in Sacramento, California.
 - 23 ii. Plaintiff Yvette Ramirez worked for Wells Fargo as a Personal Banker from
24 approximately October 2008 until approximately December 2008 in
25 Oakland, California. She resides in Alameda County, California.
 - 26 iii. Plaintiff Ani Hanesoghlyan worked for Wells Fargo as a Personal Banker
27 from approximately August 2008 to March 2011 in Los Angeles, California.
28 She resides in Los Angeles, California.

1 iv. Plaintiff Jeremy Uzqueda worked for Defendant Wells Fargo as a Personal
2 Banker from approximately July 2008 until approximately January 2010 in
3 Los Angeles, California, and resides in Los Angeles County, California.

4 b. **CSSRs**: Plaintiffs Yvette Ramirez, Henry Maroquin, and Bernadette Richard are
5 part of the subclass of all hourly banking employees who worked for Wells Fargo in
6 California at any time from August 2008 to the present in the position of CSSR or
7 performed the duties of a CSSR.

8 i. Plaintiff Yvette Ramirez worked for Defendant Wells Fargo as a CSSR from
9 approximately March 2008 until approximately October 2008 in Oakland,
10 California. She resides in Alameda County, California.

11 ii. Plaintiff Henry Maroquin worked for Defendant Wells Fargo as a CSSR
12 from approximately March 2008 until approximately November 2009 in
13 Rancho Cucamonga, California. He resides in San Bernardino County,
14 California.

15 iii. Plaintiff Bernadette Richard worked for Defendant Wells Fargo as a CSSR
16 from approximately October 2008 until approximately December 2010 in
17 Oakland, Alameda, and Berkeley, California. She resides in Contra Costa
18 County, California.

19 c. **Business Specialty Bankers**: Plaintiff Maria Teresa Arguelles is part of the
20 subclass of all hourly banking employees who worked for Wells Fargo in California at
21 any time from August 2008 to the present in the position of Business Specialty Banker
22 or performed the duties of a Business Specialty Banker. Plaintiff Arguelles worked for
23 Wells Fargo as a Business Specialty Banker from March 2008 to March 2011 in Los
24 Angeles, California, and currently resides in Los Angeles, California.

25 d. **Premier Bankers**: Plaintiff Kimya Aria is part of the subclass of all hourly banking
26 employees who worked for Wells Fargo in California at any time from August 2008 to
27 the present in the position of Premier Banker or performed the duties of a Premier
28 Banker. Plaintiff Aria worked for Wells Fargo as a Premier Banker from May 2010 to

1 March 2011 in Los Angeles, California. She currently resides in Los Angeles,
2 California.

3 8. In addition to a certified class action pursuant to Code of Civil Procedure §
4 382, Plaintiffs are proceeding on behalf of all similarly situated aggrieved employees in a
5 representative action pursuant to the California Private Attorneys General Act, Labor Code § 2698
6 *et seq.* (“PAGA”). Plaintiffs have exhausted all administrative prerequisites to maintaining such a
7 representative action and seek to recover all penalties provided by the PAGA which are due to the
8 Class and the State of California.

9 9. Wells Fargo is a national banking association authorized to do business in
10 the state of California. Wells Fargo is a corporation, with its principal place of business and
11 headquarters in San Francisco, California. On information and belief, the policies and practices that
12 are alleged in this Complaint occurred across multiple Wells Fargo locations in California. Wells
13 Fargo is, and at all relevant times was, an employer subject to California state wage and hour laws.

14 10. The Defendants identified as Does 1 through 50, inclusive, are and were, at
15 all relevant times mentioned in this Complaint, officers, directors, partners, and/or managing agents
16 of some or each of the remaining Defendants. Plaintiffs are informed and believe, and on that basis
17 allege, that at all times herein mentioned, Defendant Wells Fargo and Does 1 through 50, inclusive,
18 employed and/or exercised control over the wages, hours, expense reimbursements, and/or working
19 conditions of the Plaintiffs and Class Members in California.

20 11. Plaintiffs are unaware of the true names and capacities of those defendants
21 sued herein as Does 1-50, inclusive, and therefore sue these defendants by such fictitious names.
22 Plaintiffs will seek leave of court to amend this Complaint when such names are ascertained.
23 Plaintiffs are informed and believe and on that basis allege that each of the fictitiously-named
24 defendants was responsible in some manner for, consented to, ratified, and/or authorized the
25 conduct herein alleged and that the Plaintiffs’ and Class Members’ damages, as herein alleged,
26 were proximately caused thereby.

27 12. Plaintiffs are informed and believe and on that basis allege that at all
28 relevant times herein, each of the defendants was the agent and/or employee of each of the

1 remaining defendants and, in doing the acts herein alleged, was acting within the course and scope
2 of such agency and/or employment.

3 CLASS ACTION ALLEGATIONS

4 13. Plaintiffs bring this action individually and as a class action on behalf of a
5 class of individuals who worked as hourly banking employees for Defendant Wells Fargo in
6 California, with subclasses defined as follows:

7 a. **Personal Bankers**: All persons who, at any time from August 2008 to the present,
8 worked for Wells Fargo in the State of California as a Personal Banker or performed the
9 duties of a Personal Banker.

10 b. **CSSRs**: All persons who, at any time from August 2008 to the present, worked for
11 Wells Fargo in the State of California as a Customer Sales and Service Representative
12 (CSSR) or performed the duties of a CSSR.

13 c. **Business Specialty Bankers**: All persons who, at any time from August 2008 to
14 the present, worked for Wells Fargo in the State of California as a Business Specialty
15 Banker or performed the duties of a Business Specialty Banker.

16 d. **Premier Bankers**: All persons who, at any time from August 2008 to the present,
17 worked for Wells Fargo in the State of California as a Premier Banker or performed the
18 duties of a Premier Banker.

19 14. Plaintiffs reserve their right under Rule 3.765 of the California Rules of
20 Court to amend or modify the Class description with greater specificity or by further division into
21 subclasses or limitation to particular issues.

22 15. This action is brought, and may properly be maintained, as a class action
23 pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of
24 interest in the litigation and the proposed class is easily ascertainable. This action presents
25 questions of common interest and satisfies the numerosity, commonality, typicality, adequacy,
26 predominance, and superiority requirements of this provision.

27 a. **Numerosity**: The Class is so numerous that the individual joinder of all of its
28 members is impracticable. While the exact number and identities of Class Members are

1 unknown to Plaintiffs at this time and can only be ascertained through appropriate
2 discovery, Plaintiffs are informed and believe that the proposed class includes at least
3 500 persons. A class action is the only available method for the fair and efficient
4 adjudication of this controversy.

5 b. **Commonality**: Common questions of fact and law exist as to all members of the
6 class that predominate over any questions affecting only individual Class Members.
7 These common legal and factual questions, which do not vary from Class Member to
8 Class Member and which may be determined without reference to the individual
9 circumstances of any Class Member include, but are not limited to, the following:

- 10 i. Whether Defendants, in violation of Cal. Code Regs., Title 8 § 11040, failed
11 to pay Plaintiffs and Class Members overtime pay for all overtime hours
12 worked;
- 13 ii. Whether Defendants, in violation of Cal. Labor Code § 204, failed to pay
14 Plaintiffs and Class Members wages for all hours worked;
- 15 iii. Whether Defendants, in violation of Cal. Labor Code § 226.7 failed to
16 provide proper meal breaks to Plaintiffs and Class Members as required
17 under IWC Wage Order No. 4-2001(11) and (12);
- 18 iv. Whether Plaintiffs and Class Members are entitled to “waiting time”
19 penalties pursuant to Cal. Labor Code § 203;
- 20 v. Whether Defendants, in violation of Cal. Labor Code §§ 201–203, failed to
21 timely pay Plaintiffs and Class Members all wages due upon termination or
22 resignation;
- 23 vi. Whether Defendants, in violation of Cal. Labor Code §§ 226 and 1174,
24 systematically failed to keep and provide accurate records of all of the hours
25 worked by Plaintiffs and Class Members and their applicable hourly rates;
- 26 vii. Whether members of the class are entitled to restitution under Cal. Bus. &
27 Prof. Code § 17200 *et seq.*; and
- 28 viii. What amounts Plaintiffs and Class Members are entitled to receive in

1 interest on unpaid compensation due and owing to them.

2 c. **Typicality**: Plaintiffs' claims are typical of the claims of the class. Plaintiffs and all
3 Class Members sustained injuries and damages arising out of and caused by
4 Defendants' common course of conduct in violation of law as alleged herein.

5 d. **Adequacy of Representation**: Plaintiffs are adequate representatives of the class in
6 that their claims are typical of the class. Plaintiffs have the same interests in the
7 litigation of this case as the Class Members; they are committed to vigorous prosecution
8 of this case, and have retained competent counsel experienced in class action and wage
9 and hour litigation of this nature. Plaintiffs are not subject to any individual defenses
10 unique from those conceivably applicable to the class as a whole and anticipate no
11 management difficulties in this litigation.

12 e. **Predominance**: Defendants have engaged in a common course of wage and hour
13 abuse toward Plaintiffs and Class Members. The common issues arising from this
14 conduct that affect Plaintiffs and Class Members predominate over any individual
15 issues. Adjudication of these common issues in a single action has important and
16 desirable advantages of judicial economy.

17 f. **Superiority of Class Action**: A class action is superior to other available methods
18 for the fair and efficient adjudication of this controversy because individual litigation of
19 the claims of all Class Members is impracticable. Even if every Class Member could
20 afford individual litigation, the court system could not. It would be unduly burdensome
21 to the courts in which individual litigation of numerous cases would proceed.

22 Individualized litigation would also present the potential for varying, inconsistent, or
23 contradictory judgments and would magnify the delay and expense to all parties and to
24 the court system resulting from multiple trials of the same complex factual issues.
25 Moreover, individual actions by Class Members may establish inconsistent standards of
26 conduct for Defendants. By contrast, the conduct of this action as a class action, with
27 respect to some or all of the issues presented herein, presents fewer management
28 difficulties, conserves the resources of the parties and the court system, and protects the

1 rights of each Class Member.

2 16. Defendants have acted or refused to act in respects generally applicable to
3 the class, thereby making appropriate relief with regard to the members of the class as a whole, as
4 requested herein.

5 **FIRST CAUSE OF ACTION**
6 **(Failure to Pay Overtime)**

7 **(Brought by Personal Bankers (from 8/2008 to the present); CSSRs (from 8/2008 to the
8 present); Business Specialty Bankers (from 9/2008 to the present); and Premier Bankers
9 (from 9/2008 to the present))**

10 17. Plaintiffs, individually and on behalf of themselves and all others similarly
11 situated, refer to and hereby incorporate by reference the preceding paragraphs as though fully set
12 forth herein.

13 18. As alleged above, throughout the Class Period, Plaintiffs and Class Members
14 were required to work more than eight hours per day. Plaintiffs and Class Members regularly
15 worked more than 40 hours per week, including time worked off the clock, and often worked as
16 much as 50 or more hours a week. Defendants, however, regularly did not pay Plaintiffs or Class
17 Members overtime compensation for the hours they worked over eight hours in a day and 40 hours
18 a week.

19 19. At all times herein relevant, California Labor Code § 510 and California
20 Code of Regulations Title 8 § 11040 applied to Plaintiffs' work with Defendants and continue to
21 apply to Class Members' employment with Defendants. California Labor Code § 510 and
22 California Code of Regulations Title 8, § 11040 states that "employers must pay one and a half
23 times an employee's 'regular rate' if he or she works more than 40 hours per week or more than
24 eight hours per day." Cal. Labor Code § 510(a).

25 20. California Code of Regulations Title 8, § 11040(3)(a)(1) provides that
26 "employees shall not be employed more than eight (8) hours in any workday or more than 40 hours
27 in any workweek unless the employee receives one and one-half (1 1/2) times such employee's
28 regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor
constitutes a day's work." Defendants violated California law by requiring employees to enter their

1 shift time of eight scheduled hours, but to continue to work for one to three hours each day, and not
2 paying them overtime wages for these overtime hours worked.

3 21. In addition, outside of their regularly-scheduled shifts, Plaintiffs and
4 proposed Class Members were, among other tasks, (1) assisting new and existing customers with
5 their accounts; (2) balancing transactions and resolving balance disputes; (3) performing closing
6 procedures, including but not limited to, securing cash and customer information, balancing and
7 locking their individual cash drawer, and balancing and locking the bank's vault; (4) attending staff
8 and audit meetings; and (5) working through meal breaks. Employees, therefore, regularly worked
9 more than 8 hours, but Defendants regularly failed to compensate them with premium wages for all
10 of the overtime hours the employees worked.

11 22. As a direct and proximate result of Defendants' unlawful conduct, as set
12 forth herein, Plaintiffs and the Class Members have sustained damages, including loss of earnings
13 from overtime compensation due, in an amount to be established at trial, plus prejudgment interest
14 pursuant to statute.

15 23. While the statute of limitations for Plaintiffs' overtime claims is three years,
16 pursuant to California Business & Professions Code § 17208, the statute of limitations is
17 effectively four years because Plaintiffs have brought claims under the California Unfair
18 Competition Law.

19 **SECOND CAUSE OF ACTION**
20 **(Failure to Pay Wages Owed)**
21 **(Brought by Personal Bankers (from 8/2008 to the present), CSSRs (from 8/2008 to the**
22 **present))**

22 24. Plaintiffs, individually and on behalf of themselves and all employees
23 similarly situated, refer to and hereby incorporate by reference the preceding paragraphs as though
24 fully set forth herein.

25 25. California Labor Code § 204 establishes the fundamental right of all
26 employees in the State of California to be paid wages in a timely fashion for their work.

27 26. Pursuant to IWC Wage Order No. 4, Defendant is required to pay Plaintiffs
28 and other members of the class for all hours worked, meaning the time during which an employee

1 is subject to the control of the employer.

2 27. Defendant's uniform policy and procedure requires its employees to work
3 off the clock without compensation for time spent working for Defendant and/or subject to the
4 control of the Defendant. Plaintiffs seek unpaid wages and penalties therefore.

5 28. Defendant's pattern, practice, and uniform administration of corporate policy
6 regarding illegal employee compensation as described herein is unlawful and creates an
7 entitlement, pursuant to Cal. Labor Code § 218, to recovery by Plaintiffs and other members of the
8 class, in a civil action, for the unpaid balance of the full amount of the straight time compensation
9 owing. Plaintiffs also seek prejudgment interest pursuant to statute.

10 **THIRD CAUSE OF ACTION**
11 **(Failure to Provide Meal Breaks)**
12 **(Brought by Personal Bankers (from 12/2012 to the present))**

13 29. Plaintiffs, individually and on behalf of themselves and all employees
14 similarly situated, refer to and hereby incorporate by reference the preceding paragraphs as though
15 fully set forth herein.

16 30. As alleged above, throughout the Class Period, Plaintiffs and Class Members
17 regularly worked a full day and did not receive proper meal breaks. Instead, Class Members were
18 frequently required and/or encouraged to work through all or part of their lunch period, and/or
19 discouraged from taking their full meal periods. Additionally, Defendants' timekeeping systems,
20 including WebTime, lacked a process to clock in and out for lunch. When Plaintiffs or Class
21 Members attempted to record on WebTime that they worked all of part of their lunch period, their
22 time entry would appear in red. When Plaintiffs and proposed Class Members submitted these
23 entries, management did not approve these records. Defendants informed Plaintiffs and proposed
24 Class Members that Wells Fargo had a policy of not accepting WebTime entries with these error
25 messages.

26 31. At all times relevant herein, California Labor Code § 226.7 and California
27 Code of Regulations Title 8 §§ 11010-11150, 11160 have applied and continue to apply to
28 Plaintiffs' and the Class Members' employment with Defendants. California Labor Code § 226.7

1 states “an employer may not employ an employee for a work period of more than five hours per
2 day without providing the employee with a meal period of not less than 30 minutes.” Lab. C. §
3 226.7(a).

4 32. Defendants failed to provide Plaintiffs and Class Members with adequate
5 meal periods as required by law. Plaintiffs and the Class Members are therefore entitled to
6 payment of additional wages as provided by law.

7 **FOURTH CAUSE OF ACTION**
8 **(Waiting Time Penalties Under California Law)**
9 **(Brought by CSSRs (from 8/2010 to the present); Personal Bankers (from 9/2008 to the**
10 **present), Business Specialty Bankers (from 9/2008 to the present), Premier Bankers (from**
11 **9/2008 to the present))**

12 33. Plaintiffs, individually and on behalf of themselves and all employees
13 similarly situated, refer to and hereby incorporate by reference the preceding paragraphs as though
14 fully set forth herein.

15 34. California Labor Code § 201 requires Defendants to pay their discharged
16 employees all wages due immediately upon discharge.

17 35. California Labor Code § 202 requires that if an employee quits his or her
18 employment, “his or her wages shall become due and payable not later than 72 hours thereafter,
19 unless the employee has given 72 hours’ notice of his or her intention to quit, in which case the
20 employee is entitled to his or her wages at the time of quitting. Notwithstanding any other
21 provision of law, an employee who quits without providing a 72-hour notice shall be entitled to
22 receive payment by mail if he or she so requests and designates a mailing address.”

23 36. California Labor Code § 203 provides that if an employer willfully fails to
24 timely pay any wages that are due to an employee who quits or is discharged, the employer must,
25 as a penalty, continue to pay the employee’s wages until the back wages are paid in full or an
26 action is commenced. The penalty cannot exceed 30 days of wages.

27 37. Plaintiffs and Class Members who have been discharged or who have quit
28 are entitled to all unpaid compensation, pursuant to California Labor Code § 203, but, as alleged
above in the preceding paragraphs, to date have not received such compensation.

1 38. As a consequence of Defendants' willful conduct in not paying
2 compensation for all hours worked, Plaintiffs and many members of the proposed Class are entitled
3 to up to 30 days wages as a penalty under California Labor Code § 203, together with interest
4 thereon.

5 **FIFTH CAUSE OF ACTION**

6 **(Failure to Issue Itemized Wage Statements as Required by California Law)**
7 **(Brought by CSSRs (from 1/2009 to the present), Personal Bankers (from 1/2009 to the**
8 **present), Business Specialty Bankers (from 9/2010 to the present), and Premier Bankers**
9 **(from 9/2010 to the present))**

10 39. Plaintiffs, individually and on behalf of themselves and all employees
11 similarly situated, refer to and hereby incorporate by reference the preceding paragraphs as though
12 fully set forth herein.

13 40. California Labor Code § 226(a) provides that, at the time of each payment of
14 wages, an employer shall provide each employee with a wage statement itemizing, among other
15 things, the total hours worked by the employee in the pay period and the correct amount to be paid
16 for each hour worked.

17 41. California Labor Code § 226(e) provides that an employee suffering injury
18 as a result of a knowing and intentional failure by an employer to comply with Labor Code §
19 226(a) is entitled to recover the greater of his or her actual damages or a penalty of \$50 for the
20 initial pay period in which a violation occurs and \$100 per employee for each violation in a
21 subsequent pay period (up to a maximum of \$4,000), in addition to attorneys' fees and costs.

22 42. Defendants knowingly and intentionally failed to provide timely, accurate,
23 itemized wage statements to Plaintiffs and Class Members in accordance with Labor Code §226.
24 The statements provided to Plaintiffs and Class Members have not accurately reflected actual gross
25 wages earned, and the total hours worked by employees. Plaintiffs and the Class are therefore
26 entitled to the damages and penalties provided for under Labor Code § 226(e).

27 **SIXTH CAUSE OF ACTION**

28 **(Unlawful Business Practices Under California's Unfair Competition Law)**
(Brought by CSSRs (from 8/2008 to the present), Personal Bankers (from 8/2008 to the
present), Business Specialty Bankers (from 8/2008 to the present), Premier Bankers (from

1 **8/2008 to the present))**

2 43. Plaintiffs, individually and on behalf of themselves and all employees
3 similarly situated, refer to and hereby incorporate by reference the preceding paragraphs as though
4 fully set forth herein.

5 44. Plaintiffs further bring this cause of action on behalf of the proposed Class,
6 seeking statutory relief to stop the misconduct of Defendants, as complained herein, and to compel
7 restitution and disgorgement of all profits obtained by Defendants through the unfair and unlawful
8 business practices described herein.

9 45. The conduct of Defendants, as alleged herein, constitutes unlawful practices
10 as set forth in California Business & Professions Code §§ 17200, *et seq.* Specifically, Defendants
11 conduct business activities while failing to comply with California wage and hour laws and the
12 California common and statutory law as described herein—including the failure to pay overtime,
13 pay for all hours worked, and the failure to provide adequate meal breaks.

14 46. Section 17200 of the California Business & Professions Code prohibits
15 unfair competition by prohibiting unlawful, unfair, or fraudulent business practices or acts.

16 47. Defendants' failure to adopt policies in accordance with and/or adhere to
17 these laws, all of which are binding upon and burdensome to Defendants' competitors, engenders
18 an unfair competitive advantage for Defendants, thereby constituting an unfair business practice, as
19 set forth in California Business & Professions Code §§ 17200, *et seq.*

20 48. Defendants' conduct as herein alleged has damaged Plaintiffs and members
21 of the proposed Class by wrongfully denying them earned wages, overtime pay, and meal breaks
22 and therefore was substantially injurious to Plaintiffs and the Class.

23 49. Under the circumstances alleged, it would be inequitable and result in a
24 miscarriage of justice for Defendants to continue to retain the property of Plaintiffs and the
25 members of the Class, entitling Plaintiffs and the proposed Class to restitution of the unfair benefits
26 obtained and disgorgement of Defendants' ill-gotten gains.

27
28

1 50. As a result of Defendants’ unlawful and unfair business practices, Plaintiffs
2 and members of the proposed Class are entitled to and seek restitution and disgorgement, and other
3 appropriate relief available under Cal. Bus. & Prof. Code §§ 17200 *et. seq.*

4 **SEVENTH CAUSE OF ACTION**
5 **(Recovery Under Private Attorneys General Act (PAGA))**
6 **(Brought by Personal Bankers (from 10/2010 to the present), Business Specialty Bankers**
7 **(from 10/2010 to the present), Premier Bankers (from 10/2010 to the present))**

8 51. Plaintiffs, individually and on behalf of themselves and all employees
9 similarly situated, refer to and hereby incorporate by reference the preceding paragraphs as though
10 fully set forth herein.

11 52. Plaintiffs, as aggrieved employees, bring this claim under California Labor
12 Code §§2698-2699 on behalf of themselves and all current and former hourly banking employees
13 employed by Defendants at any time for which recovery is authorized under Labor Code §§2698-
14 2699 *et seq.* Pursuant to Labor Code §2699.3, Plaintiffs sent notice by certified mail to the Labor
15 and Workforce Development Agency of the specific provisions of the Labor Code that Defendants
16 violated, including the facts and theories to support the violations. Plaintiffs thus have complied
17 with the Private Attorneys General Act notice requirement.

18 53. As above alleged, Defendants have violated the provisions of the California
19 Labor Code, including by failing to pay overtime pay, failing to pay wages owed in a timely
20 manner, failing to provide properly itemized pay statements and failing to keep accurate payroll
21 records. Representative Plaintiffs on behalf of themselves and all other hourly banking employees
22 employed by Defendants at any time for which recovery is authorized under Labor Code §§2698-
23 2699 seek recovery of unpaid wages resulting from these violations.

24 54. Pursuant to Labor Code §2699, Representative Plaintiffs also seek recovery
25 of all penalties for Defendants’ above-described violations of the California Labor Code and
26 Industrial Welfare Commission Wage Orders, except insofar as recovered under a preceding cause
27 of action and except insofar as constituting civil penalties only made recoverable by virtue of
28 enactment of the Private Attorneys General Act. Such penalties for which Representative Plaintiffs

1 now seek recovery include, but are not limited to, those set forth in California Labor Code §§201-
2 203 (failure to pay wages due in timely manner to terminated or quitting employees), and § 226
3 (failure to provide proper pay statements).

4 55. Representative Plaintiffs request an award of attorneys' fees and costs,
5 including as authorized under Labor Code §2699.

6 **RELIEF SOUGHT**

7 **WHEREFORE**, Plaintiffs, on behalf of themselves and the proposed Class, pray for judgment and
8 the following specific relief against Defendants, jointly and separately, as follows:

9 A. That the Court determine that this action may be maintained as a class action
10 under California Code of Civil Procedure §382;

11 B. That Defendants are found to have violated the provisions of the California
12 Labor Code § 510, as to the Plaintiff and the Class by failing to pay Plaintiffs and the Class for
13 overtime hours worked;

14 C. That Defendant violated California Labor Code § 204 and IWC Wage Order
15 No. 4 by failing to pay Plaintiffs and Class Members for all hours worked;

16 D. That Defendants are found to have violated the record-keeping provisions of
17 California Labor Code §§ 1174(d) and 226 as to Plaintiffs and the Class Members;

18 E. That Defendants are found to have violated California Labor Code § 226.7
19 by not authorizing and providing adequate meal breaks to Plaintiffs and the Class;

20 F. That Defendants are found to have violated California's Business and
21 Professions Code § 17200 as to Plaintiffs and the Class by failing to pay Plaintiffs and members of
22 the California Class for all hours worked and failing to keep timely, accurate, itemized records of
23 all hours worked and failing to provide and authorize adequate meal breaks to Plaintiffs and the
24 Class;

25 G. That Plaintiffs and the Class be awarded damages for the amount of unpaid
26 compensation, including interest thereon, liquidated damages, and penalties subject to proof at
27 trial;

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H. That Plaintiffs and the Class be awarded reasonable attorneys' fees and costs pursuant to California Labor Code §§ 226, and 1194, California Code of Civil Procedure § 1021.5, and/or other applicable law; and

I. That Defendants be ordered and enjoined to pay restitution to Plaintiffs and the Class due to Defendants' unlawful activities, pursuant to California's Business and Professions Code §§ 17200-05;

J. An award of such other and further relief as this Court may deem appropriate.

1
2 Dated: December 18, 2015

THE MARKHAM LAW FIRM

3
4 By: Peggy Reali / RHS
David R. Markham
Peggy J. Reali
Attorneys for Plaintiffs Yvette Ramirez, Henry
5 Marroquin, and Jeremy Uzqueda
6

7
8 Dated: December 18, 2015

RUKIN HYLAND DORIA & TINDALL LLP

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10 By: Rebecca Stephens
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Attorneys for Plaintiffs Bernadette Richard and
11 Michael Devito
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14 Dated: December 18, 2015

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17 Teresa Arguelles, and Kimia Arya
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DEMAND FOR JURY TRIAL

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Plaintiffs demand a jury trial on issues triable to a jury.

Dated: December 18, 2015

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