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9 CLEARPATH FEDERAL CREDIT UNION

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF LOS ANGELES**

12 ANA RIVERA, SUSAN MOGHAVEM,  
13 individuals, and on behalf of all others similarly  
14 situated,

15 Plaintiffs,

16 vs.

17 CLEARPATH FEDERAL CREDIT UNION; and  
18 DOES 1 to 10, inclusive.

19 Defendants.

Case No.: 19STCV33504  
[Unlimited Jurisdiction]

[Assigned to: Hon. Amy D. Hogue, Dept. 7]

**ANSWER AND AFFIRMATIVE  
DEFENSES OF DEFENDANT  
CLEARPATH FEDERAL CREDIT UNION  
TO FIRST AMENDED COMPLAINT;  
DEMAND FOR JURY**

Filing Date: 9/20/19

20 Defendant CLEARPATH FEDERAL CREDIT UNION (hereinafter "Defendant") hereby  
21 answers the unverified Complaint of Plaintiffs ANA RIVERA and SUSAN MOGHAVEM,  
22 individually and on behalf of all others similarly situated (hereinafter collectively "Plaintiffs"), as  
23 follows:

24 **GENERAL DENIAL**

25 Pursuant to California *Code of Civil of Procedure* section 431.30, subdivision (d),  
26 Defendant generally denies each and every allegation and cause of action in Plaintiffs' unverified  
27 Complaint. In addition, Defendant denies that Plaintiffs, and any other aggrieved employees, the  
28 existence of which Defendant denies, have sustained, or will sustain, any loss or damage in the  
manner or amount alleged, or otherwise, by reason of any act or omission, or any other conduct or

1 absence thereof on the part of Defendant.

2 **AFFIRMATIVE DEFENSES**

3 **FIRST AFFIRMATIVE DEFENSE**

4 **(Failure to State Cause of Action)**

5 The Complaint and the causes of action therein fail to state facts sufficient to constitute  
6 a cause of action against Defendant.

7  
8 **SECOND AFFIRMATIVE DEFENSE**

9 **(Uncertain Complaint)**

10 The Complaint and the causes of action therein are not pled with sufficient particularity to  
11 provide notice to Defendant of the claims, rendering the Complaint uncertain.

12  
13 **THIRD AFFIRMATIVE DEFENSE**

14 **(Justified Conduct)**

15 The conduct of Defendant with respect to the matters alleged in the Complaint was justified,  
16 and, by reason of the foregoing, Plaintiffs are barred from any recovery against Defendant.

17  
18 **FOURTH AFFIRMATIVE DEFENSE**

19 **(Estoppel)**

20 Plaintiffs are estopped from obtaining the relief sought, or pursuing any of the claims raised or  
21 causes of actions contained in the Complaint by virtue of their acts, failures to act, conduct,  
22 representations, admissions and the like.

23  
24 **FIFTH AFFIRMATIVE DEFENSE**

25 **(Waiver)**

26 Plaintiffs waived their rights to the claims, causes of action and relief sought in the Complaint  
27 against Defendant by virtue of their acts, failures to act, conduct, representations, admissions,  
28 modification of agreement and the like. To the extent Plaintiffs claim that they were unlawfully denied

1 the right to rest periods, such claim is barred because Plaintiffs voluntarily relinquished or waived their  
2 respective right to such rest periods.

3  
4 **SIXTH AFFIRMATIVE DEFENSE**

5 **(Complete Performance)**

6 Defendant appropriately, completely and fully performed and discharged any and all obligations  
7 and legal duties arising out of the matters alleged in the Complaint.

8  
9 **SEVENTH AFFIRMATIVE DEFENSE**

10 **(Unclean Hands)**

11 Plaintiffs are barred from any recovery or equitable relief based on the doctrine of unclean  
12 hands.

13  
14 **EIGHTH AFFIRMATIVE DEFENSE**

15 **(Failure to Mitigate)**

16 If Plaintiffs suffered any loss it was directly or proximately caused by and is the result of  
17 Plaintiffs' and/or others' conduct and failure to mitigate any such loss.

18  
19 **NINTH AFFIRMATIVE DEFENSE**

20 **(Accord and Satisfaction)**

21 Plaintiffs' claims are barred to the extent Plaintiffs and Defendant reached an accord and  
22 satisfaction.

23  
24 **TENTH AFFIRMATIVE DEFENSE**

25 **(Performance Excused)**

26 Defendant was excused from performing any duties alleged by Plaintiffs by reason of the failure  
27 of consideration, waiver, breach of condition precedent, impossibility of performance, prevention,  
28 frustration of purpose and/or acceptance by Plaintiffs.

1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 **(Duties Performed)**

3 Prior to the commencement of this action, Defendant duly performed, satisfied, and discharged  
4 all duties and obligations he and it may have owed arising out of any and all agreements,  
5 representations, or contracts by or on behalf of Defendant, and therefore, this action is barred by the  
6 provisions of *Civil Code* section 1473.

7  
8 **TWELFTH AFFIRMATIVE DEFENSE**

9 **(Speculative and Unrecoverable Damages)**

10 That damages alleged by Plaintiffs, if any, are speculative as a matter of law and such damages  
11 are not properly recoverable against Defendant.

12  
13 **THIRTEENTH AFFIRMATIVE DEFENSE**

14 **(Prior Breach of Contract)**

15 Defendant is excused from performing any contractual duties alleged by Plaintiffs because of  
16 Plaintiffs' prior breach of contract.

17  
18 **FOURTEENTH AFFIRMATIVE DEFENSE**

19 **(Unjust Enrichment)**

20 Plaintiffs will be unjustly enriched if allowed to recover any sum from Defendant.

21  
22 **FIFTEENTH AFFIRMATIVE DEFENSE**

23 **(No Damages)**

24 Plaintiffs have not suffered any damages, including alleged damages as a result of Defendant's  
25 conduct. In addition, although Defendant maintains that Plaintiffs cannot establish any claim for  
26 restitution or other damages, should Defendant be found liable for any amount of restitution or  
27 damages, Defendant maintains that such amounts are barred legally, or subject to an equitable offset,  
28 due to damages suffered by Defendant which were caused by wrongful conduct of Plaintiffs. (*Service*

1 *Employees Internat. Union, Local 250 v. Colcord* (2008) 160 Cal.App.4th 362.)

2  
3 **SIXTEENTH AFFIRMATIVE DEFENSE**

4 **(Good Faith Conduct)**

5 Defendant acted in good faith and/or with reasonable grounds at all times with respect to the  
6 allegations set forth in the Complaint.

7  
8 **SEVENTEENTH AFFIRMATIVE DEFENSE**

9 **(Failure to Notify)**

10 Plaintiffs failed to provide timely notice within a reasonable period of time after discovery of  
11 the alleged damages. As a result, Defendant has been damaged and prejudiced, and, the Complaint and  
12 each cause of action therein, is barred as a matter of law.

13  
14 **EIGHTEENTH AFFIRMATIVE DEFENSE**

15 **(Statutes of Limitations)**

16 The Complaint, and each and every cause of action alleged therein, is barred by the applicable  
17 statutes of limitations, including but not limited to, *Code of Civil Procedure* sections 335 through  
18 349.4, Labor Code section 203, and California Business and Professions Code section 17208.

19  
20 **NINETEENTH AFFIRMATIVE DEFENSE**

21 **(Contribution/ Apportionment/Fault of Others/Indemnity)**

22 At all times and places set forth in the Complaint, parties other than Defendant failed to  
23 exercise ordinary care and/or to comply with contractual obligations, which was thereby the proximate  
24 cause of some or all of the damages complained of in this action, if any. Therefore, the fault of  
25 Defendant, if any, should be compared with the fault of the other parties, and damages, if any, should  
26 be apportioned among the other parties and responsible non-parties, including Plaintiffs, in direct  
27 relation to each party's comparative fault in accordance with the principals of equitable indemnity and  
28 comparative contribution.

1 **TWENTIETH AFFIRMATIVE DEFENSE**

2 **(Set Off)**

3 In accordance with *Code of Civil Procedure* section 431.70, Defendant is entitled to a set off in  
4 a sum to be established representing sums due and owing by reason of Plaintiffs' conduct as against  
5 any and all of Plaintiffs' alleged damages or losses, if any.

6  
7 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

8 **(Indemnification)**

9 If Plaintiffs recover damages from Defendant, Defendant is entitled to indemnification, either in  
10 whole or in part, by and from all persons and entities whose conduct proximately contributed to  
11 Plaintiffs' alleged damages, if any.

12  
13 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

14 **(Fraud)**

15 Plaintiffs made certain representations, warranties and promises, which were either false and/or  
16 misleading, and which therefore bar any of the alleged claims and request for relief set forth in the  
17 Complaint.

18  
19 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

20 **(Consent)**

21 Plaintiffs are barred from prosecuting the purported causes of action set forth in the Complaint  
22 because Plaintiffs, and/or the persons and/or entities acting on its behalf, consented to and acquiesced  
23 in the conduct alleged.

24  
25 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

26 **(Assumption of Risk)**

27 Plaintiffs knew, or in the exercise of ordinary care, should have known, the risks and hazards  
28 involved in the transaction, but nevertheless, and with full knowledge of these things, did fully and

1 voluntarily consent and assume the risks and hazards involved.

2  
3 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

4 **(Superseding or Intervening Cause)**

5 If in fact Plaintiffs were damaged in any manner whatsoever, such damage, if any, was a  
6 direct and proximate result of the intervening and superseding acts on the part of other parties, and  
7 not Defendant, and such intervening and superseding acts of such other parties, bar or diminish  
8 Plaintiffs' recovery, if any, against Defendant.

9  
10 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

11 **(Conduct Not a Substantial Factor)**

12 The conduct alleged in the Complaint against Defendant was not a substantial factor in  
13 Plaintiffs' alleged damages and, therefore, any such alleged misconduct was not a contributing cause  
14 of any alleged damages allegedly suffered by Plaintiffs.

15  
16 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

17 **(No Duty)**

18 Defendant did not owe any duty to Plaintiffs in connection with the claims alleged in the  
19 Complaint, and therefore such claims are barred.

20  
21 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

22 **(Injunctive Relief Sought is Improper)**

23 To the extent the Complaints calls for injunctive relief, the Complaint fails to allege any facts  
24 or legal justification for injunctive relief.

25  
26 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

27 **(Business Practices Not Unfair)**

28 Defendant's business acts or practices were not unlawful, unfair or fraudulent nor was there

1 any unfair, deceptive, untrue or misleading advertising within the meaning of California *Business and*  
2 *Professions Code* section 17200 et seq.

3  
4 **THIRTIETH AFFIRMATIVE DEFENSE**

5 **(Business Practices Not Ongoing)**

6 The cause of action for Unfair Business Practices is barred in that Defendant's alleged  
7 conduct did not occur, discontinued, ceased and is unlikely to recur within the meaning of California  
8 *Business and Professions Code* section 17200 et seq.

9  
10 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

11 **(Prevention of Performance)**

12 Plaintiffs are barred from prosecuting the purported causes of action alleged in the  
13 Complaint and/or Defendant is excused from performing any contractual duties by reason of  
14 Plaintiffs' conduct that prevented Defendant from performing any agreements, representations, or  
15 contracts under which Plaintiffs seek recovery or relief.

16  
17 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

18 **(Damages Caused by Acts or Omissions Beyond Defendant's Control)**

19 The damages sustained by Plaintiffs, if any, were proximately caused by the acts, omissions,  
20 negligence, fraud, and/or breach of obligations by persons other than Defendant and beyond  
21 Defendant's supervision and control.

22  
23 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

24 **(Proximate Cause - Other Persons)**

25 The damages alleged to have been suffered by Plaintiffs in the Complaint were proximately  
26 caused or contributed to by acts or failures to act of persons other than Defendant, which acts or  
27 failures to act constitute an intervening and superseding cause of the damages alleged in the  
28 Complaint.



1 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

2 **(Damages and Remedies Not Recoverable)**

3 Plaintiffs seek damages and remedies that are not properly recoverable in this action or  
4 against Defendant.

5  
6 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

7 **(Laches)**

8 The Complaint, and each cause of action and claim asserted therein, is barred in whole or in  
9 part by the doctrine of laches.

10  
11 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

12 **(Lack of Standing)**

13 Plaintiffs lack standing to assert each claim and cause of action set forth in the Complaint,  
14 including against Defendant. Plaintiffs lack standing under the California Private Attorneys General  
15 Act of 2004, *Labor Code* section 2698 *et seq.*, and any other applicable law or statute.

16  
17 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

18 **(Standard of Care)**

19 At all times relevant hereto, and in the exercise of duties owed, if any, Defendant acted with  
20 due care, in good faith, in a commercially reasonable manner and consistent with the usual standard  
21 of care at the time and location where their conduct occurred, to the extent it did, in connection with  
22 the allegations in the Complaint.

23  
24 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

25 **(Lack of Actual Controversy)**

26 The Complaint fails to allege an actual controversy for which a judicial declaration or  
27 determination is warranted nor is a judicial declaration or determination necessary or proper under  
28 the facts and circumstances alleges in the Complaint.

1 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

2 **(Improper Remedies and Relief)**

3 The remedies and relief sought by Plaintiffs are improper, deficient, unavailable and not  
4 warranted under the facts and circumstances alleges in the Complaint.

5  
6 **FORTIETH AFFIRMATIVE DEFENSE**

7 **(Exempt from Overtime Pay)**

8 Plaintiffs were not entitled to payment of overtime premiums to the extent they were exempt  
9 from overtime requirements pursuant to, but not limited to, the California Labor Code, the provisions  
10 of the California Industrial Commission Wages Order, and any and all California overtime laws.

11  
12 **FORTY-FIRST AFFIRMATIVE DEFENSE**

13 **(Wages Paid)**

14 Plaintiffs have been paid and/or received all wages and reimbursements due to them for their  
15 services.

16  
17 **FORTY-SECOND AFFIRMATIVE DEFENSE**

18 **(Reimbursements Paid)**

19 Plaintiffs have received reimbursement for all necessary and/or reasonable job-related  
20 expenses.

21  
22 **FORTY-THIRD AFFIRMATIVE DEFENSE**

23 **(No Penalties)**

24 Plaintiffs are not entitled to general or other penalties under California *Labor Code* section  
25 203 or any other applicable law. Plaintiffs were paid all wages owed at the end of services and such  
26 payment was timely, and regardless, any alleged failure to pay all wages allegedly due to end of  
27 service was not willful and/or there existed a good faith dispute as to the amount of compensation  
28 owed, if any, at the end of the services.

1 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

2 **(Not Intentional and No Injury)**

3 Defendant's conduct was not a knowing or intentional failure under California *Labor Code*  
4 section 226(e) or any other applicable law, and Plaintiffs did not suffer any injury.

5  
6 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

7 **(Improper Plaintiff)**

8 The penalties claimed under California *Labor Code* section 226 may only be imposed in a  
9 proceeding brought by the California Labor Commissioner.

10  
11 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

12 **(Statement Provided or No Injury)**

13 Plaintiffs were provided with proper itemized statements of wages and deductions and, to the  
14 extent that they were not, Plaintiffs were not injured as a result.

15  
16 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

17 **(No Permission for Representative Action)**

18 Plaintiffs cannot obtain relief for others for violation of California *Business and Professions*  
19 Code section 17200 because California law does not permit representative actions where liability can  
20 only be determined through fact-intensive individualized assessments of alleged wage and hour  
21 violations.

22  
23 **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

24 **(Inadequate Class)**

25 Plaintiffs lack standing to represent the proposed class and do not adequately represent the  
26 class members.

27 ///

28 ///

1 **FORTY-NINTH AFFIRMATIVE DEFENSE**

2 **(Improper or Insufficient Class Pleadings)**

3 This action cannot be properly maintained as a class or representative action because 1)  
4 Plaintiffs failed to plead, and cannot establish, the necessary procedural elements for class or  
5 representative treatment, 2) a class or representative action is not an appropriate method for the fair  
6 and efficient adjudication of the claims alleged in the Complaint, 3) common issues of factor do not  
7 predominate and to the contrary individual issues predominate, 4) Plaintiffs' claims are not  
8 representative or typical of the claims of the class, 5) Plaintiffs are not proper class or other  
9 representatives, 6) class counsel are not adequate representatives for the alleged class, 7) Plaintiffs  
10 cannot satisfy any of the requirements for class or representative action treatment and class action  
11 treatment is neither appropriate nor constitutional, 8) there is not a well-defined community of  
12 interest in the questions of law or fact affecting Plaintiffs and the members of the class, and/or 9) the  
13 alleged class is not ascertainable or have identifiable members.

14  
15 **FIFTIETH AFFIRMATIVE DEFENSE**

16 **(Reservation of Defenses Against Class Members)**

17 Defendant opposes class or representative certification and disputes the propriety of class or  
18 representative treatment. If the Court certifies a class or a representative action in this case over  
19 Defendant's objections, then Defendant asserts the affirmative defenses set forth herein again against  
20 each and every member of the certified class.

21  
22 **FIFTY-FIRST AFFIRMATIVE DEFENSE**

23 **(Violation of Right to Jury)**

24 Adjudication of the claims of the class or representatives through generalized class or  
25 representative wide proof violates Defendant's right to trial by jury guaranteed by the U.S. and  
26 California Constitutions.

1 **FIFTY-SECOND AFFIRMATIVE DEFENSE**

2 **(Violation of Due Process)**

3 Certification of the class or representative nature of this matter, as applied to the facts and  
4 circumstances of this case, would constitute a denial of Defendant’s due process rights, both  
5 substantive and procedural, in violation of the 14<sup>th</sup> Amendment of the U.S. and California  
6 Constitutions.

7  
8 **FIFTY-THIRD AFFIRMATIVE DEFENSE**

9 **(No Right to Attorneys’ Fees)**

10 The Complaint fails to properly state a claim for attorneys’ fees under California *Code of*  
11 *Civil Procedure* section 1021.5, California *Labor Code* section 218.5 and 1194, California *Business*  
12 *and Professions Code* section 17200, or any other basis.

13  
14 **FIFTY-FOURTH AFFIRMATIVE DEFENSE**

15 **(Setoff and Recoupment)**

16 Defendant is entitled to the equitable doctrine of setoff and recoupment to offset all extra  
17 payments or overpayments and/or obligations of Plaintiffs for any judgment entered against her.

18  
19 **FIFTY-FIFTH AFFIRMATIVE DEFENSE**

20 **(No Authority to Act)**

21 To the extent the Complaint mentions the actions of employees, such actions were committed  
22 outside the course and scope of employment, were not authorized, adopted or ratified, and/or  
23 Defendants did not know nor should have known of such conduct.

24  
25 **FIFTY-FIFTH AFFIRMATIVE DEFENSE**

26 **(Unconstitutional Laws)**

27 The causes of action are barred because the applicable wage orders of the Industrial Welfare  
28 Commission are unconstitutionally vague and ambiguous and violate Defendant’s rights under the

1 U.S. and California Constitutions.

2  
3 **FIFTY-SIXTH AFFIRMATIVE DEFENSE**

4 **(Representative Action Not Manageable)**

5 Plaintiffs' representative action under the Private Attorneys General Act is not manageable  
6 because it would require the testimony of each of the persons on whose behalf civil penalties and  
7 other relief is sought in order for there to be recovery of penalties and other relief on any such  
8 persons' behalf.

9  
10 **FIFTY-SEVENTH AFFIRMATIVE DEFENSE**

11 **(Representative Action Not Manageable)**

12 Plaintiffs' claims, if any, against Defendant under California *Labor Code* sections 2698-2699  
13 and the Private Attorneys General Act of 2004, are barred because Plaintiffs, and the individuals they  
14 seek to represent, are not "aggrieved employees" as defined by California *Labor Code* section 2699.

15  
16 **FIFTY-EIGHTH AFFIRMATIVE DEFENSE**

17 **(Equitable Reduction)**

18 Any penalties available to Plaintiffs under the Private Attorneys General Act are subject to  
19 equitable reduction pursuant to California *Labor Code* section 2699(e)(2), on the grounds that  
20 awarding the maximum available penalty would be unjust, arbitrary and oppressive, and confiscatory.

21  
22 **FIFTY-NINTH AFFIRMATIVE DEFENSE**

23 **(No Knowledge)**

24 Any recovery on Plaintiffs Complaint, or any cause of action therein, is barred on the ground  
25 that, to the extent they did not receive compensation for hours worked, such work was unauthorized  
26 by Defendant and performed without Defendant's knowledge.

1 **SIXTIETH AFFIRMATIVE DEFENSE**

2 **(Accurate Statements)**

3 Assuming Plaintiffs and the similarly aggrieved employees were employed by Defendant,  
4 Defendant maintained and provided Plaintiff with accurate statements and records for wages, meal  
5 period, rest periods, etc., in compliance with California Industrial Welfare Commissions Wage Orders  
6 and the California *Labor Code*.

7 **SIXTY-FIRST AFFIRMATIVE DEFENSE**

8 **(No or De Minimus Violation)**

9 To the extent Plaintiffs claim that they were unlawfully denied the right to meal periods, this  
10 claim is barred because Plaintiffs were "provided" off-duty meal periods of at least thirty (30)  
11 minutes duration at the appropriate times as required by Section 11 of the applicable Industrial  
12 Welfare Commission Wage Order, *Labor Code* section 512, and any other applicable law, and any  
13 interruption during said meal periods (which Defendant does not concede) was "*de minimus*," as  
14 permitted by law.

15 **SIXTY-SECOND AFFIRMATIVE DEFENSE**

16 **(Authority for Breaks)**

17 Plaintiff were, at all relevant times, "authorized and permitted" to take rest periods pursuant to  
18 Section 12 of the applicable Industrial Welfare Commission Wage Order.  
19

20 **SIXTY-THIRD AFFIRMATIVE DEFENSE**

21 **(Failure to Exhaust)**

22 Plaintiffs failed to exhaust his internal and administrative remedies, including but not limited  
23 to such exhaustion of remedies which is required as a condition precedent to maintenance of this  
24 action under the *Labor Code* section 2699.3, which failure bars his recovery, if any, against  
25 Defendant.  
26  
27  
28

1 **SIXTY-FOURTH AFFIRMATIVE DEFENSE**

2 **(Receipt of Minimum Wage)**

3 Plaintiff were compensated at a rate at or above the applicable minimum wage at all  
4 times.

5 **SIXTY-FIFTH AFFIRMATIVE DEFENSE**

6 **(Exemption)**

7 Plaintiffs' claims are barred, in whole or in part, because the work they performed falls  
8 within one or more of the exemptions provided by the Federal Fair Labor Standards Act, the  
9 California Labor Code and the California Industrial Welfare Commission's Wage Orders,  
10 including but not limited to IWC Wage Order 7-2001.

11 **SIXTY-SIXTH AFFIRMATIVE DEFENSE**

12 **(After-Acquired Evidence)**

13 Plaintiffs' claims are barred, in whole or in part, or the Plaintiffs' claims must be  
14 reduced or denied, under the doctrine of after-acquired evidence.

15 **SIXTY-SEVENTH AFFIRMATIVE DEFENSE**

16 **(PAGA Claims Not Suitable for Class Action)**

17 Plaintiffs' claims for penalties under the Private Attorneys General Act, Labor Code  
18 §2698 et. seq. ("PAGA") cannot be determined on a class or community-wide basis.

19 **SIXTY-EIGHTH AFFIRMATIVE DEFENSE**

20 **(Limitation of Civil Penalties)**

21 Plaintiffs' claims for penalties under PAGA must be limited to those penalties  
22 applicable to an initial violation and according to recent case law.

23 **SIXTY-NINTH AFFIRMATIVE DEFENSE**

24 **(Non-Certifiable Class or Representative Action)**

25 Plaintiffs' claims do not state facts to certify a class or representative action and  
26 therefore have not been properly brought as a class action.

27

28



1 **SEVENTIETH AFFIRMATIVE DEFENSE**

2 **(Claims Not Representative of Class)**

3 Plaintiffs' claims are not representative of the claims of the members of the putative  
4 class or group of alleged claimants, and therefore this action is not properly maintained  
5 as a representative or class action.

6 **SEVENTY-FIRST AFFIRMATIVE DEFENSE**

7 **(Claims Not Numerous)**

8 The putative class or representative group is not so numerous that joinder of all members  
9 is impracticable; therefore, Plaintiffs cannot meet the prerequisites to a class or representative  
10 action.

11 **SEVENTY-SECOND AFFIRMATIVE DEFENSE**

12 **(No Common Questions of Law or Fact)**

13 There are not questions of law or fact common to the putative class or  
14 representative group; rather, individualized questions of law and fact predominate over  
15 any semblance of common question. In addition, the proof peculiar to Plaintiffs' claims  
16 and the defenses thereto will vary widely.

17 **SEVENTY-THIRD AFFIRMATIVE DEFENSE**

18 **(Claims Not Typical)**

19 The claims of Plaintiffs and Defendant's defenses thereto are not typical of the  
20 putative claims or related defenses of the putative class or group as a whole.

21 **SEVENTY-FOURTH AFFIRMATIVE DEFENSE**

22 **(Representative Action Not Practical)**

23 This case is not properly maintained as a class or representative action because the  
24 prosecution of separate actions by individual members of the putative class or group  
25 would not create a risk of inconsistent or varying adjudications or adjudications that as a  
26 practical matter would be dispositive of the interests of other members not parties to the  
27 action.

28

1 **SEVENTY-FIFTH AFFIRMATIVE DEFENSE**

2 **(Representative Action or Class Not Manageable)**

3 This case is not properly maintained as a class or representative action because of the  
4 difficulties likely to be encountered in the management of such an action.

5  
6 **SEVENTY-SIXTH AFFIRMATIVE DEFENSE**

7 **(No Questions of Common or General Interest)**

8 This action does not raise questions of a common or general interest; therefore, this case  
9 may not be properly maintained as a class or representative action.

10  
11 **SEVENTY-SEVENTH AFFIRMATIVE DEFENSE**

12 **(Additional Affirmative Defenses)**

13 Defendant reserves the right to amend this Answer to include any applicable defense that may  
14 become available or apparent during the course of discovery proceedings or further investigation.

15  
16 **PRAYER**

17 WHEREFORE, Defendant prays for judgment from this Court as follows:

- 18 1. Judgment be entered in favor of Defendant and against Plaintiffs;
- 19 2. Plaintiffs take nothing by this action;
- 20 3. The First Amended Complaint be dismissed in its entirety with prejudice;
- 21 4. Defendant be awarded attorneys' fees and costs of suit herein to the extent permitted
- 22 under applicable law; and
- 23 5. For such other or further relief as the Court deems just and proper.

24 DATED: February 7, 2020

By: /s/ Keven Steinberg  
Keven Steinberg, Esq.  
Attorneys Defendant,  
CLEARPATH FEDERAL CREDIT  
UNION

**DEMAND FOR JURY**

Defendant hereby demands a jury on all causes of actions and claims permitted therefore.

DATED: February 7, 2020

By: /s/ Keven Steinberg  
Keven Steinberg, Esq.  
Attorneys Defendant,  
CLEARPATH FEDERAL CREDIT  
UNION

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 13412 Ventura Boulevard, Suite 380, Sherman Oaks, California 91423.

On the execution date below and in the manner stated herein, I served the following document: **ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT CLEARPATH FEDERAL CREDIT UNION TO FIRST AMENDED COMPLAINT; REQUEST FOR JURY** on all interested parties in this action by placing  the original or  a true copy of the original thereof enclosed in sealed envelopes addressed as follows:

Kane Moon Allen Feghali MOON & YANG, APC 1055 West Seventh Street, Suite 1880 Los Angeles, California 90017	Attorneys for Plaintiffs Ana Rivera and Susan Moghavem
---	---

(BY MAIL) I deposited such envelope(s) with postage thereon fully prepaid in the United States mail at a facility regularly maintained by the United States Postal Service at Los Angeles, California. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing, pursuant to this affidavit.

(BY PERSONAL SERVICE) I caused the documents listed above to be personally served on the person(s) at the address(es) set forth above by placing them in an envelope or package addressed to the persons and provided them to a professional messenger service for service.

(BY OVERNIGHT COURIER) I caused the document(s) listed above to be delivered in a sealed envelope with shipping prepaid, and depositing in a collection box for next day delivery via FEDERAL EXPRESS to the person(s) at the address(es) set forth below.

(BY FACSIMILE) I caused the transmission of the foregoing document by facsimile to the offices of the addressee(s), and such transmission was reported as complete and without error.

(BY ELECTRONIC SERVICE) Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the notification addresses listed above.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 7, 2020, at Los Angeles, California.

/s/ Keven Steinberg  
Keven Steinberg