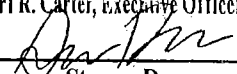


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Superior Court of California
County of Los Angeles

DEC 31 2019

Sherri R. Carter, Executive Officer/Clerk of Court
By , Deputy
Steven Drew

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**

BY FAX

14 ANA RIVERA, SUSAN MOGHAVEM,
15 individually, and on behalf of all others similarly
16 situated,

17 Plaintiff,

18 vs.

19 CLEARPATH FEDERAL CREDIT UNION; and
20 DOES 1 through 10, inclusive,

21 Defendants

Case No.: 19STCV33504

[Hon. Amy D. Hogue, Dept. SS-7]

**FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION
COMPLAINT:**

1. Failure to Pay Minimum and Regular Rate Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197];
2. Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198];
3. Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512];
4. Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7];
5. Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203];
6. Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226];
7. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]; And
8. Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.].

DEMAND FOR JURY TRIAL

TABLE OF CONTENTS

1

2 INTRODUCTION & PRELIMINARY STATEMENT..... 1

3 THE PARTIES 3

4 A. Plaintiff..... 3

5 B. Defendants 3

6 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION 4

7 CLASS ACTION ALLEGATIONS 8

8 FIRST CAUSE OF ACTION..... 12

9 SECOND CAUSE OF ACTION..... 13

10 THIRD CAUSE OF ACTION 14

11 FOURTH CAUSE OF ACTION..... 15

12 FIFTH CAUSE OF ACTION..... 16

13 SIXTH CAUSE OF ACTION..... 17

14 SEVENTH CAUSE OF ACTION..... 18

15 EIGHTH CAUSE OF ACTION 21

16 PRAYER FOR RELIEF..... 23

17 DEMAND FOR JURY TRIAL..... 27

18

19

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21

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1 Plaintiffs Ana Rivera and Susan Moghavam (“Plaintiffs”), based upon facts that either
2 have evidentiary support or are likely to have evidentiary support after a reasonable opportunity
3 for further investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiffs bring this action against Defendants Clearpath Federal Credit Union, and
6 Does 1 through 10 (Clearpath Federal Credit Union, and Does 1 through 10 are collectively
7 referred to as “Defendants”) for California Labor Code violations and unfair business practices
8 stemming from Defendants’ failure to pay minimum and regular rate wages, failure to pay
9 overtime wages, failure to provide meal periods, failure to authorize and permit rest periods,
10 failure to maintain accurate records of hours worked and meal periods, failure to timely pay all
11 wages to terminated employees, and failure to furnish accurate wage statements.

12 2. Plaintiffs bring the First through Seventh Causes of Action individually and as a
13 class action on behalf of herself and certain current and former employees of Defendants
14 (hereinafter collectively referred to as the “Class” or “Class Members” and defined more fully
15 below). The Class consists of Plaintiffs and all other persons who have been employed by any
16 Defendant in California and classified as a non-exempt employee during the statute of limitations
17 period applicable to the claims pleaded here.

18 3. Plaintiffs bring the Eighth Cause of Action as a representative action under the
19 California Private Attorney General Act (“PAGA”) to recover civil penalties that are owed to
20 Plaintiffs, the State of California, and past and present hourly-paid, non-exempt employees of
21 Defendants who worked in California at any time since September 20, 2018 (hereinafter referred
22 to as the “Aggrieved Employees”).

23 4. Defendants own/owned and operate/operated an industry, business, and
24 establishment within the State of California, including Los Angeles County. As such, and based
25 upon all the facts and circumstances incident to Defendants’ business in California, Defendants
26 are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare
27 Commission (“IWC”), and the California Business & Professions Code.

1 5. Despite these requirements, throughout the statutory period Defendants
2 maintained a systematic, company-wide policy and practice of:

- 3 (a) Failing to pay employees for all hours worked, including all minimum
4 wages, and overtime wages, in compliance with the California Labor Code
5 and IWC Wage Orders;
- 6 (b) Failing to maintain accurate records of the hours employees worked;
- 7 (c) Failing to provide employees with timely and duty-free meal periods in
8 compliance with the California Labor Code and IWC Wage Orders, failing
9 to maintain accurate records of all meal periods taken or missed, and
10 failing to pay an additional hour's pay for each workday a meal period
11 violation occurred;
- 12 (d) Failing to authorize and permit employees to take timely and duty-free rest
13 periods in compliance with the California Labor Code and IWC Wage
14 Orders, and failing to pay an additional hour's pay for each workday a rest
15 period violation occurred;
- 16 (e) Willfully failing to pay employees all minimum wages, overtime wages,
17 meal period premium wages, and rest period premium wages due within
18 the time period specified by California law when employment terminates;
19 and
- 20 (f) Failing to provide employees with accurate, itemized wage statements
21 containing all the information required by the California Labor Code and
22 IWC Wage Orders.

23 6. On information and belief, Defendants, and each of them were on actual and
24 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
25 unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
26 willful and deliberate.

27 7. At all relevant times, Defendants were and are legally responsible for all of the
28 unlawful conduct, policies, practices, acts and omissions as described in each and all of the

1 foregoing paragraphs as the employer of Plaintiffs, the Class, and Aggrieved Employees.
2 Further, Defendants are responsible for each of the unlawful acts or omissions complained of
3 herein under the doctrine of “respondeat superior”.

4 **THE PARTIES**

5 **A. Plaintiff**

6 8. Plaintiff Ana Rivera is a California resident who worked for Defendants in Los
7 Angeles County, California as a financial service representative from approximately April 2018
8 to August 2019.

9 9. Plaintiff Susan Moghavem is a California resident who worked for Defendants in
10 Los Angeles County, California as a loan specialist from approximately March 2014 to August
11 2018.

12 10. Plaintiffs reserve the right to seek leave to amend this complaint to add new
13 plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
14 *American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

15 **B. Defendants**

16 11. Plaintiffs are informed and believe, and based upon that information and belief
17 alleges, that Defendant Clearpath Federal Credit Union is, and at all times herein mentioned,
18 was:

- 19 (a) A federal credit union with its principal place of business in the state of
20 California, county of Los Angeles.
- 21 (b) The former employer of Plaintiffs, and the current and/or former employer
22 of the putative Class. Clearpath Federal Credit Union suffered and
23 permitted Plaintiffs, the Class, and Aggrieved Employees to work, and/or
24 controlled their wages, hours, or working conditions.

25 12. Plaintiffs does not know the true names or capacities of the persons or entities
26 sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names.
27 Each of the Doe Defendants was in some manner legally responsible for the damages suffered by
28 Plaintiffs, the Class, and Aggrieved Employees as alleged herein. Plaintiffs will amend this

1 complaint to set forth the true names and capacities of these Defendants when they have been
2 ascertained, together with appropriate charging allegations, as may be necessary.

3 13. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
4 each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
5 and/or injured a significant number of the Plaintiffs, the Class, and Aggrieved Employees in the
6 State of California.

7 14. Plaintiffs are informed and believe and thereon allege that at all relevant times
8 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiffs
9 and the other employees described in the class definitions below, and exercised control over their
10 wages, hours, and working conditions. Plaintiffs are informed and believe and thereon allege
11 that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer,
12 director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest
13 and/or predecessor in interest of some or all of the other Defendants, and was engaged with some
14 or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to
15 some or all of the other Defendants so as to be liable for their conduct with respect to the matters
16 alleged below. Plaintiffs are informed and believe and thereon allege that each Defendant acted
17 pursuant to and within the scope of the relationships alleged above, that each Defendant knew or
18 should have known about, and authorized, ratified, adopted, approved, controlled, aided and
19 abetted the conduct of all other Defendants.

20 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

21 15. Plaintiff Ana Rivera worked for Defendants in Los Angeles County, California as
22 a financial service representative from approximately April 2018 to August 2019. Plaintiff Susan
23 Moghavam worked for Defendants in Los Angeles County, California as a loan specialist from
24 approximately March 2014 to August 2018. At all times Defendants classified Plaintiffs as non-
25 exempt from California's overtime requirements. During the statutory time period, Plaintiffs
26 were typically scheduled to work 5 days in a workweek, and typically more than 8 hours in a
27 single workday.

1 16. Throughout the statutory period, Defendants failed to pay Plaintiffs for all hours
2 worked (including minimum wages and overtime compensation), failed to provide Plaintiffs with
3 uninterrupted meal periods, failed to authorize and permit Plaintiffs to take uninterrupted rest
4 periods, failed to maintain accurate records of the hours Plaintiffs worked, failed to timely pay all
5 final wages to Plaintiffs when Defendants terminated Plaintiffs' employment, and failed to
6 furnish accurate wage statements to Plaintiffs. As discussed below, Plaintiffs' experience
7 working for Defendants was typical and illustrative.

8 17. Throughout the statutory period, Defendants maintained a policy and practice of
9 failing to pay Plaintiffs, the Class, and Aggrieved Employees for all hours worked, including
10 overtime. Defendants regularly used a system of time rounding in a manner that resulted, over a
11 period of time, in failing to compensate Plaintiffs, the Class, and Aggrieved Employees properly
12 for all the time they actually worked, even though the realities of Defendants' operations are such
13 that it is possible, practical, and feasible to count and pay for work time to the minute.
14 Accordingly, Defendants frequently paid Plaintiffs, the Class, and Aggrieved Employees less
15 than all their work time. Some of this unpaid work also should have been paid at the overtime
16 rate. In maintaining a practice of time rounding, Defendants failed to maintain accurate records
17 of the hours Plaintiffs, the Class, and Aggrieved Employees worked.

18 18. In addition, Plaintiffs, the Class, and Aggrieved Employees earned non-
19 discretionary bonuses. Defendants, however, failed to include these non-discretionary bonuses
20 earned by Plaintiffs, the Class, and Aggrieved Employees for calculating the regular rate of pay
21 for purposes of paying overtime.

22 19. Throughout the statutory period, Defendants have wrongfully failed to provide
23 Plaintiffs, the Class, and Aggrieved Employees with legally compliant meal periods. Defendants
24 regularly, but not always, required Plaintiffs, the Class, and Aggrieved Employees to work in
25 excess of five consecutive hours a day without providing a 30-minute, continuous and
26 uninterrupted, duty-free meal period for every five hours of work, or without compensating
27 Plaintiffs, the Class, and Aggrieved Employees for meal periods that were not provided by the
28 end of the fifth hour of work or tenth hour of work. Defendants did not adequately inform

1 Plaintiffs, the Class, and Aggrieved Employees of their right to take a meal period by the end of
2 the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work.
3 Moreover, Defendants did not have adequate written policies or practices providing meal periods
4 for Plaintiffs, the Class, and Aggrieved Employees, nor did Defendants have adequate policies or
5 practices regarding the timing of meal periods. Defendants also did not have adequate policies or
6 practices to document and verify whether Plaintiffs, the Class, and Aggrieved Employees were
7 taking their required meal periods. Accordingly, Defendants' policy and practice was to not
8 provide meal periods to Plaintiffs, the Class, and Aggrieved Employees in compliance with
9 California law.

10 20. Throughout the statutory period, Defendants have wrongfully failed to authorize
11 and permit Plaintiffs, the Class, and Aggrieved Employees to take timely and duty-free rest
12 periods. Defendants regularly, but not always, required Plaintiffs, the Class, and Aggrieved
13 Employees to work in excess of four consecutive hours a day without Defendants authorizing and
14 permitting them to take a 10-minute, continuous and uninterrupted, rest period for every four
15 hours of work (or major fraction of four hours), or without compensating Plaintiffs, the Class,
16 and Aggrieved Employees for rest periods that were not authorized or permitted. Accordingly,
17 Defendants' policy and practice was to not authorize and permit Plaintiffs, the Class, and
18 Aggrieved Employees to take rest periods in compliance with California law.

19 21. Throughout the statutory period, Defendants willfully failed and refused to timely
20 pay Plaintiffs, the Class, and Aggrieved Employees at the conclusion of their employment all
21 wages, including overtime wages, meal period premium wages, and rest period premium wages.

22 22. Throughout the statutory period, Defendants failed to furnish Plaintiffs, the Class,
23 and Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly
24 rates, and all gross and net wages earned (including correct hours worked, correct wages earned
25 for hours worked, correct overtime hours worked, correct wages for meal periods that were not
26 provided in accordance with California law, and correct wages for rest periods that were not
27 authorized and permitted to take in accordance with California law). As a result of these
28

1 violations of California Labor Code § 226(a), Plaintiffs, the Class, and Aggrieved Employees
2 suffered injury because, among other things:

- 3 (a) the violations led them to believe that they were not entitled to be paid
4 minimum wages, overtime wages, meal period premium wages, and rest
5 period premium wages to which they were entitled, even though they were
6 entitled;
- 7 (b) the violations led them to believe that they had been paid the minimum,
8 overtime, meal period premium, and rest period premium wages to which
9 they were entitled, even though they had not been;
- 10 (c) the violations led them to believe they were not entitled to be paid
11 minimum, overtime, meal period premium, and rest period premium wages
12 at the correct California rate even though they were;
- 13 (d) the violations led them to believe they had been paid minimum, overtime,
14 meal period premium, and rest period premium wages at the correct
15 California rate even though they had not been;
- 16 (e) the violations hindered them from determining the amounts of minimum,
17 overtime, meal period premium, and rest period premium owed to them;
- 18 (f) in connection with their employment before and during this action, and in
19 connection with prosecuting this action, the violations caused them to have
20 to perform mathematical computations to determine the amounts of wages
21 owed to them, computations they would not have to make if the wage
22 statements contained the required accurate information;
- 23 (g) by understating the wages truly due them, the violations caused them to
24 lose entitlement and/or accrual of the full amount of Social Security,
25 disability, unemployment, and other governmental benefits;
- 26 (h) the wage statements inaccurately understated the wages, hours, and wage
27 rates to which Plaintiffs, the Class, and Aggrieved Employees were
28

1 entitled, and Plaintiffs, the Class, and Aggrieved Employees were paid less
2 than the wages and wage rates to which they were entitled.

3 Thus, Plaintiffs, the Class, and Aggrieved Employees are owed the amounts provided for in
4 California Labor Code § 226(e).

5 **CLASS ACTION ALLEGATIONS**

6 23. Plaintiffs bring certain claims individually, as well as on behalf of each and all
7 other persons similarly situated, and thus, seeks class certification under California Code of Civil
8 Procedure § 382.

9 24. All claims alleged herein arise under California law for which Plaintiffs seeks
10 relief authorized by California law.

11 25. The proposed Class consists of and is defined as:

12 All persons who worked for any Defendants in California as an hourly-paid,
13 non-exempt employee at any time during the period beginning four years before
14 the filing of the initial complaint in this action and ending when notice to the
Class is sent.

15 26. At all material times, Plaintiffs were members of the Class.

16 27. Plaintiffs undertake this concerted activity to improve the wages and working
17 conditions of all Class Members.

18 28. There is a well-defined community of interest in the litigation and the Class is
19 readily ascertainable:

20 (a) Numerosity: The members of the Class (and each subclass, if any) are so
21 numerous that joinder of all members would be unfeasible and impractical.
22 The membership of the entire Class is unknown to Plaintiffs at this time,
23 however, the Class is estimated to be greater than 100 individuals and the
24 identity of such membership is readily ascertainable by inspection of
25 Defendants' records.

26 (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately
27 protect the interests of each Class Member with whom there is a shared,
28 well-defined community of interest, and Plaintiffs' claims (or defenses, if

1 any) are typical of all Class Members' claims as demonstrated herein.

2 (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately
3 protect the interests of each Class Member with whom there is a shared,
4 well-defined community of interest and typicality of claims, as
5 demonstrated herein. Plaintiffs have no conflicts with or interests
6 antagonistic to any Class Member. Plaintiffs' attorneys, the proposed class
7 counsel, are versed in the rules governing class action discovery,
8 certification, and settlement. Plaintiffs have incurred, and throughout the
9 duration of this action, will continue to incur costs and attorneys' fees that
10 have been, are, and will be necessarily expended for the prosecution of this
11 action for the substantial benefit of each class member.

12 (d) Superiority: A Class Action is superior to other available methods for the
13 fair and efficient adjudication of the controversy, including consideration
14 of:

- 15 1) The interests of the members of the Class in individually
- 16 controlling the prosecution or defense of separate actions;
- 17 2) The extent and nature of any litigation concerning the controversy
- 18 already commenced by or against members of the Class;
- 19 3) The desirability or undesirability of concentrating the litigation of
- 20 the claims in the particular forum; and
- 21 4) The difficulties likely to be encountered in the management of a
- 22 class action.

23 (e) Public Policy Considerations: The public policy of the State of California
24 is to resolve the California Labor Code claims of many employees through
25 a class action. Indeed, current employees are often afraid to assert their
26 rights out of fear of direct or indirect retaliation. Former employees are
27 also fearful of bringing actions because they believe their former
28 employers might damage their future endeavors through negative

1 references and/or other means. Class actions provide the class members
2 who are not named in the complaint with a type of anonymity that allows
3 for the vindication of their rights at the same time as their privacy is
4 protected.

5 29. There are common questions of law and fact as to the Class (and each subclass, if
6 any) that predominate over questions affecting only individual members, including without
7 limitation, whether, as alleged herein, Defendants have:

- 8 (a) Failed to pay Class Members for all hours worked, including minimum
9 wages, and overtime wages;
- 10 (b) Failed to provide meal periods and pay meal period premium wages to
11 Class Members;
- 12 (c) Failed to authorize and permit rest periods and pay rest period premium
13 wages to Class Members;
- 14 (d) Failed to promptly pay all wages due to Class Members upon their
15 discharge or resignation;
- 16 (e) Failed to provide Class Members with accurate wages statements;
- 17 (f) Failed to maintain accurate records of all hours Class Members worked,
18 and all meal periods Class Members took or missed; and
- 19 (g) Violated California Business & Professions Code §§ 17200 *et. seq.* as a
20 result of their illegal conduct as described above.

21 30. This Court should permit this action to be maintained as a class action pursuant to
22 California Code of Civil Procedure § 382 because:

- 23 (a) The questions of law and fact common to the Class predominate over any
24 question affecting only individual members;
- 25 (b) A class action is superior to any other available method for the fair and
26 efficient adjudication of the claims of the members of the Class;
- 27 (c) The members of the Class are so numerous that it is impractical to bring all
28 members of the class before the Court;

- 1 (d) Plaintiffs, and the other members of the Class, will not be able to obtain
2 effective and economic legal redress unless the action is maintained as a
3 class action;
- 4 (e) There is a community of interest in obtaining appropriate legal and
5 equitable relief for the statutory violations, and in obtaining adequate
6 compensation for the damages and injuries for which Defendants are
7 responsible in an amount sufficient to adequately compensate the members
8 of the Class for the injuries sustained;
- 9 (f) Without class certification, the prosecution of separate actions by
10 individual members of the class would create a risk of:
- 11 1) Inconsistent or varying adjudications with respect to individual
12 members of the Class which would establish incompatible standards
13 of conduct for Defendants; and/or
- 14 2) Adjudications with respect to the individual members which would,
15 as a practical matter, be dispositive of the interests of other
16 members not parties to the adjudications, or would substantially
17 impair or impede their ability to protect their interests, including but
18 not limited to the potential for exhausting the funds available from
19 those parties who are, or may be, responsible Defendants; and,
- 20 (g) Defendants have acted or refused to act on grounds generally applicable to
21 the Class, thereby making final injunctive relief appropriate with respect to
22 the class as a whole.

23 31. Plaintiffs contemplate the eventual issuance of notice to the proposed members of
24 the Class that would set forth the subject and nature of the instant action. The Defendants' own
25 business records may be utilized for assistance in the preparation and issuance of the
26 contemplated notices. To the extent that any further notices may be required, Plaintiffs would
27 contemplate the use of additional techniques and forms commonly used in class actions, such as
28 published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by

1 other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

2 **FIRST CAUSE OF ACTION**

3 **(Against all Defendants for Failure to Pay Minimum Wages for All Hours Worked)**

4 32. Plaintiffs incorporate by reference and re-alleges as if fully stated herein
5 paragraphs 1 through 22 in this Complaint.

6 33. “Hours worked” is the time during which an employee is subject to the control of
7 an employer, and includes all the time the employee is suffered or permitted to work, whether or
8 not required to do so.

9 34. At all relevant times herein mentioned, Defendants knowingly failed to pay to
10 Plaintiffs and the Class compensation for all hours they worked. By their failure to pay
11 compensation for each hour worked as alleged above, Defendants willfully violated the
12 provisions of Section 1194 of the California Labor Code, and any additional applicable Wage
13 Orders, which require such compensation to non-exempt employees.

14 35. Accordingly, Plaintiffs and the Class are entitled to recover minimum wages for
15 all non-overtime hours worked for Defendants.

16 36. By and through the conduct described above, Plaintiffs and the Class have been
17 deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

18 37. By virtue of the Defendants’ unlawful failure to pay additional compensation to
19 Plaintiffs and the Class for their non-overtime hours worked without pay, Plaintiffs and the Class
20 suffered, and will continue to suffer, damages in amounts which are presently unknown to
21 Plaintiffs and the Class, but which exceed the jurisdictional minimum of this Court, and which
22 will be ascertained according to proof at trial.

23 38. By failing to keep adequate time records required by California Labor Code §
24 1174(d), Defendants have made it difficult to calculate the full extent of minimum wage
25 compensation due Plaintiffs and the Class.

26 39. Pursuant to California Labor Code section 1194.2, Plaintiffs and the Class are
27 entitled to recover liquidated damages (double damages) for Defendants’ failure to pay minimum
28 wages.

1 compensation to the Plaintiffs and the Class for their overtime hours worked, Plaintiffs and the
2 Class have suffered, and will continue to suffer, damages in amounts which are presently
3 unknown to them but which exceed the jurisdictional minimum of this Court and which will be
4 ascertained according to proof at trial.

5 48. By failing to keep adequate time records required by Labor Code § 1174(d),
6 Defendants have made it difficult to calculate the full extent of overtime compensation due to
7 Plaintiffs and the Class.

8 49. Plaintiffs and the Class also request recovery of overtime compensation according
9 to proof, interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well
10 as the assessment of any statutory penalties against Defendants, in a sum as provided by the
11 California Labor Code and/or other statutes.

12 50. California Labor Code § 204 requires employers to provide employees with all
13 wages due and payable twice a month. The Wage Orders also provide that every employer shall
14 pay to each employee, on the established payday for the period involved, overtime wages for all
15 overtime hours worked in the payroll period. Defendants failed to provide Plaintiffs and the
16 Class with all compensation due, in violation of California Labor Code § 204.

17 **THIRD CAUSE OF ACTION**

18 **(Against All Defendants for Failure to Provide Meal Periods)**

19 51. Plaintiffs incorporate by reference and re-alleges as if fully stated herein
20 paragraphs 1 through 22 in this Complaint.

21 52. Under California law, Defendants have an affirmative obligation to relieve the
22 Plaintiffs and the Class of all duty in order to take their first daily meal periods no later than the
23 start of Plaintiffs and the Class' sixth hour of work in a workday, and to take their second meal
24 periods no later than the start of the eleventh hour of work in the workday. Section 512 of the
25 California Labor Code, and Section 11 of the applicable Wage Orders require that an employer
26 provide unpaid meal periods of at least 30 minutes for each five-hour period worked. It is a
27 violation of Section 226.7 of the California Labor Code for an employer to require any employee
28 to work during any meal period mandated under any Wage Order.

1 Code §§ 17200, *et seq.*

2 78. A violation of California Business & Professions Code §§ 17200, *et seq.* may be
3 predicated on the violation of any state or federal law. All of the acts described herein as
4 violations of, among other things, the California Labor Code, are unlawful and in violation of
5 public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous,
6 and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of
7 California Business & Professions Code §§ 17200, *et seq.*

8 **Failure to Pay Minimum Wages**

9 79. Defendants' failure to pay minimum wages, and other benefits in violation of the
10 California Labor Code constitutes unlawful and/or unfair activity prohibited by California
11 Business & Professions Code §§ 17200, *et seq.*

12 **Failure to Pay Overtime Wages**

13 80. Defendants' failure to pay overtime compensation and other benefits in violation
14 of California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity
15 prohibited by California Business & Professions Code §§ 17200, *et seq.*

16 **Failure to Maintain Accurate Records of All Hours Worked**

17 81. Defendants' failure to maintain accurate records of all hours worked in accordance
18 with California Labor Code § 1174.5 and the IWC Wage Orders constitutes unlawful and/or
19 unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

20 **Failure to Provide Meal Periods**

21 82. Defendants' failure to provide meal periods in accordance with California Labor
22 Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or
23 unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

24 **Failure to Maintain Accurate Records of Meal Periods**

25 83. Defendants' failure to maintain accurate records of employee meal periods in
26 accordance with California Labor Code § 226.7 and the IWC Wage Orders, as alleged above,
27 constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code
28 §§ 17200, *et seq.*

1 **Failure to Authorize and Permit Rest Periods**

2 84. Defendants' failure to authorize and permit rest periods in accordance with
3 California Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful
4 and/or unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

5 **Failure to Provide Accurate Itemized Wage Statements**

6 85. Defendants' failure to provide accurate itemized wage statements in accordance
7 with California Labor Code § 226, as alleged above, constitutes unlawful and/or unfair activity
8 prohibited by California Business & Professions Code §§ 17200, *et seq.*

9 86. By and through their unfair, unlawful and/or fraudulent business practices
10 described herein, the Defendants, have obtained valuable property, money and services from
11 Plaintiffs, and all persons similarly situated, and have deprived Plaintiffs, and all persons
12 similarly situated, of valuable rights and benefits guaranteed by law, all to their detriment.

13 87. Plaintiffs and the Class Members suffered monetary injury as a direct result of
14 Defendants' wrongful conduct.

15 88. Plaintiffs, individually, and on behalf of members of the putative Class, are
16 entitled to, and do, seek such relief as may be necessary to disgorge money and/or property
17 which the Defendants have wrongfully acquired, or of which Plaintiffs and the Class have been
18 deprived, by means of the above-described unfair, unlawful and/or fraudulent business practices.
19 Plaintiffs and the Class are not obligated to establish individual knowledge of the wrongful
20 practices of Defendants in order to recover restitution.

21 89. Plaintiffs, individually, and on behalf of members of the putative class, are further
22 entitled to and do seek a declaration that the above described business practices are unfair,
23 unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them,
24 from engaging in any of the above-described unfair, unlawful and/or fraudulent business
25 practices in the future.

26 90. Plaintiffs, individually, and on behalf of members of the putative class, have no
27 plain, speedy, and/or adequate remedy at law to redress the injuries which the Class Members
28 suffered as a consequence of the Defendants' unfair, unlawful and/or fraudulent business

1 practices. As a result of the unfair, unlawful and/or fraudulent business practices described
2 above, Plaintiffs, individually, and on behalf of members of the putative Class, suffered and will
3 continue to suffer irreparable harm unless the Defendants, and each of them, are restrained from
4 continuing to engage in said unfair, unlawful and/or fraudulent business practices.

5 91. Plaintiffs also allege that if Defendants are not enjoined from the conduct set forth
6 herein above, they will continue to avoid paying the appropriate taxes, insurance and other
7 withholdings.

8 92. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiffs
9 and putative Class Members are entitled to restitution of the wages withheld and retained by
10 Defendants during a period that commences four years prior to the filing of this complaint; a
11 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and
12 Class Members; an award of attorneys' fees pursuant to California Code of Civil Procedure §
13 1021.5 and other applicable laws; and an award of costs.

14 **EIGHTH CAUSE OF ACTION**

15 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of** 16 **2004, Cal. Lab. Code § 2698 et seq.)**

17 93. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs
18 1 through 22 in this Complaint.

19 94. At all times herein mentioned, Defendants were subject to the Labor Code of the
20 State of California and the applicable Industrial Welfare Commission Orders.

21 95. California Labor Code § 2699(a) specifically provides for a private right of action
22 to recover penalties for violations of the Labor Code: "Notwithstanding any other provision of
23 law, any provision of this code that provides for a civil penalty to be assessed and collected by
24 the Labor and Workforce Development Agency or any of its departments, divisions,
25 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
26 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
27 herself and other current or former employees pursuant to the procedures specified in Section
28 2699.3."

1 96. Plaintiffs have exhausted their administrative remedies pursuant to California
2 Labor Code § 2699.3. On September 18, 2019, they gave written notice by online filing to the
3 Labor and Workforce Development Agency and by certified mail to Defendants of the specific
4 provisions of the Labor Code that Defendants have violated against Plaintiffs and current and
5 former aggrieved employees, including the facts and theories to support the violations. Plaintiffs
6 also paid the filing fee. Plaintiffs' PAGA case numbers are LWDA-CM- 74665-19 (Rivera) and
7 LWDA-CM-746437-19 (Moghavem).

8 97. More than 65 days has elapsed since Plaintiffs provided notice, but the Labor and
9 Workforce Development Agency has not indicated that it intends to investigate Defendants'
10 Labor Code violations discussed in the notice. Accordingly, Plaintiffs may commence a civil
11 action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of
12 the Labor Code described in this Complaint. These penalties include, but are not limited to,
13 penalties under California Labor Code §§ 210, 226.3, 558, 1197.1, and 2699(f)(2).

14 98. In addition, Plaintiffs seek penalties for Defendants' violation of California Labor
15 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
16 employing labor who willfully fails to maintain accurate and complete records required by
17 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
18 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee
19 begins and ends each work period. Meal periods, and total hours worked daily shall also be
20 recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall
21 keep total hours worked in the payroll period and applicable rates of pay.

22 99. During the time period of employment for Plaintiffs and the Aggrieved
23 Employees, Defendants failed to maintain records pursuant to the Labor Code and IWC Orders
24 by failing to maintain accurate records showing meal periods, and accurate records showing
25 when employees begin and end each work period. Defendants' failure to provide and maintain
26 records required by the Labor Code IWC Wage Orders deprived Plaintiffs and the Aggrieved
27 Employees the ability to know, understand and question the accuracy and frequency of meal
28 periods, and the accuracy of their hours worked stated in Defendants' records. Therefore,

1 Plaintiffs and the Aggrieved Employees had no way to dispute the resulting failure to pay wages,
2 all of which resulted in an unjustified economic enrichment to Defendants. As a direct result,
3 Plaintiffs and the Aggrieved Employees have suffered and continue to suffer, substantial losses
4 related to the use and enjoyment of such wages, lost interest on such wages and expenses and
5 attorney's fees in seeking to compel Defendants to fully perform their obligations under state
6 law, all to their respective damage in amounts according to proof at trial. Because of
7 Defendants' knowing failure to comply with the Labor Code and applicable IWC Wage Orders,
8 Plaintiffs and the Aggrieved Employees have also suffered an injury in that they were prevented
9 from knowing, understanding, and disputing the wage payments paid to them.

10 100. Based on the conduct described in this Complaint, Plaintiff is entitled to an award
11 of civil penalties on behalf of themselves, the State of California, and similarly Aggrieved
12 Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount
13 to be shown according to proof at trial. These penalties are in addition to all other remedies
14 permitted by law.

15 101. In addition, Plaintiffs seek an award of reasonable attorney's fees and costs
16 pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in
17 any action shall be entitled to an award of reasonable attorney's fees and costs."

18 **PRAYER FOR RELIEF**

19 Plaintiffs, individually, and on behalf of all others similarly situated only with respect to
20 the class claims, pray for relief and judgment against Defendants, jointly and severally, as
21 follows:

22 **Class Certification**

- 23 1. That this action be certified as a class action with respect to the First, Second,
24 Third, Fourth, Fifth, Sixth, and Eighth Causes of Action;
- 25 2. That Plaintiffs be appointed as the representative of the Class; and
- 26 3. That counsel for Plaintiffs be appointed as Class Counsel.

27 **As to the First Cause of Action**

- 28 4. That the Court declare, adjudge and decree that Defendants violated California Labor

1 Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all minimum
2 wages due;

3 5. For general unpaid wages as may be appropriate;

4 6. For pre-judgment interest on any unpaid compensation commencing from the date
5 such amounts were due;

6 7. For liquidated damages;

7 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
8 California Labor Code § 1194(a); and,

9 9. For such other and further relief as the Court may deem equitable and appropriate.

10 As to the Second Cause of Action

11 10. That the Court declare, adjudge and decree that Defendants violated California Labor
12 Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime
13 wages due;

14 11. For general unpaid wages at overtime wage rates as may be appropriate;

15 12. For pre-judgment interest on any unpaid overtime compensation commencing from
16 the date such amounts were due;

17 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
18 California Labor Code § 1194(a); and,

19 14. For such other and further relief as the Court may deem equitable and appropriate.

20 As to the Third Cause of Action

21 15. That the Court declare, adjudge and decree that Defendants violated California Labor
22 Code §§ 226.7 and 512, and the IWC Wage Orders;

23 16. For unpaid meal period premium wages as may be appropriate;

24 17. For pre-judgment interest on any unpaid compensation commencing from the date
25 such amounts were due;

26 18. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and
27 for costs of suit incurred herein; and

28 19. For such other and further relief as the Court may deem equitable and appropriate.

1 As to the Fourth Cause of Action

2 20. That the Court declare, adjudge and decree that Defendants violated California Labor
3 Code §§ 226.7 and 512, and the IWC Wage Orders;

4 21. For unpaid rest period premium wages as may be appropriate;

5 22. For pre-judgment interest on any unpaid compensation commencing from the date
6 such amounts were due;

7 23. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and
8 for costs of suit incurred herein; and

9 24. For such other and further relief as the Court may deem equitable and appropriate.

10 As to the Fifth Cause of Action

11 25. That the Court declare, adjudge and decree that Defendants violated California Labor
12 Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
13 termination of the employment;

14 26. For statutory wage penalties pursuant to California Labor Code § 203 for former
15 employees who have left Defendants' employ;

16 27. For pre-judgment interest on any unpaid wages from the date such amounts were due;

17 28. For reasonable attorneys' fees and for costs of suit incurred herein; and

18 29. For such other and further relief as the Court may deem equitable and appropriate.

19 As to the Sixth Cause of Action

20 30. That the Court declare, adjudge and decree that Defendants violated the record
21 keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and
22 willfully failed to provide accurate itemized wage statements thereto;

23 31. For statutory penalties and actual damages pursuant to California Labor Code §
24 226(e);

25 32. For injunctive relief to ensure compliance with this section, pursuant to California
26 Labor Code § 226(h);

27 33. For reasonable attorneys' fees and for costs of suit incurred herein; and

28 34. For such other and further relief as the Court may deem equitable and appropriate.

1 As to the Seventh Cause of Action

2 35. That the Court declare, adjudge and decree that Defendants violated California
3 Business & Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours worked
4 (including minimum, overtime wages), failing to provide meal periods, failing to maintain
5 accurate records of meal periods, failing to authorize and permit rest periods, failing to maintain
6 accurate records of all hours worked and meal periods, and failing to furnish accurate wage
7 statements;

8 36. For restitution of unpaid wages to Plaintiffs and all Class Members and prejudgment
9 interest from the day such amounts were due and payable;

10 37. For the appointment of a receiver to receive, manage and distribute any and all funds
11 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a
12 result of violations of California Business & Professions Code §§ 17200 *et seq.*;

13 38. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
14 Code of Civil Procedure § 1021.5;

15 39. For injunctive relief to ensure compliance with this section, pursuant to California
16 Business & Professions Code §§ 17200, *et seq.*; and,

17 40. For such other and further relief as the Court may deem equitable and appropriate.

18 As to the Eighth Cause of Action

19 41. That the Court declare, adjudge and decree that Defendants violated the California
20 Labor Code by failing to provide meal periods, failing to maintain accurate records of meal
21 periods, failing to authorize and permit rest periods, failing to reimburse for all necessary
22 business expenses, failing to maintain accurate records of all hours worked and meal periods,
23 failing to pay final wages at termination, and failing to furnish accurate wage statements;

24 42. For all actual, consequential and incidental losses and damages, according to proof;

25 43. For all civil penalties pursuant to California Labor Code § 2699, *et seq.*, and all other
26 applicable Labor Code provisions;

27 44. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
28 Labor Code § 2699;

1 45. For such other and further relief as the Court may deem equitable and appropriate.

2 As to all Causes of Action

3 46. For any additional relief that the Court deems just and proper.

4
5 Dated: December 30, 2019

Respectfully submitted,

6 MOON & YANG, APC

7
8 By: _____


Kane Moon
Allen Feghali
Attorneys for Plaintiffs


9
10 **DEMAND FOR JURY TRIAL**

11 Plaintiffs demand a trial by jury as to all causes of action triable by jury.

12
13 Dated: December 30, 2019

MOON & YANG, APC

14
15 By: _____


Kane Moon
Allen Feghali
Attorneys for Plaintiffs

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of 18 and
4 not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA
5 90017.

6 On the date indicated below, I served the document described as: **FIRST AMENDED CLASS
7 ACTION AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this
8 action by sending [] the original [or] [] a true copy thereof [] to interested parties as follows [or] [
9] as stated on the attached service list:

7 Keven Steinberg, Esq.
8 STEINBERG LAW
9 13412 Ventura Boulevard, Suite 380
10 Sherman Oaks, California 91423
11 E-mail: keven@kevensteinberglaw.com
12 **Attorneys for Defendant**
13 **Clearpath Federal Credit Union**

11 [] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to
12 accept electronic service, I caused the documents to be sent to the persons at the electronic
13 service addresses listed above via third-party cloud service CASEANYWHERE. I did not
14 receive an error message.

14 I declare under penalty of perjury under the laws of the State of California that the foregoing is
15 true and correct. Executed this **December 30, 2019** at Los Angeles, California.

16 Angel Reyes
17 Type or Print Name


17 Signature