

1 Robin K. Perkins, Esq. (SBN 131252)
Natalia D. Asbill-Bearor, Esq. (SBN 281860)
2 PERKINS & ASSOCIATES
300 Capitol Mall, Suite 1800
3 Sacramento, CA 95814
Telephone: (916) 446-2000
4 rperkins@perkins-lawoffice.com
nasbill@perkins-lawoffice.com

5 *Attorneys for Plaintiff*
6 *and the Putative Classes*

7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

10 **DESHAWN WARE** individually and on behalf
11 of all others similarly situated,

12 Plaintiff,

13 vs.

14 **THE GOLDEN 1 CREDIT UNION, INC.,** as
15

16 Defendant.
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18
19
20
21

Case No:

**CLASS/ ACTION/REPRESENTATIVE
COMPLAINT FOR:**

- **FAILURE TO PAY OVERTIME;**
- **UNLAWFUL DEDUCTIONS;**
- **FAILURE TO PROVIDE MEAL AND REST BREAKS;**
- **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS;**
- **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS;**
- **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, et seq.;**
- **VIOLATION OF CAL. LABOR CODE §§ 2698, et seq.;**
- **VIOLATION OF 29 U.S.C. § 201, et seq.;**

JURY TRIAL DEMANDED

22 *Trial Counsel for Plaintiff, Proposed Class, and Collective Members*

23 Kevin J. Stoops (*Pro Hac Vice forthcoming*)
kstoops@sommerspc.com
24 Charles R. Ash, IV (*pro hac vice forthcoming*)
crash@sommerspc.com
25 **SOMMERS SCHWARTZ, PC**
26 One Town Square, Suite 1700
Southfield, MI 48076
27 Telephone: 248-784-6613
Facsimile: 248-936-2143

Trenton R. Kashima (SBN 291405)
trk@classactionlaw.com
FINKELSTEIN & KRINSK, LLP
550 West C St., Suite 1760
San Diego, CA 92101
Telephone: (619) 238-1333

28 Plaintiff, DESHAWN WARE (hereinafter "Plaintiff"), individually and on behalf of all others

1 similarly situated, by and through his attorneys, hereby bring this Collective/Class Action Complaint
2 against Defendant THE GOLDEN 1 CREDIT UNION, INC. (hereinafter collectively referred to as
3 “Defendant”), jointly and severally, and state as follows:

4 **INTRODUCTION**

5 1. This is a collective and class action brought for violations of the Fair Labor Standards
6 Act of 1938, 29 U.S.C. § 201, *et seq.* (“FLSA”) as a FLSA § 216(b) collective action and California
7 state-wide class action pursuant to Fed. R. Civ. P. 23(b)(3) for state law claims, including California
8 Labor Code (“Labor Code”); the California Industrial Welfare Commission, Wage Order No. 4
9 (“Wage Order”); the California Business & Professional Code section 17200, *et seq.*; and others as
10 pleaded below. Additionally, Plaintiff also asserts representative claims pursuant to Private Attorney
11 General Act (Cal. Lab. Code §§ 2698, *et seq.*) for violations of relevant sections of the Labor Code
12 and Wage Order as set forth below.

13 2. Defendant is in the banking and finance business.

14 3. Defendant employed call center sales employees, referred to herein as call center
15 customer support representatives (“CSR”). Defendant employed these CSRs, including Plaintiff, in a
16 call center facility in Sacramento, California.

17 4. Defendant employs over one hundred CSRs to provide customer support to its clients
18 via inbound phone calls.

19 5. The individuals Named Plaintiff seek to represent in this action are current and former
20 CSRs who are similarly situated to themselves in terms of their positions, job duties, pay structure,
21 and Defendant’s violations of federal and state law.

22 6. Defendant required its CSRs to work a full-time schedule, plus overtime. However,
23 Defendant did not actually or accurately record their CSRs’ compensable work time as required by
24 law.

25 7. Defendant required CSRs, such as Plaintiff, to perform substantial off-the-clock work
26 every day before they clocked into Defendant’s timekeeping system at the beginning of the work day
27 and after they clocked out at the end of the work day. Specifically, this off-the-clock work occurred
28 as CSRs booted up their computers and logged into programs at the beginning of the day, and,

1 conversely, logged out of applications and shutdown their computers at the end of the day. The time
2 CSRs spent booting up and logging into these programs and applications before and after their shifts
3 was compensable because the programs and applications were an integral, indispensable, and
4 important part of the CSRs' work and they could not perform their jobs effectively without them.

5 8. The CSRs performed the same basic job duties and were required to use the same or
6 similar computer networks, software programs, applications, and phone systems.

7 9. Defendant knew or could have easily determined how long it took for their CSRs to
8 complete their unpaid work, and Defendant could have properly compensated Plaintiff and the putative
9 Class for this work, but they did not.

10 10. Furthermore, Defendant systematically failed to properly calculate Plaintiff and other
11 CSRs' regular hourly rate by failing to include all remuneration in the regular rate calculation.
12 Specifically, Plaintiff and all other CSRs were paid on an hourly rate of approximately \$16.49 per
13 hour. However, CSRs also received additional non-discretionary bonuses for meeting certain
14 performance metrics set by Defendant. That additional income was not factored into the determination
15 of the CSRs' regular hourly rate for overtime purposes.

16 11. In addition, Defendant imposed work duties and otherwise operated in a manner that
17 encouraged or required CSRs to skip rest and meal periods. Defendant failed to provide bona fide
18 meal and rest periods, as required by California law. More specifically, Defendant required CSRs to
19 return to their work stations early from their lunch break to complete the log-in process, so they were
20 prepared to resume taking calls immediately after their lunch break ended. Additionally, during rest
21 break, Defendant failed to completely relieve the CSRs from their work duties.

22 12. Plaintiff seeks a declaration that his rights, and the rights of the putative Class, were
23 violated, an award of unpaid wages, an award of liquidated damages, statutory penalties, injunctive
24 and declaratory relief, attendant penalties, and award of attorneys' fees and costs to make them whole
25 for damages they suffered, and to ensure that they and future workers will not be subjected by
26 Defendant to such illegal conduct in the future.

27 ///

28 **JURISDICTION AND VENUE**

1 21. Defendant operates a financial institution that offers its customers products and services
2 such as: checking accounts, savings accounts, student loans, home loans, investments, estate planning,
3 credit cards, and insurance. See <https://www.golden1.com/ProductsServices/default> (last visited on
4 8/28/18).

5 22. In order to assist customers with these products, Defendant employs CSRs in a call
6 center located in Sacramento, California. Plaintiff estimates that there are anywhere from 200 to 300
7 CSRs employed at the call center during any given time.

8 23. As a CSR in Defendant's call center, Plaintiff and all other CSRs were responsible for,
9 among other things, responding to inbound telephone calls from Defendant's customers, and assisting
10 those customers with any issues or questions they had regarding Defendant's financial products and
11 services.

12 24. Defendant paid Plaintiff a base hourly rate of \$16.49 per hour, plus commissions,
13 incentives, and/or bonuses based on specified performance metrics.

14 25. Throughout their employment with Defendant, CSRs were required to work a
15 substantial amount of unpaid off-the-clock time, including overtime, as part of their jobs.

16 26. Defendant's CSRs were responsible for, among other things: (a) booting up their
17 computers and logging into several software programs before taking phone calls; (b) booting up their
18 computers and logging into several software programs when returning from lunch; and (c) logging out
19 of the computer programs and shutting down their computers.

20 27. Defendant maintained strict expectations that CSRs be prepared to begin taking calls
21 promptly at the start of their shifts. However, in order to be prepared to receive calls promptly at the
22 start of their shift CSRs were required to log into a number of essential work applications, which
23 include: Smart Suite, TNAV Loans-Manager, Pay by Phone, Case Management, Springboard,
24 Relationship Manager, Visa Cats, Partner Care, Verafin, Document Manager, OSI, E-funds Qualifile,
25 Jabber, and Visa Online Resolve.

26 28. A CSR's failure to be prepared to field calls at the start of their shift resulted in a
27 violation of Defendant's attendance policies, and subjected the CSR to disciplinary action.

28 29. Defendant required their CSRs to work rigid schedules, usually consisting of many

1 overtime hours on a weekly basis.

2 30. Defendant failed to accurately account for and pay for all of the time actually worked
3 by employees which is a clear violation of FLSA's recordkeeping requirements. *See* 29 U.S.C. §
4 211(c).

5 31. In addition to their hourly rate, Defendant also compensated CSRs with
6 nondiscretionary bonuses, commissions, and or other incentive payments.

7 32. Defendant failed to include the additional compensation CSRs received in the form of
8 nondiscretionary bonuses, commissions, or other incentive payments in the calculation of their regular
9 hourly rate. Instead, Defendant based the CSRs' overtime rate strictly on the hourly wage rate they
10 are paid – without consideration of additional remuneration that was paid to the CSRs during each pay
11 period.

12 **Off-the-Clock Work**

13 33. In addition to their regularly scheduled shifts, Defendant's CSRs performed off-the-
14 clock work that went uncompensated.

15 34. Pursuant to Defendant's policies, training and direction, CSRs were required to startup
16 and login to various secure computer networks, software programs, and applications in order to access
17 information and software.

18 35. The CSR's startup and login process takes substantial time on a daily basis with said
19 time ranging from 4 to 10 minutes per day, or even longer if technical issues arise. Defendant's CSRs
20 were never compensated for this time, which directly benefitted Defendant and was an essential part
21 of the CSRs' job responsibilities.

22 36. Additionally, Defendant's CSRs were required to logout of and close down various
23 programs at the end of each shift. The log-out process occurred each shift with said time also ranging
24 from 4 to 10 minutes per day. Defendant's CSRs were never paid for this time either, which directly
25 benefitted Defendant and was an essential part of the CSRs' job responsibilities.

26 37. The U.S. Department of Labor recognizes that call center jobs, like those held by
27 Defendant's CSRs, are homogenous and it issued Fact Sheet #64 in July 2008 to alert call center
28 employees to some of the abuses which are prevalent in the industry. One of those abuses, which is

1 occurring in this case, is an employer's refusal to pay for work "from the beginning of the first
2 principal activity of the workday to the end of the last principal activity of the workday." DOL Fact
3 Sheet #64.

4 38. The Department of Labor's Fact Sheet #64 specifically condemns an employer's non-
5 payment of an employee's necessary pre- and post-shift activities: "An example of the first principal
6 activity of the day for CSRs/specialists/representatives working in call centers includes starting the
7 computer to download work instructions, computer applications and work-related emails." *See, Id.*, at
8 p. 2. Additionally, the FLSA requires that "[a] daily or weekly record of all hours worked, including
9 time spent in pre-shift and post-shift job-related activities must be kept." *Id.*

10 **Meal and Rest Period Violations**

11 39. Defendant promised each CSR one unpaid meal period during each shift. However, in
12 reality, Defendant often required CSRs to work through unpaid meal periods if there were not enough
13 CSRs to cover the phones.

14 40. Under the federal law, in order to deduct an unpaid meal period from an employee's
15 compensable time, an employee must be completely relieved of his or her employment duties for the
16 entire lunch break. 29 CFR 785.19(a) states:

17 Bona fide meal periods. Bona fide meal periods are not work time. Bona fide meal
18 periods do not include coffee breaks or time for snacks. These are rest periods. The
19 employee must be *completely relieved* from duty for the purposes of eating regular
20 meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A
21 shorter period may be long enough under special conditions. The employee is not
22 relieved if he is required to perform any duties, whether active or inactive, while eating.
23 For example, an office employee who is required to eat at his desk or a factory worker
24 who is required to be at his machine is working while eating. (emphasis added).

25 41. However, Defendant did not provide their CSRs with a legitimate bona fide meal
26 period.

27 42. Under California law, employers must provide a meal period of at least 30 minutes for
28 every five (5) hours worked. Cal. Lab. Code § 512(a) states:

1 An employer may not employ an employee for a work period of more than five hours
2 per day without providing the employee with a meal period of not less than 30 minutes,
3 except that if the total work period per day of the employee is no more than six hours,
4 the meal period may be waived by mutual consent of both the employer and employee.
5 An employer may not employ an employee for a work period of more than 10 hours
6 per day without providing the employee with a second meal period of not less than 30
7 minutes, except that if the total hours worked is no more than 12 hours, the second meal
8 period may be waived by mutual consent of the employer and the employee only if the
9 first meal period was not waived.

10
11 43. Additionally, the applicable Industrial Welfare Commission Wage Order states that an
12 employee is also entitled to a ten (10) minute break for each four (4) hour period, or major fraction
13 thereof, worked.

14 44. However, Defendant failed to provide their CSRs with a 30-minute meal period for
15 every five (5) hours worked, or a rest period for each four (4) hour period worked. Accordingly,
16 Plaintiff and the Class are entitled to one additional hour of compensation per workday for a missed
17 meal and rest period.

18 **Defendant Unlawfully Benefitted From The CSRs' Uncompensated Work**

19 45. At all relevant times, Defendant directed and directly benefited from the
20 uncompensated off-the-clock work performed by CSRs.

21 46. At all relevant times, Defendant controlled the work schedules, duties, protocols,
22 applications, assignments and employment conditions of CSRs.

23 47. At all relevant times, Defendant was able to track the amount of time their CSRs spent
24 working; however, Defendant failed to document, track, or pay its CSRs for all the work they
25 performed, including off-the-clock work.

26 48. At all relevant times, Plaintiff and all other CSRs were non-exempt employees, subject
27 to the requirements of the FLSA and the California Labor Code.

28 49. At all relevant times, Defendant's policies and practices deprived their CSRs of wages

1 owed for the off-the-clock work activities and their required meal periods. Because Defendant's CSRs
2 typically worked over 40 hours in a workweek, and more than eight (8) hours per day, Defendant's
3 policies and practices also deprived them of overtime pay.

4 50. Defendant knew or should have known that Plaintiff and other CSRs' off-the-clock
5 work was compensable under the law. Indeed, in light of the explicit DOL guidance cited above, there
6 is no conceivable way for Defendant to establish that it acted in good faith.

7 51. As an example of one particular workweek where Defendant failed to pay Plaintiff
8 overtime for hours worked in excess of 40 hours (as mandated by the FLSA and California Labor
9 Code), during the weeks of March 18, 2018 to March 31, 2018:

- 10 ➤ Plaintiff was paid for 80 hours of regular time and 1.57 hours of
11 overtime. See *Exhibit B*.
- 12 ➤ With pre-, mid-, and post-shift time of 9 to 25 minutes per shift, working
13 a full time 40 hour workweek, Plaintiff should have been paid an
14 additional 40 to 125 minutes of overtime compensation per week, or 80
15 to 250 minutes of overtime for the entire two-week pay period.
- 16 ➤ Defendant also did not include commissions or other incentives earned
17 during this pay period in the calculation of Plaintiff's regular hourly rate,
18 and instead, simply paid him 1.5 times his straight-time hourly rate for
19 the overtime worked.

20 52. Plaintiff and all other CSRs worked a fulltime schedule that often exceeded forty hours
21 in a work week and eight hours in a day; however, their overtime pay did not account for any of the
22 off-the-clock work as set forth herein.

23 **Defendant Failed to Properly Calculate the Regular Rate of Pay**

24 53. As non-exempt employees, Defendant's CSRs were entitled to full compensation for
25 all overtime hours worked at a rate of 1.5 times their "regular rate" of pay.

26 54. Under FLSA, the regular rate is the "keystone" to calculating the overtime rate. *Walling*
27 *v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419 (1945). It is "the hourly rate actually paid to
28 the employee for the normal, non-overtime workweek for which he is employed." 29 C.F.R. §778.108.

55. No matter how an employee is paid—whether by the hour, by the piece, on a
commission, or on a salary—the employee's compensation must be converted to an equivalent hourly
rate from which the overtime rate can be calculated. 29 C.F.R. §778.109. "The regular hourly rate of

1 pay is determined by dividing the employee’s total remuneration for employment (except statutory
2 exclusions) in any workweek by the total number of hours actually worked by the employee in that
3 workweek for which such compensation was paid.” *Id.*

4 56. Defendant’s compensation plan for CSRs did not fall within any of the statutory
5 exclusions from the regular rate as provided in 29 U.S.C. §§ 207(e)(1)-(8).

6 57. A commission-based employee’s regular rate of pay is computed by reference to the
7 number of hours the commission payment is intended to compensate. 29 C.F.R. §778.117.

8 This is true regardless of whether the commission is the sole source of the
9 employee’s compensation or is paid in addition to a guaranteed salary or hourly
10 rate, or on some other basis, and regardless of the method, frequency, or
11 regularity of computing, allocating and paying the commission. It does not
12 matter whether the commission earnings are computed daily, weekly, biweekly,
13 semimonthly, monthly, or at some other interval. The fact that the commission
14 is paid on a basis other than weekly, and that payment is delayed for a time past
15 the employee's normal pay day or pay period, does not excuse the employer
16 from including this payment in the employee’s regular rate. *Id.*

17 58. There is a statutory presumption that remuneration in any form must be included in the
18 regular rate calculation. The burden is on Defendant to establish that any payment should be excluded.
19 Thus, determining the regular rate starts from the premise that all payments made to Plaintiff for work
20 performed are included in the base calculation unless specifically excluded by statute.

21 59. Even “[w]hen the commission is paid on a weekly basis, it is added to the employee’s
22 other earnings for that workweek (except overtime premiums and other payments excluded as
23 provided in section 7(e) of the Act), and the total is divided by the total number of hours worked in
24 the workweek to obtain the employee’s regular hourly rate for the particular workweek. The employee
25 must then be paid extra compensation at one-half of that rate for each hour worked in excess of the
26 applicable maximum hours standard.” 29 C.F.R. §778.118.

27 60. Once the total amount of an employee’s “regular” compensation is deduced, “the
28 determination of the regular rate becomes a matter of mathematical computation.” *Walling v.*

1 *Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419, 425 (1945). The regular rate must be expressed
2 as an hourly rate because, although any method of compensating an employee is permitted, the FLSA
3 imposes its overtime requirements in terms of hourly wages. Thus, if necessary, an employer must
4 convert an employee’s wages to rate per hour to determine compliance with the statute.

5 61. Because Defendant’s compensation scheme failed to incorporate the regular rate of
6 pay, Defendant failed to properly compensate Plaintiff and its other CSRs under the FLSA.

7 62. Under California law, employees are entitled to “no less than one and one-half times
8 the regular rate of pay” for work in excess of eight hours in one workday. Any work in excess of 12
9 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an
10 employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be
11 compensated at the rate of no less than twice the regular rate of pay of an employee. Cal. Lab. Code,
12 § 510(a).

13 63. The California Division of Labor Standards Enforcement Manual section 49.2.4.2
14 provides a reasonable formula for calculating overtime on a flat sum bonus. The flat sum bonus
15 formula set forth in sections 49.2.4.2 and 49.2.4.3 of the Manual, which uses a divisor of straight time,
16 instead of total hours worked to set the regular bonus rate, and a multiplier of 1.5, rather than 0.5, to
17 fix the bonus overtime due, produces “a premium based on bonus” that is necessary to avoid
18 encouraging the use of overtime.

19 64. Because Defendant’s compensation scheme failed to incorporate the California
20 Division of Labor Standards Enforcement Manual formula, Defendant failed to properly compensate
21 Plaintiff and its other CSRs under the California Labor Code.

22 65. Because Defendant’s weekly pay period compensation scheme did not pay
23 commissions in the week in which they were earned, Defendant failed to properly compensate Plaintiff
24 and its other CSRs under the California Labor Code. *See e.g., Peabody v. Time Warner Cable, Inc.*,
25 59 Cal. 4th 662, 663 (Cal. 2014) (An employer may not attribute commission wages paid in one pay
26 period to other pay periods in order to satisfy the minimum earnings prong of the commissioned
27 employee exemption to the overtime requirement in Lab. Code, § 510).

28 **FLSA COLLECTIVE ACTION ALLEGATIONS**

1 66. Plaintiff brings this action pursuant to 29 U.S.C. § 216(b) of the FLSA on their own
2 behalf and on behalf of:

3 ***All current and former CSRs who worked for Defendant at any time from November***
4 ***6, 2015 through judgment.***

5 (hereinafter referred to as the “FLSA Collective”). Plaintiff reserves the right to amend this
6 definition if necessary.

7 67. Defendant is liable under the FLSA for, *inter alia*, failing to properly compensate
8 Plaintiff and other similarly situated CSRs.

9 68. Excluded from the proposed FLSA Collective are Defendant’s executives,
10 administrative and professional employees, including computer professionals and outside sales
11 persons.

12 69. Consistent with Defendant’s policy and pattern or practice, Plaintiff and the members
13 of the FLSA Collective were not paid premium overtime compensation for all hours they worked
14 beyond 40 hours in a workweek.

15 70. All of the work that Plaintiff and the FLSA Collective members performed was
16 assigned by Defendant, and/or Defendant was aware of all of the work that Plaintiff and the FLSA
17 Collective members performed.

18 71. As part of its regular business practice, Defendant intentionally, willfully, and
19 repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiff
20 and the FLSA Collective members. This policy and pattern or practice includes, but is not limited to:

- 21 a. Willfully failing to pay its employees, including Plaintiff and the FLSA Collective, for all
22 hours worked including premium overtime wages for all hours worked in excess of 40 hours
23 per workweek; and
24 b. Willfully failing to accurately record all of the time that its employees, including Plaintiff and
25 the FLSA Collective, worked for Defendant’s benefit.

26 72. Defendant is aware or should have been aware that federal law required it to pay
27 Plaintiff and the FLSA Collective overtime premiums for all hours worked in excess of 40 per
28 workweek.

1 *time from November 6, 2014 through judgment.*
2 (hereinafter referred to as the “California Class”). Plaintiff reserves the right to amend the putative
3 class definition if necessary. Plaintiff shares the same interests as the putative class and will be entitled
4 under the California Labor Code to unpaid overtime compensation, attorneys’ fees, and costs and lost
5 interest owed to them under nearly identical factual and legal standards as the remainder of the putative
6 class.

7 82. While the exact number of Class members is unknown to Plaintiff at this time, and will
8 be ascertained through appropriate discovery, Plaintiff is informed and believes that Defendant
9 employed hundreds, if not thousands, of CSRs throughout California. The number of individuals who
10 comprise the Class are so numerous that joinder of all such persons is impracticable and the disposition
11 of their claims in a class action, rather than in individual actions, will benefit both the parties and the
12 courts.

13 83. Plaintiff’s claims are typical of the claims of the other members of the Class. All
14 members of the Class have been and/or continue to be similarly affected by Defendant’s wrongful
15 conduct as complained of herein, in violation of federal and state law. Plaintiff is unaware of any
16 interests that conflict with or are antagonistic to the interests of the Class.

17 84. Plaintiff will fairly and adequately protect the Class members’ interests and have
18 retained counsel competent and experienced in consumer class action lawsuits and complex litigation.
19 Plaintiff and their counsel have the necessary financial resources to adequately and vigorously litigate
20 this class action, and Plaintiff is aware of their duties and responsibilities to the Class.

21 85. Defendant has acted with respect to the Class in a manner generally applicable to each
22 Class member. Common questions of law and fact exist as to all Class members and predominate over
23 any questions wholly affecting individual Class members. There is a well-defined community of
24 interest in the questions of law and fact involved in the action, which affect all Class members. Among
25 the questions of law and fact common to the Class are, inter alia:

- 26 a. Whether Defendant engaged in a policy or practice of failing to pay each Class member
27 regular wages for each non-overtime hour worked;
28 b. Whether Defendant engaged in a policy or practice of failing to pay each Class member

1 overtime compensation for each overtime hour worked;

2 c. Whether Defendant violated Labor Code sections 221 and 223 by making unlawful
3 deductions to Class members' wages;

4 d. Whether Defendant failed to provide each Class member with at least one 30-minute
5 meal period on every workday of at least 5 hours and a second 30-minute meal period
6 on every workday of at least 10 hours as required by the California Employment Law
7 and Regulations;

8 e. Whether Defendant violated section 226 of the Labor Code by willfully failing to
9 provide accurate itemized wage statements showing the number of hours worked by
10 each Class member and the corresponding hourly rate;

11 f. Whether Defendant violated sections 1174 and 1175 of the Labor Code and the
12 applicable Industrial Welfare Commission Orders by failing to maintain records
13 pertaining to when Class members began and ended each work period, the total daily
14 hours worked, and the total hours worked per pay period;

15 g. Whether Defendant violated section 510 of the Labor Code and the applicable
16 Industrial Welfare Commission Orders by failing to accurately calculate regular rates
17 of pay for overtime purposes;

18 h. Whether Defendant was unjustly enriched by the work and services performed by Class
19 members without compensation;

20 i. Whether Defendant engaged in unfair business practices in violation of Business and
21 Professions Code section 17200, et seq.;

22 j. Whether Defendant breached their duty of good faith and fair dealing by limiting or
23 manipulating the leads given to their CSRs; and

24 k. Whether Defendant should be required to pay compensatory damages, attorneys' fees,
25 penalties, costs, and interest for violating California state law.

26 86. A class action is superior to all other available methods for the fair and efficient
27 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
28 damages suffered by individual Class members may be relatively small, the expense and burden of

1 individual litigation make it virtually impossible for Class members to individually redress the wrongs
2 done to them. There will be no difficulty in managing this action as a class action.

3 87. Defendant has acted on grounds generally applicable to the entire Class with respect to
4 the matters complained of herein, thereby making appropriate the relief sought herein with respect to
5 the Class as a whole.

6 **REPRESENTATIVE ACTION ALLEGATIONS**

7 88. PAGA is a mechanism by which the State of California itself can enforce state labor laws
8 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law
9 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
10 enforcement action designed to protect the public and not to benefit private parties. The purpose of the
11 PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private
12 attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that
13 "it was ... in the public interest to allow aggrieved employees, acting as private attorney general to recover
14 civil penalties for Labor Code violations ..." Stats. 2003, Ch. 906, § 1.

15 89. Plaintiff Ware complied with the procedures for bringing suit specified in Labor Code
16 Section 2699.3. By certified letter, return receipt requested, dated October 10, 2018, Plaintiff Ware
17 gave written notice to the Labor and Workforce Development Agency ("LWDA") and to Defendant
18 of the specific provisions of the Labor Code alleged to have been violated, including the facts and
19 theories to support the alleged violations. A true and correct copy of this letter is attached hereto as
20 *Exhibit C*.

21 90. After sixty days from the service of the PAGA notice, if the LWDA has not provided
22 any notice by certified mail of its intent to investigate the Defendant's alleged violations as mandated
23 by Labor Code Section 2699.3(a)(2)(A), then Plaintiff intends to pursue the PAGA claims outlined
24 herein. Accordingly, unless such notice is received from the LWDA, at the expiration of sixty days,
25 Plaintiff brings this representative action on behalf of the State of California with respect to himself
26 and all other individuals who are or previously were employed by Defendant in California classified
27 as non-exempt employees during the applicable statutory period (the "Aggrieved Employees"). The
28 PAGA claims outlined herein will not become effective until the sixty days have lapsed.

COUNT I

VIOLATION OF FLSA, 29 U.S.C. § 201, et seq. – FAILURE TO PAY OVERTIME WAGES

(On Behalf of the FLSA Collective)

91. Plaintiff re-alleges and incorporates all previous paragraphs herein.

92. At all times relevant to this action, Defendant was engaged in interstate commerce, or in the production of goods for commerce, as defined by the FLSA.

93. At all times relevant to this action, Plaintiff was an “employee” of Defendant within the meaning of 29 U.S.C. § 203(e)(1) of the FLSA.

94. Plaintiff and the FLSA Collective members, by virtue of their job duties and activities actually performed, are all non-exempt employees.

95. Furthermore, upon information and belief, Defendant classified Plaintiff and the FLSA Collective members as non-exempt employees.

96. Defendant is not “retail or service establishments” as defined by 29 U.S.C. § 213(a)(2) of the FLSA.

97. Plaintiff either: (1) engaged in commerce; or (2) engaged in the production of goods for commerce; or (3) were employed in an enterprise engaged in commerce or in the production of goods for commerce.

98. At all times relevant to this action, Defendant “suffered or permitted” Plaintiff and all similarly situated current and former employees to work and thus “employed” them within the meaning of 29 U.S.C. § 203(g) of the FLSA.

99. At all times relevant to this action, Defendant required Plaintiff and the FLSA Collective members to perform off-the-clock work each shift but failed to pay these employees the federally mandated overtime compensation for this work.

100. The off-the-clock work performed every shift by Plaintiff and the FLSA Collective members is an essential part of their jobs and these activities and the time associated with these activities is not *de minimis*.

101. In workweeks where Plaintiff and other FLSA Collective members worked 40 hours or more, the uncompensated off-the-clock work time, and all other overtime should have been paid at the

1 federally mandated rate of 1.5 times each employee’s regularly hourly wage. 29 U.S.C. § 207.

2 102. In addition to failing to pay for all off-the-clock work performed every shift by Plaintiff
3 and the FLSA Collective members, Defendant failed to properly calculate the regular rate of pay of
4 Plaintiff and the FLSA Collective members.

5 103. As non-exempt employees, Defendant’s CSRs were entitled to full compensation for
6 all overtime hours worked at a rate of 1.5 times their “regular rate” of pay.

7 104. Under FLSA, the regular rate is the “keystone” to calculating the overtime rate. *Walling*
8 *v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419 (1945). It is “the hourly rate actually paid to
9 the employee for the normal, non-overtime workweek for which he is employed.” 29 C.F.R. §778.108.

10 105. No matter how an employee is paid—whether by the hour, by the piece, on a
11 commission, or on a salary—the employee’s compensation must be converted to an equivalent hourly
12 rate from which the overtime rate can be calculated. 29 C.F.R. §778.109. “The regular hourly rate of
13 pay is determined by dividing the employee’s total remuneration for employment (except statutory
14 exclusions) in any workweek by the total number of hours actually worked by the employee in that
15 workweek for which such compensation was paid.” *Id.*

16 106. Defendant’s compensation plan for Plaintiff and the FLSA Collective did not fall
17 within any of the statutory exclusions from the regular rate as provided in 29 U.S.C. §§ 207(e)(1)-(8).

18 107. A commission-based employee’s regular rate of pay is computed by reference to the
19 number of hours the commission payment is intended to compensate. 29 C.F.R. §778.117.

20 This is true regardless of whether the commission is the sole source of the
21 employee’s compensation or is paid in addition to a guaranteed salary or hourly
22 rate, or on some other basis, and regardless of the method, frequency, or
23 regularity of computing, allocating and paying the commission. It does not
24 matter whether the commission earnings are computed daily, weekly, biweekly,
25 semimonthly, monthly, or at some other interval. The fact that the commission
26 is paid on a basis other than weekly, and that payment is delayed for a time past
27 the employee's normal pay day or pay period, does not excuse the employer
28 from including this payment in the employee’s regular rate. *Id.*

1 **VIOLATION OF CALIFORNIA LABOR CODE §§ 510, 1194, 1198 AND WAGE ORDER –**
2 **FAILURE TO PAY OVERTIME**
3 **(On Behalf of the California Class)**

4 114. Plaintiff re-alleges and incorporates all previous paragraphs herein.

5 115. At all relevant times, Defendant regularly and consistently maintained corporate
6 policies and procedures designed to reduce labor costs by reducing or minimizing the amount of
7 compensation paid to its employees, especially overtime compensation.

8 116. At all relevant times, Plaintiff and the Class regularly performed non-exempt work and
9 were thus subject to the overtime requirements of California law.

10 117. Labor Code §§ 510 and 1198 and Wage Order § 3(A) provide that: (a) employees are
11 entitled to compensation at the rate of one and one-half times their regular rate of pay for all hours
12 worked in excess of eight (8) hours in a workday up to twelve (12) hours in a workday, in excess of
13 forty (40) hours in a workweek, and for the first eight (8) hours of work on the seventh (7th) consecutive
14 day or a workweek; and (b) employees are entitled to compensation at the rate of twice their regular
15 rate of pay for all hours worked in excess of twelve (12) hours in a workday, and in excess of eight (8)
16 hours on the seventh (7th) consecutive day of work in a workweek.

17 118. At all relevant times, Plaintiff and the Class regularly worked in excess of eight (8) hours
18 in a workday and/or in excess of forty (40) hours in a workweek.

19 119. At all relevant times, Defendant failed and refused to pay Plaintiff and the Class
20 members for any and all hours actually worked in excess of the scheduled shift and to compensate
21 them at their regular rate of pay.

22 120. Defendant intentionally, maliciously, fraudulently and with the intent to deprive the Class
23 of their ability to earn a living so as to reduce their labor costs, knowingly and willingly implemented a
24 scheme or artifice to avoid paying overtime by reducing the rate of pay to Plaintiff and other Class
25 members who worked overtime hours.

26 121. Plaintiff and the Class were entitled to receive overtime compensation at their lawful
27 regular rate of pay, including the shift differential where applicable. Defendant's failure to pay lawful
28 premium overtime wages, as alleged above, was a willful violation of Labor Code §§ 510, 1198, and

1 Wage Order.

2 122. Wherefore, Plaintiff demands payment of the unpaid balance of the full amount of
3 wages due for unpaid time worked, as well as overtime premiums owing, including interest thereon,
4 penalties, reasonable attorneys' fees, and costs of suit pursuant to Labor Code §§ 1194 and 1194.2 as
5 a result of Defendant's failure to pay for all time worked and such premium compensation, as is
6 required under California law.

7 **COUNT III**

8 **VIOLATION OF CALIFORNIA LABOR CODE §§ 221 and 223 – UNLAWFUL**

9 **DEDUCTIONS**

10 **(On Behalf of the California Class)**

11 123. Plaintiff re-alleges and incorporates all previous paragraphs herein.

12 124. At all relevant times, Defendant regularly and consistently maintained corporate
13 policies and procedures designed to reduce labor costs by reducing or minimizing the amount of
14 compensation paid to its employees, especially overtime compensation.

15 125. Defendant made deductions from Plaintiff's and the Class members' paychecks in the
16 amount of the overtime premiums earned by the employee during the pay period so as to avoid paying
17 overtime compensation.

18 126. Labor Code § 221 provides it is unlawful for any employer to collect or receive from an
19 employee any part of wages theretofore paid by employer to employee.

20 127. Labor Code § 223 provides that where any statute or contract requires an employer to
21 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting
22 to pay the wage designated by statute or by contract. Labor Code section 225 further provides that the
23 violation of any provision of Labor Code §§ 221 and 223 is a misdemeanor.

24 128. As a result of the conduct alleged above, Defendant unlawfully collected or received
25 from Plaintiff and the Class part of the wages paid to their employees.

26 129. Wherefore, Plaintiff demands the return of all wages unlawfully deducted from the
27 paychecks, including interest thereon, penalties, reasonable attorneys' fees, and costs of suit pursuant
28 to Labor Code §§ 225.5 and 1194.

COUNT IV

VIOLATION OF CALIFORNIA LABOR CODE §§ 226.7 and 512 –

FAILURE TO PROVIDE MEAL AND REST BREAKS

(On Behalf of the California Class)

130. Plaintiff re-alleges and incorporates all previous paragraphs herein.

131. Labor Code § 512, and Wage Order § 11(A) and (B) provide that an employer may not employ a person for a work period of more than five (5) hours without providing the employee with a meal period of not less than thirty (30) minutes, and may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than (30) minutes.

132. Additionally, Defendant is required to provide a rest period of ten (10) minute break for each four (4) hour period, or major fraction thereof, worked.

133. At all relevant times, Plaintiff and the Class consistently worked in excess of five (5) or ten (10) hours in a day.

134. At all relevant times, Defendant regularly required employees to perform work during their first and/or second meal periods, without proper compensation. Further, Defendant did not provide rest breaks as is required by California law. Defendant's practice of requiring employees to perform work during their legally mandated meal and rest periods without premium compensation is a violation of Labor Code §§ 226.7 and 512, and IWC Wage Order No. 7.

135. Defendant purposefully elected not to provide meal and rest periods to Plaintiff and Class members, and Defendant acted willfully, oppressively, and in conscious disregard of the rights of Plaintiff and the Class members in failing to do so.

136. Plaintiff is informed and believes Defendant did not properly maintain records pertaining to when Plaintiff and the Class members began and ended each meal period, in violation of Labor Code §1174 and Wage Order § 7(A).

137. As a result of Defendant's knowing, willful, and intentional failure to provide meal and rest breaks, Plaintiff and the Class members are entitled to recover one (1) additional hour of pay at the employee's regular rate of pay for each work day that a meal and/or rest period was not provided,

1 pursuant to Labor Code § 226.7 and Wage Order § 11(D), and penalties, reasonable attorneys' fees,
2 and costs pursuant to Labor Code §§ 218.5.

3 138. Defendant's wrongful and illegal conduct in failing to provide Class members with
4 meal or rest breaks or to provide premium compensation, unless and until enjoined by order of this
5 Court, will continue to cause great and irreparable injury to Plaintiff and the Class members in that
6 Defendant will continue to violate these laws unless specifically ordered to comply with the same. The
7 expectation of future violations will require current and future employees to repeatedly and
8 continuously seek legal redress in order to gain compensation to which they are already entitled.
9 Plaintiff and the Class members have no other adequate remedy at law to insure future compliance
10 with the laws alleged herein to have been violated.

11 139. Wherefore, Plaintiff demands, pursuant to Labor Code Section 227.7(b), that Defendant
12 pay each Class member one additional hour of pay at the Class member's regular rate of compensation
13 for each work day that the meal and/or rest period was not provided.

14 **COUNT V**

15 **VIOLATION OF CALIFORNIA LABOR CODE § 226 and 1174 –**

16 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

17 **(On Behalf of the California Class)**

18 140. Plaintiff re-alleges and incorporates all previous paragraphs herein.

19 141. Labor Code §§ 226 and 1174 provide that every employer shall, semi-monthly or at the
20 time of payment of wages, furnish each employee, either as a detachable part of the check or
21 separately, an accurate, itemized statement in writing showing the total hours worked, and the
22 applicable hourly rates and corresponding total number of hours worked.

23 142. At all relevant times, Defendant failed to maintain proper records and furnish Plaintiff
24 and the Class members, either semi-monthly or at the time of each payment of wages, an accurate,
25 itemized statement conforming to the requirements of Labor Code §§ 226 and 1174.

26 143. At all relevant times, Defendant failed to furnish Plaintiff and the Class members with
27 accurate wage statements in writing, showing: (1) gross wages earned; (2) total hours worked by each
28 respective employee; (3) all deductions; (4) net wages earned; (5) the inclusive dates of the period for

1 which the employee is paid; (6) the name of the employee and only the last four digits of his or her
2 social security number or an employee identification number; (7) the name and address of the legal
3 entity that is the employer; and (8) all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate.

5 144. Plaintiff is informed and believes that Defendant knew or should have known that
6 Plaintiff and the Class members were entitled to receive wage statements compliant with Labor Code
7 §§ 226 and 1174, and that Defendant willfully and intentionally failed to provide Plaintiff and the
8 Class members with such accurate, itemized statements showing, for example, accurate hours and
9 overtime calculations.

10 145. Wherefore Plaintiff demands that Defendant pay each and every Class member fifty
11 dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars
12 (\$100) for each subsequent violation, up to a maximum of four thousand dollars (\$4,000.00) pursuant
13 to Labor Code § 226, as well as reasonable attorneys' fees and costs.

14 **COUNT VII**

15 **VIOLATION OF BUSINESS AND PROFESSIONS CODE, § 17200, *et seq.***

16 **(On Behalf of the California Class)**

17 146. Plaintiff re-alleges and incorporates all previous paragraphs herein.

18 147. Defendant engaged and continues to engage in unfair business practices in California
19 by practicing, employing and utilizing the unlawful practices described above, including: (a) training
20 and directing CSRs to work off-the-clock without compensation; (b) making deductions to CSRs'
21 paychecks to recover overtime premiums earned by the employee; (c) requiring CSRs to work
22 overtime without lawful premium compensation; (d) failing to provide lawful meal breaks or
23 premium compensation in lieu thereof; and (e) failing to provide accurate, itemized wage statements.

24 148. In addition, the conduct alleged in each of the previously stated causes of action
25 constitute an unlawful and for unfair business practice within the meaning of Business & Professions
26 Code § 17200, *et seq.*

27 149. As a result of Defendant's conduct, Plaintiff and the Class have been harmed as described
28 in the allegations set forth above.

1 himself and other current or former employees, to bring a civil action to recover civil penalties
2 pursuant to the procedures specified in Labor Code Section 2699.3.

3 157. Plaintiff complied with the procedures for bringing suit specified in Labor Code Section
4 2699.3. By certified letter, return receipt requested, dated October 10, 2018, Plaintiff Ware gave
5 written notice to the LWDA and to Defendant of the specific provisions of the Labor Code alleged to
6 have been violated, including the facts and theories to support the alleged violations. A true and
7 correct copy of this letter is attached hereto as *Exhibit C*.

8 158. The PAGA claims outlined herein will become effective sixty (60) days after serving
9 the LWDA with notice of Defendant's violations, provided the LWDA has not provided any notice by
10 certified mail of its intent to investigate the Defendant's alleged violations as mandated by Labor Code
11 Section 2699.3(a)(2)(A). Accordingly, after sixty days has lapsed, pursuant to Labor Code Section
12 2699.3(a)(2)(A), Plaintiff, on behalf of the Aggrieved Employees, will commence and is authorized
13 to pursue this cause of action via this Complaint.

14 159. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and similarly situated
15 employees are entitled to civil penalties for Defendant's violations of Labor Code Sections 201, 202,
16 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1194.2, 1197.1, and 1198.

17 160. Pursuant to Labor Code Section 2699(g), Plaintiff and similarly situated employees are
18 entitled to an award of reasonable attorneys' fees and costs in connection with their claims for civil
19 penalties.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff on his own behalf and on the behalf of the putative Collective and
22 Class members, request judgment as follows:

- 23 a. Certifying this case as a collective action in accordance with 29 U.S.C. § 216(b) with
24 respect to the FLSA claims set forth above;
- 25 b. Designating the named Plaintiff as Representative of the proposed FLSA collective;
- 26 c. Ordering Defendant to disclose in computer format, or in print if no computer readable
27 format is available, the names and addresses of all those individuals who are similarly
28 situated, and permitting Plaintiff to send notice of this action to all those similarly

1 situated individuals including the publishing of notice in a manner that is reasonably
2 calculated to apprise the potential class members of their rights under the FLSA;

- 3 d. Certifying the proposed California Class;
- 4 e. Designating Plaintiff as representative of the proposed California Class;
- 5 f. Appointing Plaintiff's counsel as Class Counsel;
- 6 g. Declaring that Defendant willfully violated the Fair Labor Standards Act and its
7 attendant regulations as set forth above;
- 8 h. Granting judgment in favor of Plaintiff and against Defendant and awarding the amount
9 of unpaid overtime wages calculated at the rate of one and one-half (1.5) of Plaintiff's
10 regular rate (including the shift differential where applicable) multiplied by all off-the-
11 clock hours that Plaintiff worked in excess of eight (8) hours per day and/or forty (40)
12 hours per week for the past four years;
- 13 i. Awarding liquidated damages in an amount equal to the amount of unpaid overtime
14 wages found due and owing;
- 15 j. For disgorgement and restitution to Plaintiff and other similarly effected Class
16 members of all funds unlawfully acquired by Defendant, and withheld from Plaintiff
17 and the California Class, by means of any acts or practices declared by this Court to
18 violate the mandate established by California Business and Professions Code § 17200,
19 *et seq.*;
- 20 k. For an injunction prohibiting Defendant from engaging in the unfair business practices
21 complained of herein;
- 22 l. For an injunction requiring Defendant to give notice to persons to whom restitution is
23 owing of the means by which to file for restitution;
- 24 m. For an order requiring Defendant to show cause, if any there be, why they should not be
25 enjoined and ordered to comply with the applicable California Industrial Welfare
26 Commission wage orders related to record keeping for Defendant's employees related
27 to same; and for an order enjoining and restraining Defendant and their CSRs, servants
28 and employees related thereto;

- 1 n. For actual damages or statutory penalties according to proof as set forth in California
- 2 Labor Code §§ 226, 1174, and Wage Order § 7(A) related to record keeping;
- 3 o. For statutory and civil penalties pursuant to Labor Code §§ 225.5, 226(e), 226.3, and
- 4 226.7;
- 5 p. For civil penalties pursuant to Labor Code § 558 (including the payment of all withheld
- 6 from compensation due to Plaintiff and the Aggrieved Employees);
- 7 q. For civil penalties pursuant to California Labor Code § 2698, *et seq.*;
- 8 r. For pre-judgment interest as allowed by California Labor Code §§ 218.6, 1194 and
- 9 California Civil Code § 3287 and other statutes;
- 10 s. For reasonable attorneys' fees, expenses, and costs as provided by the FLSA, California
- 11 Labor Code §§ 218.5, 226(e) and (g), 1194, and California Code of Civil Procedure §
- 12 1021.5;
- 13 t. All other relief available to Plaintiff and the Aggrieved Employees pursuant *Lawson v.*
- 14 *ZB, N.A.*, (2017) 18 Cal.App.5th 705; and
- 15 u. For such other and further relief, the Court may deem just and proper.

16 **JURY DEMAND**

17 Plaintiff, individually and on behalf of all others similarly situated, by and through their
18 attorneys, hereby demands a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure
19 and the court rules and statutes made and provided with respect to the above entitled cause.

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28 Respectfully Submitted,

1 Dated: November 6, 2018

2 By: /s/ Natalia D. Asbill-Bearor
3 Natalia D. Asbill-Bearor
4 Perkins & Associates, a Professional Law Corp.
5 *Attorneys for Plaintiff*
6 *and the Putative Classes*

7 Kevin J. Stoops (*pro hac vice* forthcoming)
8 kstoops@sommerspc.com
9 Charles R. Ash, IV (*pro hac vice* forthcoming)
10 crash@sommerspc.com
11 SOMMERS SCHWARTZ, P.C.
12 One Towne Square, Suite 1700
13 Southfield, Michigan 48076
14 Telephone: (248) 355-0300
15 Facsimile: (248) 436-8453

16 Trenton R. Kashima (SBN 291405)
17 trk@classactionlaw.com
18 FINKELSTEIN & KRINSK, LLP
19 550 West C St., Suite 1760
20 San Diego, CA 92101
21 Telephone: (619) 238-1333

22 *Trial Counsel for Plaintiff and Proposed Class*
23 *and Collective Members*
24
25
26
27
28

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
qw
(b) County of Residence of First Listed Plaintiff Sacramento
(EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorneys (Firm Name, Address, and Telephone Number)
Natalia D. Asbill-Bearor, Esq. (SBN 281860)
PERKINS & ASSOCIATES
300 Capitol Mall, Suite 1800
Sacramento, CA 95814
Telephone: (916) 446-2000

DEFENDANTS
THE GOLDEN 1 CREDIT UNION, INC.
County of Residence of First Listed Defendant Sacramento
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
Courtney Linn, Senior Vice President, General Counsel
8945 Cal Center Dr.
Sacramento, CA 95826

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)
PTF DEF
Citizen of This State X 1 1 Incorporated or Principal Place of Business In This State 4 X 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
X 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. § 201, et seq.
Brief description of cause:
Wage and Hour Violations under FSLA and Cal. Laobr Code and B&P Code

VII. REQUESTED IN COMPLAINT:
X CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Exceeds Jurisdictional Limits CHECK YES only if demanded in complaint:
JURY DEMAND: X Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 11/06/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Natalia D. Asbill-Bearor

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use
(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the
(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box. Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Wage and Hour Suit Filed Against The Golden 1 Credit Union](#)
