

1 Kashif Haque, Esq. (SBN 218672)
2 Samuel A. Wong, Esq. (SBN 217104)
3 **AEGIS LAW FIRM, PC**
4 8105 Irvine Center Drive, Suite 1070
5 Irvine, California 92618-2902
6 Telephone: (949) 379-6250
7 Facsimile: (949) 379-6251

8 Attorneys for Plaintiffs Jon Kevin Smith and Porfiria
9 Hernandez, individually, and on behalf of all others
10 similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**

13 **JON KEVIN SMITH and PORFIRIA**
14 **HERNANDEZ, individually, and on**
15 **behalf of all others similarly situated,**

16 **Plaintiffs,**

17 **v.**

18 **UNIONBANCAL CORPORATION, a**
19 **California Corporation; and DOES 1-100,**
20 **inclusive,**

21 **Defendant**

22 Case No. CGC-11-508-019

23 **FIRST AMENDED CLASS ACTION**
24 **COMPLAINT FOR DAMAGES, INJUNCTIVE**
25 **AND DECLARATORY RELIEF AND**
26 **RESTITUTION**

- 27 1. Failure to Pay Overtime Wages (Lab. Code §§204, 510, 1194);
- 28 2. Failure to Provide Meal Periods or Compensation in Lieu Thereof (Lab. Code §§226.7, 512);
3. Failure to Provide Paid Rest Periods or Compensation in Lieu Thereof (Lab. Code §§226.7, 512);
4. Failure to Timely Pay Wages Due at Separation in Violation of Labor Code, § 203 (Lab. Code §§201-203);
5. Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §226);
6. Violations of the Unfair Competition Law (Bus. & Prof. Code §§17200-17208)
7. Violations of the Private Attorney General Act ("PAGA") (Labor Code §2698 et seq.)

DEMAND FOR JURY TRIAL

ENDORSED
FILED
Superior Court of California
County of San Francisco

FEB 28 2011

CLERK OF THE COURT
BY: MICHAEL BAYDAY
Deputy Clerk

FILED BY FAX

1 Plaintiffs JON KEVIN SMITH and PORFIRIA HERNANDEZ, individually for
2 themselves, on behalf of all others similarly situated, and demanding a trial by jury, complain
3 and plead upon information and belief, as follows:

4 1. This is a proposed class action brought on behalf of Plaintiffs and all persons
5 who, at any time within the four (4) years preceding the filing of this lawsuit or at any time since
6 the filing of this lawsuit up to and including the time of trial, are currently or formerly employed
7 by Defendant UNIONBANCAL CORPORATION (hereinafter "UNION BANK") in the State of
8 California as non-managerial members of the company's Information Technology Group
9 ("ITG") and for whom the company failed to comply with the salary benchmarks in the
10 application of the "computer professional" exemption, which resulted in the underpayment of
11 wages and/or the improper failure to pay the required salary and/or hourly benchmarks to satisfy
12 Labor Code Section 515.5.

13 2. The case arises out of Defendant's uniform and systematic mis-classification of
14 proposed class members as exempt from overtime pay, resulting in the non-payment of overtime
15 compensation and failure to provide compliant rest and meal periods as well as applicable
16 premium wages to this ascertainable group of the company's California-based IT employees who
17 essentially installed, configured, tested, maintained and engaged in troubleshooting of UNION
18 BANK's internal and external networked applications and computer systems for its commercial
19 and consumer banking services. Specifically, an entire group of ascertainable and non-
20 managerial employees based in California were systematically deemed ineligible for overtime
21 wages and other Labor Code/Wage Order benefits and protections by the Defendant without any
22 individualized assessment of tasks and duties, and were regularly, consistently and continuously
23 required to work hours in excess of 8 hours per day and/or 40 hours per week in violation of
24 IWC Wage Order 4-2001, and Labor Code Sections 201, 510, 515.5, and 1194. The covered
25 positions of the proposed class members have been misclassified as exempt from overtime
26 compensation despite the fact that employees in this position regularly and customarily work
27 overtime but spend fifty percent (50%) or more of their work time performing non-exempt work.
28 The positions fail to confer any sufficient level of discretion and independent judgment to justify

1 exempt status and fail to meet the Department of Labor Standards Enforcement (“DLSE”)’s
2 required salary benchmarks created specifically for IT and computer service employees.
3 Furthermore, Plaintiffs are informed and believe that irrespective of the determination of
4 “exempt” status made by Defendant, non-managerial persons within the UNION BANK’s ITG
5 failed to have the requisite level of authority and decision making to satisfy any potentially
6 applicable exemption under California law and that, moreover, Defendant failed to take adequate
7 measures to ensure that Plaintiffs or the proposed class were conferred such authority so as to
8 satisfy the employer’s burden of proof that the employees were plainly and unmistakably
9 “exempt” from California’s minimum legal protections for employees.

10 3. During the “Relevant Time Period” (defined as any time commencing 4-years
11 from the date of filing this Complaint until the date of commencement of trial in the action),
12 UNION BANK’s course of conduct, policy and practice was to mis-classify a wholesale group
13 of employees under “exempt” or “salaried” job titles as further defined and described herein.
14 Plaintiffs are informed and believe that Defendant failed to undertake any individualized
15 assessments, measure or analysis of the tasks and duties assigned and performed by the proposed
16 class so that it could in any meaningful way ensure that Plaintiffs’ or any proposed class
17 member’s designation was in compliance with any recognized exemption from the Labor Code
18 protections identified herein. Defendant also failed to keep accurate records of actual hours
19 caused or suffered to work by the employees, thus preventing it from in any way determining
20 whether it met California’s requirement that “exempt” employees spend more than 50% of their
21 actual work time performing exempt tasks and duties. This failure of documentation and record-
22 keeping on the part of the employer will require the use of survey and statistical analysis of
23 secondary data in order for the company to make a prima-facie case supporting any exemption
24 defense. Plaintiffs are informed and believe, and based thereupon allege, that prior to the
25 initiation of this lawsuit, Defendant failed to maintain adequate records that would justify its
26 exempt classification scheme and failed, at least until September 2010, to make any effort to
27 comply with the DLSE’s salary and hourly benchmarks necessary to allow UNION BANK to
28 make a colorable claim of compliance with Labor Code Section 515.5, which is the specific

1 exemption created by the California Legislature to potentially cover the ITG employees with
2 exempt status. Defendant, at all relevant times, knew that its failure to maintain appropriate
3 records for each and every person in the proposed class on an individual basis constituted a
4 systematic classification scheme and it took no reasonable measures to periodically monitor,
5 audit or ensure that its exempt classification for the proposed Plaintiff Classes was lawful or
6 proper. Further, the routine and repetitive demands of the job led to considerable on-call work
7 periods subject to Defendant's control without compensation, as well as the frequent missing of
8 any duty free meal and rest periods as proscribed by Labor Code Section 512(b). Accordingly,
9 Plaintiffs seek to certify the following classes:

10 **Plaintiff Class I (The Salary Threshold Class):**

11 All Defendant's California-based non-managerial employees who (1)
12 were employed within Defendant's Information Technology Group
13 (ITG) with Job Designation Codes 570000 through 589999; (2) were
14 employed at any time from the period of 4 years prior to the
15 commencement of this action until the date of trial and (3) were
16 deemed "exempt" from the requirement to pay overtime
17 compensation but who were not paid a wage that satisfied the
18 benchmarks set forth in Labor Code Section 515.5 according to
19 UNION BANK records.

17 **Plaintiff Class II (The Duties Threshold Class):**

18 All Defendant's California-based non-managerial employees who (1)
19 were employed within Defendant's Information Technology Group
20 (ITG) with Job Designation Codes 570000 through 589999; (2) were
21 employed at any time from the period of 4 years prior to the
22 commencement of this action until the date of trial and (3) were
23 deemed "exempt" from the requirement to pay overtime
24 compensation but whose job duties failed to satisfy Labor Code
25 Section 515.5 definition of "computer professional."

23 **Plaintiff Class III (The Re-Classified Class):**

24 All Defendant's California-based non-managerial employees who (1)
25 were employed within Defendant's Information Technology Group
26 (ITG) with Job Designation Codes 570000 through 589999; (2) were
27 employed at any time from the period of 4 years prior to the
28 commencement of this action until the date of trial; (3) were
reclassified as hourly and "non-exempt" as of September 2010
according to UNION BANK records; and (4) were not paid for all

1 overtime hours worked from 4 years prior to the commencement of
2 this action until September 2010, despite no change in job duties.

3 4. The "Overtime Subclass" includes all proposed Members of the Plaintiff Class I-
4 III who worked in excess of 8 hours per day and/or 40 hours per week and who were not paid
5 overtime compensation as required by applicable orders of the Industrial Welfare Commission
6 ("IWC"). Due to the nature of the duties and responsibilities required by UNION BANK,
7 Plaintiffs and the proposed class of employees regularly worked overtime, but were deemed
8 "salaried exempt" without regard to exemption status, particularly salary benchmarks for
9 computer professional employees as determined by the DLSE. Each of the positions cover the
10 multiple "salary bands" of anywhere from Level A1-A7, excluding any managerial employees.
11 The positions all require the same basic task work and the corresponding salary grade is for
12 determination of advancement and pay and does not include expanded responsibility or
13 management positions. In addition to the "blanket" classification scheme for exempt status, all
14 proposed class members were subject to a common set of employer-based policies, procedures,
15 practices and directives that had a common impact on the proposed class and failed entirely to
16 assess on an individualized basis whether the group was entitled to premium wages and meal/rest
17 breaks as required by the California Labor Code and applicable orders of the Industrial Welfare
18 Commission. Plaintiffs allege on behalf of themselves and all others in the proposed classes that
19 overtime hours were regularly required and demanded of the employer to be worked and the
20 employer failed to document, track or record all hours actually caused or suffered to work. As a
21 result of said Defendant's failure to document actual hours worked by the proposed class,
22 Plaintiff and the members of the proposed classes are entitled to state and will state reasonable
23 estimates of daily, weekly, monthly or yearly overtime as to hours routinely worked in excess of
24 8 per day and/or 40 per week. Said estimates will be provided through survey evidence and
25 representative testimony that is statistically reliable and can be extrapolated to the class as a
26 whole.

27 5. The "Meal Period Subclass" includes all proposed Members of the Plaintiff
28 Classes who worked periods exceeding five hours without an uninterrupted, off-duty, 30-minute

1 meal period and/or periods in excess of ten hours without a second uninterrupted off-duty, 30-
2 minute meal period and were denied commensurate pay under Labor Code sections 226.7 as well
3 as applicable Wage Orders of the Industrial Welfare Commission. Evidence of violation rates
4 for non-compliant meal periods will be provided through survey evidence and representative
5 testimony that is statistically reliable and can be extrapolated to the class as a whole.

6 6. The “Rest Period Subclass” includes all Members of the Plaintiff Classes who
7 worked periods of four hours or a major fraction thereof without a rest period of at least 10-
8 minutes and were denied commensurate pay under Labor Code section 226.7. Evidence of
9 violation rates for non-compliant rest periods will be provided through survey evidence and
10 representative testimony that is statistically reliable and can be extrapolated to the class as a
11 whole. As to the Meal and Rest Period subclasses, Plaintiffs allege on behalf of themselves
12 and all others in the proposed classes, that due to exempt status, UNION BANK deprived and
13 prevented the effected employees from taking timely, uninterrupted 10-minute duty free rest
14 periods for every four hours worked. Further, the employer failed to document, track or record
15 all hours actually caused or suffered to work and failed to provide, authorize and/or permit
16 timely rest periods for the proposed class of employees, nor did it pay premium wages in lieu
17 thereof as required by Labor Code § 226.7. Defendant’s policy, practice and pattern of conduct
18 did not afford Plaintiffs or the proposed class members the ability to take legally compliant meal
19 and rest breaks based on the systematic assertion of exempt status.

20 7. The “Waiting Time Subclass” includes all proposed Members of the Plaintiff
21 Classes who ended their employment with the Defendant during the Class Period, but who were
22 not timely paid all wages owed as required by the Labor Code, and, therefore, are entitled to
23 “premium wage” payments equivalent to 30-days pay at their last hourly rate pursuant to
24 California Labor Code section 203. By this action, Plaintiffs specifically preserve the statute of
25 limitations for former employees to obtain the penalty wage of 30 days pay for each separated
26 employee from the date of at least 3 years prior to the commencement of this action until the
27 time of trial in the matter. The “Wage Statement Subclass” consists of all ITG Class members
28 whom Defendant knowingly and intentionally failed to provide accurate itemized wage

1 statements as required by the Labor Code and are entitled to recover damages and statutory
2 penalties. Plaintiffs allege on behalf of themselves and all others in the proposed classes that
3 their wage statements failed to provide accurate and detailed records of time, hours worked and
4 pay to be provided on an hourly basis. Plaintiffs also allege that Defendant's conduct in
5 connection with the exempt classification scheme placed it on notice that it was not providing
6 timely and accurate wage statements and that its conduct was knowing and willful.

7 8. All wages sought by this action for Plaintiffs and the proposed class members are
8 pursuant to the Unfair Competition Law, Business & Professions Code Section 17200, et seq.,
9 for the restitution of unpaid wages and/or disgorgement of profits Defendant obtained as a result
10 of failing to pay all appropriate and lawful wages due to the Plaintiffs and the putative class.

11 II.

12 JURISDICTION AND VENUE

13 9. The California Superior Court has jurisdiction in this matter due to Defendant's
14 violations of Labor Code §201, et seq., Labor Code §500, et seq., Labor Code §1194, Business &
15 Professions Code sections 17200, et seq., the IWC Wage Order(s) and common law principles.

16 10. Venue is proper in this Judicial district and the City and County of San Francisco
17 because, upon information and belief, Defendant resides in and/or is domiciled in this county and
18 maintains offices and transacts business in this county, and work was performed by members of
19 the class made the subject of this action in the County of San Francisco, California. Venue is
20 also proper in San Francisco County pursuant to CCP §395(b) and/or CCP §395.5 in that
21 Defendant is a resident and domiciliary of said county and the county is the place where the
22 harm occurred. Lastly, the unlawful acts alleged herein have a direct effect on Plaintiffs and
23 those similarly situated within the State of California and within San Francisco County, as well
24 as other counties located throughout California. Although the positions covered by the proposed
25 class are throughout California, a high percentage and the highest concentration of the personnel
26 were employed in the Bay area. At all relevant times, Plaintiffs were and are residents of the
27 State of California who were employed by Defendant and held positions within the ITG group.
28

1 blanket "exempt" classification and no individual inquiry at any time as to the appropriateness of
2 the designation. At all relevant times, SMITH held the ITG position job code designation
3 between 570000 and 589999 and was designated standard position responsibilities that, on their
4 face, fail to qualify for exempt status. Plaintiffs are informed and believe as many as 300 other
5 employees of UNION BANK were similarly situated with substantially identical functions and
6 worked overtime hours without appropriate premium compensation of 1.5x their converted
7 hourly wage. Each of the applicable position designation codes used by the company within the
8 ITG and numerically categorized from 570000 through 589999 were uniformly classified as
9 "exempt;" but all positions performed the same basic task work in installing, configuring,
10 maintaining, testing and troubleshooting computer network, security and applications provided
11 by UNION BANK through the company's networked systems. During this time, SMITH was
12 required to work a minimum of 60 hours per week and almost always beyond 8 hours per day
13 and/or 40 hours per week. Overtime pay at 1.5x SMITH's hourly rate was not paid. During the
14 proposed Class Period SMITH and others similarly situated were paid a salary, deemed exempt
15 without individual assessment of exemption, and, based on the total hours actually worked, the
16 salary was below that required by the DLSE to satisfy the computer professional exemption.
17 UNION BANK gradually increased SMITH's salary, but the responsibilities and duties were still
18 insufficient to meet any recognized exemption under California law and applicable Wage Order
19 4-2001. The position at issue in this case did not entail management or supervision of other
20 employees. In September 2010, UNION BANK reclassified similar employees as SMITH to be
21 hourly non-exempt employees due to the nature of the job duties. Although SMITH's job duties
22 remained the same, instead of being reclassified as nonexempt, UNION BANK changed his job
23 title and provided increased compensation in what was stated by the company as being required
24 by DLSE and Labor Code Section 515.5 requirements. SMITH was not paid overtime premium
25 wages for work performed in excess of 8 hours per day and/or 40 hours per week prior to
26 September 2010, even though such work hours were regularly required and were spent working.
27 SMITH's new job position fails to meet the requirements of Labor Code Section 515.5 and he is
28 still regularly required to work overtime hours without overtime compensation, meal periods,

1 rest periods and does not receive accurate wage statements showing all hours worked.

2 13. Within four years prior to the filing of this Complaint, Plaintiff PORFIRIA
3 HERNANDEZ was a California-based employee of the Defendant and, under applicable law was
4 entitled to overtime compensation, rest and meal periods (or premium compensation in lieu
5 thereof). At all times herein, HERNANDEZ is and maintains residency in the State of California
6 and is a citizen of the State of California. Plaintiff held the positions of the nature, type and
7 function of the proposed class, which was to update, install, configure, maintain and troubleshoot
8 UNION BANK's internal and external networked computer system and applications as an ITG
9 employee of the company. Plaintiffs are informed and believe that all UNION BANK ITG
10 positions provided the same or similar functions and were all subject to the same policies,
11 procedures, practices and employer directives, including, but not limited to a blanket "exempt"
12 classification and no individual inquiry at any time as to the appropriateness of the designation.
13 At all relevant times, HERNANDEZ held an ITG position job code designation between 570000
14 and 589999 and was designated standard position responsibilities that, on their face, failed to
15 qualify for exempt status, both in terms of job duties and salary benchmarks required by the
16 DLSE. Plaintiffs are informed and believe as many as 300 other employees of UNION BANK
17 were similarly situated with substantially identical functions, had job code designations in the
18 ITG between 570000 and 589999, and worked overtime hours without appropriate premium
19 compensation of 1.5x their converted hourly wage. Each of the applicable position designation
20 codes used by the company within the ITG and numerically categorized from 570000 through
21 589999 were uniformly classified as "exempt;" but all positions performed the same basic task
22 work in installing, configuring, maintaining, testing and troubleshooting computer network,
23 security and application suites provided by UNION BANK through the company's networked
24 systems. During this time, HERNANDEZ was required to work a minimum of 60 hours per
25 week and almost always beyond 8 hours per day and/or 40 hours per week. Prior to September
26 2010, overtime pay at 1.5x HERNANDEZ's hourly rate was not paid even though
27 HERNANDEZ's total pay did not satisfy the wage benchmarks required by Labor Code Section
28 515.5. From four years of filing this Complaint until September 2010, HERNANDEZ and

1 others similarly situated were paid a salary, deemed exempt without individual assessment of
2 exemption, and, based on the total hours actually worked, the salary was below that required by
3 the DLSE to satisfy the computer professional exemption. UNION BANK gradually increased
4 HERNANDEZ's salary, but the responsibilities and duties were still insufficient to meet any
5 recognized exemption under California law and applicable Wage Order 4-2001. The position at
6 issue in this case did not entail management or supervision of other employees. In September
7 2010, UNION BANK reclassified similar employees as HERNANDEZ to be hourly non-exempt
8 employees due to the nature of the job duties. As of September 2010, HERNANDEZ and other
9 ITG employees were re-classified as hourly employees and deemed eligible for overtime pay.
10 Since September 2010, HERNANDEZ has been paid overtime wages and there was no change in
11 her job function; in effect, her job duties remained the same but the company did not make the
12 reclassification retroactive to as to pay Proposed Plaintiff Class III class members back wages for
13 overtime previously performed within the statute of limitations period.

14 **B. The Defendant**

15 14. Defendant UNIONBANCAL CORPORATION is incorporated under Delaware,
16 but does business and employs individuals throughout the State of California and is registered
17 with the California Secretary of State to do business in California. The headquarters and
18 principal domicile for UNION BANK is in San Francisco, California. Defendant has offices
19 throughout California, but many or most of the proposed class members, based on information
20 and belief, were employed in and around San Francisco County. For purposes of the Class
21 Action Fairness Act, Plaintiffs are informed and believe, and based thereon allege, that UNION
22 BANK is domiciled in the state of Delaware and California as of the date of filing this
23 Complaint. As a result, no minimal diversity exists for purposes of 28 U.S.C. Section 1332(a)-
24 (d).

25 15. The true names and capacities, whether individual, corporate, associate, or
26 otherwise, of Does 1 through 50, inclusive, are unknown to Plaintiffs, who therefore sue such
27 Defendants under fictitious names pursuant to California Code of Civil Procedure § 474.
28 Plaintiffs are informed and believe and thereon allege that these Defendants, Does 1 through 50,

1 are in some manner or capacity, and to some degree, legally responsible and liable for the
2 wrongs of which Plaintiffs complain. Plaintiffs will seek leave to amend this complaint to allege
3 the true names and capacities of these Doe Defendants once they are ascertained. On
4 information and belief, Plaintiffs make all allegations contained in this complaint against all
5 Defendants, including Does 1 through 50, inclusive.

6 16. Plaintiffs SMITH and HERNANDEZ are current employees of UNION BANK.
7 From four years prior the filing of this Complaint, Plaintiffs regularly and customarily worked
8 more than eight (8) hours a day and more than forty (40) hours a week. At all relevant times,
9 over fifty percent (50%) of Plaintiffs' working hours were spent performing non-exempt duties
10 and routine, repetitive task work to assist computer users in the company with standard issues
11 related to computer networked applications and systems. Plaintiffs did not customarily and
12 regularly direct the work of any subordinate employees. Plaintiffs are customarily and regularly
13 required to work in such a manner that prevented from them from taking compliant meal periods
14 and rest breaks as required under California law. After Plaintiff HERNANDEZ was reclassified
15 as hourly or "nonexempt" in September 2010, she was paid overtime and has been permitted rest
16 and meal breaks (whereas before she was not allowed such breaks.) However, for all period of
17 time within the applicable statute of limitations prior to the September 2010 reclassification,
18 Defendant failed to pay overtime wages, or allow for compliant break periods for proposed
19 Plaintiff Class III members.

20 17. While the amount of unpaid wages for overtime and non-compliant meal and rest
21 periods vary, Plaintiffs and the proposed classes all were subject to the same common set of
22 defined tasks and duties, and failed to engage in decision-making with any degree of discretion
23 and independent judgment as to any matter of significance to the overall employer objectives for
24 a majority of their daily work time. Further, Defendant failed to monitor time records or task
25 objectives in any sufficient way so as to meet its burden of proof to show that a majority of all
26 work time during a typical work day or work week satisfied any exemption status. And, to the
27 extent the "computer professional" exemption may be available generally to similar employees
28 under Labor Code Section 515.5, Plaintiff HERNANDEZ alleges that she and all proposed class

1 members failed as a matter of law to meet the requisite compensation requirements identified the
2 by the Department of Labor Standards Enforcement that would be necessary to implicate the
3 exemption.

4 18. Plaintiffs bring this action on their own behalf and on behalf of the all other such
5 current and former employees similarly situated. With respect to the causes of action asserted
6 under the Unfair Competition Law (California Business & Professions Code § 17200), Plaintiffs
7 also bring this action on behalf of the public to ensure that the objectives of Labor Code Section
8 90.5 are satisfied. Plaintiffs have now substantially complied with the requirements of the
9 Private Attorney General Act of 2004 ("PAGA") and bring this action as a representative action,
10 as permitted by Labor Code Section 2699.3. The Notice and time periods proscribed by the
11 statute have been satisfied as shown by the attached Exhibit "A", which is incorporated herein by
12 this reference. As of this time, the California Department of Labor Standards Enforcement
13 (DLSE) nor the California Labor and Workforce Development Agency (LWDA) have taken
14 steps to investigate claims of violations, nor has Defendant taken any corrective action to cure
15 violations alleged herein. The time for corrective action or action by the DLSE and/or the
16 LWDA has expired. As a consequence, Plaintiffs bring this action as a representative action on
17 behalf of the State of California and the general public to obtain penalty assessments as
18 permitted by law.

19 **IV.**

20 **GENERAL ALLEGATIONS**

21 19. California Labor Code section 1194 provides that notwithstanding any agreement
22 to work for a lesser wage, an employee receiving less than the legal overtime compensation is
23 entitled to recover in a civil action the unpaid balance of their overtime compensation, including
24 interest thereon, reasonable attorneys' fees, and costs of suit.

25 20. Further, Business and Professions Code section 17203 provides that any person
26 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
27 Business and Professions Code section 17204 provides that any person who has suffered actual
28 injury and has lost money or property as a result of the unfair competition may bring an action

1 for restitution in a court of competent jurisdiction. Violations of the California Labor Code in
2 connection with an employer's obligation to pay wages serve as a legitimate predicate for
3 implication of the UCL.

4 21. During all, or a portion, of the Class Period, Plaintiffs and each member of the
5 proposed Plaintiff Classes I-III were employed by Defendants, and each of them, in the State of
6 California in non-managerial positions with the job code identifications within UNION BANK's
7 ITG numerically designated between 570000 through and including 589999. Although
8 systematically and uniformly classified as "exempt" by Defendant for all or a portion of the
9 proposed Class Period, Plaintiffs, and each member of the proposed Plaintiff Classes I-III were,
10 in fact, non-exempt employees who were entitled to rights and benefits in working conditions
11 covered under one or more Industrial Welfare Commission (IWC) Wage Orders, including Wage
12 Order 4-2000, 4-2001 ("Wage Orders"), Labor Code sections 201-203, 221, 226, 226.7, 510,
13 512, 1194, and/or other applicable wage orders, regulations and statutes, and each Plaintiff Class
14 member was not subject to an exemption for computer, executive, administrative or professional
15 employees. Since the employees' job functions, duties and wages were in fact insufficient to
16 satisfy exempt status, the applicable Wage Orders promulgated by the IWC imposed an
17 obligation on the part of the Defendant to pay Plaintiffs and the proposed Plaintiff Class I-III
18 members lawful overtime compensation at the requisite legal rate for hours worked in excess of
19 8 hours per week and/or 40 per week, and to provide compliant, timely and duty-free rest and
20 meal periods, or compensation in lieu thereof for non-compliant missed, late or interrupted meals
21 and rest periods throughout all or a portion of the proposed Class Period.

22 22. During the Class Period, Defendant was obligated to pay Plaintiffs, and all
23 members of the proposed Plaintiff Classes overtime compensation for all hours worked over
24 eight (8) hours of work in one (1) day or forty (40) hours in one (1) week. Defendant regularly
25 required Plaintiffs and the proposed Plaintiff Class members to work overtime hours without
26 overtime compensation. Until September 2010, Defendant failed to pay overtime to all members
27 of the Plaintiff Classes I-III; however, after September 2010, Defendant did begin to pay
28 overtime wages to Plaintiff Class III, the Reclassified Class.

1 23. Plaintiffs, and each Plaintiff Class member, primarily performed non-exempt
2 work in excess of the maximum regular rate hours set by the IWC in the above Wage Orders,
3 regulations or statutes, and therefore entitled the Plaintiffs and the proposed classes to properly
4 calculated overtime compensation at the rate of time and one-half, and when applicable, double
5 time rates as set forth by the above Wage Orders, regulations and/or statutes. Such policies,
6 practices and procedures are continuous and done willfully by the employer, UNION BANK, to
7 the present, with the exception of the proposed Plaintiff Class III, who were reclassified as
8 hourly and non-exempt in or around September 2010.

9 24. During the Class Period, the Defendants, and each of them, required Plaintiffs and
10 the proposed members of the Plaintiff Classes to work overtime without lawful compensation, in
11 violation of the various above applicable Wage Orders, regulations and statutes. Defendant
12 knew or should have known that the positions failed to plainly and unmistakably meet any
13 recognized exemption and willfully deprived Plaintiffs of minimum labor standards required by
14 applicable California labor laws and regulations. Defendant also failed to maintain adequate
15 records to justify the continued used of “exempt” classification and based thereon, Plaintiffs
16 allege that UNION BANK will be unable to satisfy its burden of proof to show that any similarly
17 situated employee in the proposed Plaintiff Classes was properly classified as exempt.

18 25. During the Class Period, the Defendants, and each of them, required Plaintiffs and
19 the members of the proposed Plaintiff Classes to work without being given paid 10-minute rest
20 periods as required by law and without being provided 30-minute meal period and second 30-
21 minute meal periods as required by law, during which Plaintiffs and the proposed class members
22 were not relieved of all duties and not free to leave the employer’s premises. Plaintiffs and
23 members of the proposed Plaintiff Classes I-III were not provided with compliant meal periods
24 during the Class Period nor did Defendant pay Plaintiffs or proposed Plaintiff Class members
25 one hour’s pay at the employee’s regular rate of pay as premium pay compensation for failure to
26 provide rest and/or meal periods. This conduct violated Labor Code Section 226.7 and
27 applicable wage orders issued by the Industrial Welfare Commission (IWC).

28

1 (ITG) with Job Designation Codes 570000 through 589999; (2) were
2 employed at any time from the period of 4 years prior to the
3 commencement of this action until the date of trial and (3) were
4 deemed "exempt" from the requirement to pay overtime
5 compensation but whose job duties failed to satisfy Labor Code
6 Section 515.5 definition of "computer professional."

5 **Plaintiff Class III (The Re-Classified Class):**

6 All Defendant's California-based non-managerial employees who (1)
7 were employed within Defendant's Information Technology Group
8 (ITG) with Job Designation Codes 570000 through 589999; (2) were
9 employed at any time from the period of 4 years prior to the
10 commencement of this action until the date of trial; (3) were
11 reclassified as hourly and "non-exempt" as of September 2010
12 according to UNION BANK records; and (4) were not paid for all
13 overtime hours worked from 4 years prior to the commencement of
14 this action until September 2010, despite no change in job duties.

12 28. Further, Plaintiffs seek to certify a subclass of employees composed of and
13 defined as follows:

14 Plaintiff "Overtime Subclass":

15 All members of the proposed Plaintiff Classes I-III who worked in excess of 8 hours per
16 day and/or 40 hours per week and who were not paid the legally requisite overtime rate
17 for all hours worked in excess of eight (8) hours per workday and/or forty (40) hours per
18 workweek at the premium pay rate required by applicable law.

18 29. Further, Plaintiffs seek to certify a subclass of employees composed of and
19 defined as follows:

20 Plaintiff "Meal Period Subclass":

21 All members of the proposed Plaintiff Classes I-III who worked periods exceeding five
22 hours without being provided with an uninterrupted, off-duty, 30-minute meal period
23 and/or were not provided compensation of one hour's pay at the employee's regular rate
24 for each such day that a meal period was not provided.

25 30. Further, Plaintiffs seek to certify a subclass of employees composed of and
26 defined as follows:

27 Plaintiff "Rest Period Subclass":

1 All members of the proposed Plaintiff Classes I-III who worked periods of four hours
2 without being authorized and/or permitted by UNION BANK to take a paid duty-free and
3 uninterrupted rest period of at least 10-minutes length and who were not provided with
4 compensation of one hour's pay at the employee's regular rate for each such day that a
5 rest period was not permitted.

6 31. Further, Plaintiffs seek to certify a subclass of employees composed of and
7 defined as follows:

8 Plaintiff "Waiting Time Subclass":

9 All members of the proposed Plaintiff Classes I-III, who, from 3 years prior to the
10 commencement of the action, separated from their employment from Defendant by way
11 of voluntary or involuntary discharge, and to whom the Defendant knowingly failed to
12 timely pay all wages due to said employees in the time periods proscribed by statute.

13 32. Further, Plaintiffs seek to certify a subclass of employees composed of and
14 defined as follows:

15 Plaintiff "Wage Statement Subclass":

16 All members of the proposed Plaintiff Class from 3 years prior to the commencement of
17 this action, for whom Defendant knowingly and intentionally failed to provide accurate
18 itemized wage statements showing all hours the said employee was actually caused or
19 suffered to work.

20 33. Further, Plaintiffs seek to certify a subclass of employees composed of and
21 defined as follows:

22 Plaintiff "17200 Subclass":

23 All members of the proposed Plaintiff Classes I-III who, during the proposed Class
24 Period, were subjected to Defendant's unlawful and unfair business practices failed to
25 pay proper overtime compensation, failed to provide meal periods, and failed to provide
26 rest breaks in accordance with California Labor Law and are thus owed equitable relief
27 including restitution and injunctive relief.

28 34. Plaintiffs are informed and believe that any an all recovery for unpaid back wages
can be pursued by restitution of such wages and by virtue of equitable action under California's
Unfair Competition Law and will seek to try those claims before any legal claims or claims for
statutory penalties.

35. Plaintiffs reserve the right under Rule 3.765(b), California Rules of Court, to

1 amend or modify the Class description with greater specificity or further division into subclasses
2 or limitation to particular issues.

3 36. This action has been brought and may be maintained as a class action pursuant to
4 Code of Civil Procedure section 382 because there is a well-defined common interest of many
5 persons and it is impractical to bring them all before the court.

6 37. **Ascertainable Class:** The proposed classes and each subclass are ascertainable
7 in that their members can be identified and located using information contained in Defendant's
8 payroll and personnel records.

9 38. **Numerosity:** The potential quantity of members of the Classes and Subclasses as
10 defined is so numerous that joinder of all members would be unfeasible and impractical. The
11 disposition of their claims through this class action will benefit both the parties and this Court.
12 The quantity of members of the Classes and Subclasses is unknown to Plaintiffs at this time, but
13 may be derived directly from UNION BANK's corporate payroll records. Based on Plaintiffs'
14 tenure with the company, it is estimated that each of the Classes and Subclasses number between
15 100-300 individuals. The quantity and identity of such membership is readily ascertainable via
16 inspection of Defendant's records, and identifying data will be sufficient to provide the proposed
17 class members with constitutionally required notice of the pendency of the action and provide
18 them with the right to opt out of the proceedings. Plaintiffs are informed and believe that the job
19 code and position title are sufficiently specific to allow Defendant to identify each and every
20 proposed member of the Plaintiff Classes I-III as defined herein.

21 38. **Typicality:** The claims of Plaintiffs SMITH and HERNANDEZ for overtime
22 wages, non-compliant meal and rest periods, inaccurate wage statements, waiting time penalties,
23 interest, and attorneys' fees are typical of the claims of all members of the Class and Subclasses
24 mentioned herein because all members of the Classes and Subclasses sustained similar injuries
25 and damages arising out of Defendant's common course of conduct in violation of law and the
26 injuries and damages of all members of the Class and Subclasses were caused by Defendant's
27 wrongful conduct in violation of law, as alleged herein. Specifically, SMITH and
28 HERNANDEZ held the relevant job positions during their tenure with the company and were

1 required to work overtime without compensation. SMITH and HERNANDEZ were aware of
2 other similar employees treated in like manner by the Defendant and subject to the same set of
3 policies, practices and procedures that led to the underpayment of wages. SMITH and
4 HERNANDEZ were employed within the proposed Class Period, and are each willing to serve
5 as an interested class representative with claims typical of all proposed class and subclass
6 members.

7 39. **Adequacy:** Plaintiffs SMITH and HERNANDEZ are adequate representatives of
8 the proposed Plaintiff Classes I-III and Subclasses herein, will fairly protect the interests of the
9 members of the Class and Subclasses, have no interests antagonistic to the members of the
10 Classes and Subclasses and will vigorously pursue this suit via attorneys who are competent,
11 skilled and experienced in litigating matters of this type. Proposed Class Counsel is competent
12 and experienced in litigating large employment law class actions.

13 40. **Superiority:** The nature of this action and the nature of laws available to
14 Plaintiffs make use of the class action format a particularly efficient and appropriate procedure to
15 afford relief to Plaintiffs for the wrongs alleged herein, as follows:

16 a. This case involves a large corporate Defendant and a sufficient numerous
17 group of individual Class Members with many relatively small claims and
18 common issues of law and fact;

19 b. If each individual member of each of the Plaintiff Classes and Subclasses
20 was required to file an individual lawsuit, the large corporate Defendant would
21 necessarily gain an unconscionable advantage because Defendant would be able
22 to exploit and overwhelm the limited resources of each individual member of
23 Plaintiff Classes and Subclasses with Defendant's vastly superior financial and
24 legal resources;

25 c. Requiring each individual member of each of the Plaintiff Classes and
26 proposed Subclasses to pursue an individual remedy would also discourage the
27 assertion of lawful claims by the members of the Plaintiff Classes and Subclasses
28 who would be disinclined to pursue an action against Defendant because of an

1 appreciable and justifiable fear of retaliation and permanent damage to their lives,
2 careers and well-being;

3 d. Proof of a common business practice or factual pattern, of which the
4 members of the Plaintiff Classes and proposed Subclasses experienced, is
5 representative of every other similar position and differs only in the quantity of
6 unpaid wages (damages);

7 e. The prosecution of separate actions by the individual members of the
8 Plaintiff Classes and proposed Subclasses, even if possible, would create a
9 substantial risk of inconsistent or varying verdicts or adjudications with respect to
10 the individual members of the Plaintiff Class and proposed Subclasses against
11 Defendant; and which would establish potentially incompatible standards of
12 conduct for Defendant; and/or legal determinations with respect to individual
13 members of the Plaintiff Classes and proposed Subclasses which would, as a
14 practical matter, be dispositive of the interest of the other members.

15 f. The claims of the individual members of the Plaintiff Classes and
16 proposed Subclasses are not sufficiently large to warrant vigorous individual
17 prosecution considering all of the concomitant costs and expenses attending
18 thereto;

19 g. Furthermore, as the damages suffered by each individual member of the
20 classes may be relatively small, the expenses and burden of individual litigation
21 would make it difficult or impossible for individual members of the classes to
22 redress the wrongs done to them, while an important public interest will be served
23 by addressing the matter as a class action;

24 h. The cost to the court system of adjudication of such individualized
25 litigation would be substantial. Individualized litigation would also present the
26 potential for inconsistent or contradictory judgment; and

27 i. Finally, the alternative of filing a claim with the California Labor
28 Commission is not superior, given the lack of discovery in such proceedings, the

1 availability of fewer remedies, and the fact that the losing party has the right to a
2 trial de novo in the Superior Court.

3 **41. Existence and Predominance of Common Questions of Fact and Law:** There
4 are common questions of law and fact as to the members of the Plaintiff Classes and proposed
5 Subclasses which predominate over questions affecting only individual members of the Plaintiff
6 Classes and proposed Subclasses including, without limitation:

- 7 a. Whether the Plaintiff Class members qualify for exempt status under the
8 administrative exemption;
- 9 b. Whether the Plaintiff Class members qualify for exempt status under the
10 computer professional exemption;
- 11 c. Whether the Plaintiff Class members were improperly mis-classified by
12 Defendant without analysis as to job duties performed;
- 13 d. The extent to which Defendant analyzed the duties and responsibilities of
14 the Plaintiff Class members before classifying them as exempt;
- 15 e. The number of hours per week and per day Plaintiff Class members are
16 expected to work;
- 17 f. Defendant's expectations as to the duties and responsibilities of the
18 Plaintiff Class members, and whether these expectations are reasonable under the
19 circumstances;
- 20 g. Whether the various tasks performed by the Plaintiff Class members
21 qualify as exempt or non-exempt tasks;
- 22 h. Whether Defendant's conduct constitutes unfair competition within the
23 meaning of Business and Professions Code sections 17200 and 17203;
- 24 i. Whether members of the Plaintiff Classes and Subclasses are entitled to
25 compensatory damages, and if so, the means of measuring such damages;
- 26 j. Whether the members of the Plaintiff Classes and Subclasses are entitled
27 to injunctive and/or declaratory relief;
- 28 k. Whether the members of the Plaintiff Classes and Subclasses are entitled

1 to restitution;

2 l. Whether Defendant is liable for pre-judgment interest; and

3 m. Whether Defendant is liable for attorneys' fees and costs.

4 42. **Manageability of Class and Common Proof:** The nature of this action and the
5 nature of laws available to Plaintiffs make use of the class action format a particularly efficient
6 and appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein.
7 Specifically, the primary claims alleged turn upon Defendant's own uniform, systematic practice
8 of classifying all affected job positions as "salaried exempt" without any individual scrutiny of
9 tasks and duties is in compliance with Labor Code section 1194 and the presumptions against
10 employees being deemed "exempt" from overtime payment requirements. Therefore, the
11 propriety of the classification scheme applicable to all employees holding the job titles and
12 positions as described herein is a predominant question of fact that is easily cable of being
13 discovered through manageable devices of common proof such as statistical random sampling,
14 survey evidence based on scientific principles, representative testimony, documentary evidence
15 and common practices/procedures of the Defendant in treating each of the class members as a
16 homogeneous group in the payment of their wages. Furthermore, the Plaintiff subclass relating
17 to current and former employees holding defined position descriptions, job titles, job codes and
18 salary grades and/or other similar job title, position or description is also a narrowly defined
19 group of employees whose job duties, tasks and classification scheme can be readily achieved
20 through means of common proof. Once the predominant issue of exempt classification is
21 determined, then each of the derivative Subclass claims and damages, if any, suffered by each
22 member is capable of being shown by several means of common proof and limited by individual
23 showings of entitlement to recovery that can be professionally administered and tailored to the
24 facts and circumstances of the case.

25 VI.

26 CAUSES OF ACTION

27 FIRST CAUSE OF ACTION

28 **Failure To Pay Overtime Wages [Labor Code §510 and §1194]
(Plaintiffs and Each Member of Plaintiff Classes I-III against each Defendant)**

1 43. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

2 44. Plaintiffs and the Plaintiff Class Members were regularly required to work
3 overtime hours and are entitled to overtime compensation for overtime work performed for the
4 Defendant, in an amount according to proof. Pursuant to Labor Code sections 1194 and 1198
5 and IWC Wage Order 4-2001, the proposed Plaintiff Class Members seek the payment of all
6 overtime compensation which they earned and accrued after four (4) years prior to filing of the
7 Complaint, according to proof. Plaintiffs and the proposed Plaintiff Classes I-III regularly and
8 consistently worked over 8 hours per workday and/or in excess of 40 hours per workweek. With
9 the exception of Plaintiff Class III, of which HERNANDEZ is a member, who were reclassified
10 as hourly/non-exempt in or around September 2010, all proposed Plaintiff Classes I-III seek
11 unpaid overtime wage for the proposed Class Period. For proposed Plaintiff Class III, the
12 relevant time period is four years prior to the commencement of the action until the date in which
13 Plaintiff Class III members were reclassified.

14 45. Additionally, Plaintiffs and the proposed Members of the Plaintiff Class are
15 entitled to attorneys' fees, and costs, pursuant to California Labor Code § 1194 and prejudgment
16 interest in an amount according to proof.

17 **SECOND CAUSE OF ACTION**

18 **Failure To Provide Meal Periods Or Compensation In Lieu Thereof**
19 **(Plaintiffs and Each Member of Plaintiff Classes I-III against each Defendant)**

20 46. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

21 47. By virtue of the improper classification, Defendant, by practice and policy, failed
22 to provide lawful and compliant meal periods to the Plaintiffs and the proposed Plaintiff Classes
23 in violation of Labor Code Section 226.7, Labor Code Section 512 and applicable IWC Wage
24 Order 4-2001, Sections 11 & 12. By requiring Plaintiffs and members of the proposed Plaintiff
25 Classes I-III to work periods exceeding five hours without an uninterrupted, off-duty 30-minute
26 meal period and to work periods exceeding ten hours without a second uninterrupted, off-duty
27 30-minute meal period and not compensating one hour of pay at their regular rate of
28 compensation for each such occurrence, as alleged above, Defendant willfully violated the
provisions of Labor Code sections 226.7, 512 and IWC Wage Order Nos. 4-1998, 4-2000, and 4-

1 2001. Pursuant to Labor Code sections 226.7 and 512. Accordingly, Plaintiffs and members of
2 the Plaintiff Class I-III seek the payment of all meal period compensation which they are owed,
3 according to proof. Proposed Plaintiff Class III will seek such remedies only for violations that
4 occurred four years prior to the commencement of the action until the date of “re-classification”
5 by the Defendants.

6 48. Additionally, Plaintiffs and the proposed Plaintiff Class members are entitled to
7 attorneys’ fees, and costs, and prejudgment interest as proscribed by Labor Code Section 218.6
8 and Labor Code Section 1194. Plaintiffs seek attorneys fees only on the basis of unpaid back
9 wages and as permitted by Labor Code Section 1194.

10 **THIRD CAUSE OF ACTION**

11 **Failure To Provide Rest Periods Or Compensation In Lieu Thereof**
12 **(Plaintiffs and Plaintiff Class Members against each Defendant)**

13 49. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

14 50. By requiring Plaintiffs and members of the proposed Plaintiff Classes they seek to
15 represent to work four hours or a major fraction thereof without a rest period of at least ten
16 minutes, and failing to provide appropriate compensation in lieu thereof, as alleged above,
17 Defendant willfully violated the provisions of Labor Code section 226.7 and IWC Wage Order
18 Nos. 5-2000, and 5-2001. Plaintiffs and the proposed Plaintiff Class members they seek to
19 represent did not willfully waive through mutual consent with Defendant such rest periods.
20 Plaintiffs and the proposed Plaintiff Class members are entitled to an hour of pay for each day
21 that Defendant failed to properly provide one or more rest periods as set forth in the IWC wage
22 orders, in an amount according to proof. Pursuant to Labor Code section 226.7. Accordingly,
23 the Plaintiffs and proposed Plaintiff Class members seek the payment of all rest period
24 compensation which they are owed according to proof. Proposed Plaintiff Class III will seek
25 such remedies only for violations that occurred four years prior to the commencement of the
26 action until the date of “re-classification” by the Defendants.

27 51. Additionally, Plaintiffs and the proposed Plaintiff Class members are entitled to
28 attorneys’ fees, and costs, and prejudgment interest as proscribed by Labor Code Section 218.6
and Labor Code Section 1194. Plaintiffs seek attorneys fees only on the basis of unpaid back

1 wages and as permitted by Labor Code Section 1194.

2 **FOURTH CAUSE OF ACTION**

3 **Failure to Timely Pay Wages Due at Termination in Violation of
4 California Labor Code § 203**

5 **(Plaintiffs and each Waiting Time Subclass Member against each Defendant)**

6 52. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

7 53. Defendant had a consistent and uniform policy, practice and procedure of
8 knowingly and willfully failing to lawfully pay the earned and unpaid overtime wages of
9 Defendant's former employees. Labor Code sections 201 and 202 require Defendant to pay its
10 employees all wages due within 72 hours of termination of employment. Section 203 of the
11 Labor Code provides that if an employer willfully fails to timely pay such wages the employer
12 must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in
13 full or an action is commenced. The penalty cannot exceed 30 days of wages. Because the
14 Defendant continues its illegal practice, Plaintiffs will seek to enjoin the practice and obtain
15 penalty pay under this section for the maximum allowable statutory period for all former or
16 separated employees in Plaintiff Classes I-III.

17 54. Members of the Waiting Time Subclass are no longer employed by Defendant.
18 They were either discharged from or quit Defendant's employment.

19 55. Defendant willfully failed to pay Waiting Time Subclass Members a sum certain
20 at the time of their termination or within seventy-two (72) hours of their resignation, and failed
21 to pay those sums for thirty (30) days thereafter.

22 56. Defendant's willful failure to pay wages to the Waiting Time Subclass Members
23 violates Labor Code section 203 because Defendant knew wages were due to the Waiting Time
24 Subclass Members, but Defendant failed to pay them.

25 57. Members of the Waiting Time Subclass are entitled to penalties pursuant to Labor
26 Code section 203, in the amount of each class member's daily wage multiplied by thirty (30)
27 days.

28 **FIFTH CAUSE OF ACTION**

**Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement
Provisions (Lab. Code, § 226(a))**

(Plaintiffs and each Wage Statement Subclass Member against each Defendant)

58. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

59. Section 226(a) of the California Labor Code requires Defendant to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiffs and the members of the Wage Statement Subclass. Defendant has knowingly and intentionally failed to comply with Labor Code section 226(a) on each and every wage statement provided to Plaintiffs and members of the proposed Wage Statement Subclass. To wit, Plaintiffs allege that the wages statements failed to accurately set forth all hours actually caused or suffered to work.

60. As a consequence of Defendant's knowing and intentional failure to comply with Labor Code section 226(a), Plaintiffs and the Wage Statement Subclass are entitled to actual damages or penalties not to exceed \$4,000 for each employee pursuant to Labor Code section 226(b), together with interest thereon and attorneys' fees and costs as provided by this subsection.

SIXTH CAUSE OF ACTION
Violations of the Unfair Competition Law
(Plaintiffs and each Member of Plaintiff I-III against each Defendant)

A. Violation of the UCL By Systematic Failure To Pay Overtime Wages [Labor Code §§ 221-222, 510, and 1194 and applicable Regulations/IWC Wage Orders]

61. Plaintiffs incorporate all preceding paragraphs as though fully set forth here

62. Plaintiffs and proposed Plaintiff Class members were regularly required to work overtime hours and are entitled to overtime compensation for overtime work performed for the Defendant, in an amount according to proof. Pursuant to Labor Code sections 1194 and 1198 and IWC Wage Order 4-2001, Plaintiffs and proposed Plaintiff Class members seek the payment of all overtime compensation which they earned and accrued after four (4) years prior to filing of the Complaint, according to proof. Because Defendant did not maintain accurate records showing all hours actually worked by Plaintiffs and proposed Plaintiff Class members, they are permitted by law to provide reasonable estimates as to the amount of daily, weekly, monthly or yearly overtime expended during the class period as evidence of damages.

1 63. Additionally, Plaintiffs and proposed Plaintiff Class members are entitled to
2 attorneys' fees, and costs, pursuant to California Labor Code § 1194 and prejudgment interest in
3 an amount according to proof.

4 64. By failing to pay overtime wages, Defendant violated the UCL and retained
5 unfairly premium wages earned but unpaid to Plaintiffs and proposed Plaintiff Class members.
6 By this action, Plaintiffs seek restitution of these wages from Defendant in an equitable amount
7 based upon aggregate damages shown.

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10 **B. Violation of the UCL By Systematic Failure to Provide Meal and Rest**
11 **Periods (or Compensation in Lieu Thereof) Pursuant to Labor Code**
12 **Sections 226.7, 512, and Applicable IWC Wage Orders**

13 65. By requiring Plaintiffs and proposed Plaintiff Class members to work periods
14 exceeding five hours without an uninterrupted, off-duty 30-minute meal period and to work
15 periods exceeding ten hours without a second uninterrupted, off-duty 30-minute meal period and
16 not compensating one hour of pay at their regular rate of compensation for each such occurrence,
17 as alleged above, Defendant willfully violated the provisions of Labor Code sections 226.7, 512
18 and IWC Wage Order No. 4-2001. Pursuant to Labor Code sections 226.7 and 512(b), the
19 Plaintiffs and all proposed Plaintiff Class members seek restitution of all meal period
20 compensation which they are owed, according to proof.

21 66. By requiring Plaintiffs and proposed Plaintiff Class members to work four hours
22 or a major fraction thereof without a rest period of at least ten minutes, and failing to provide
23 appropriate compensation in lieu thereof, as alleged above, Defendant willfully violated the
24 provisions of Labor Code section 226.7 and IWC Wage Order No. 4-2001. Plaintiffs and
25 proposed Class Members did not willfully waive through mutual consent with Defendant such
26 rest periods. Plaintiffs and proposed Plaintiff Class members are entitled to an hour of pay for
27 each day that Defendant failed to properly provide one or more rest periods as set forth in the
28 IWC wage orders, in an amount according to proof.

1 67. Additionally, Plaintiff and proposed Plaintiff Class members are entitled to
2 attorneys' fees, and costs, pursuant to California Labor Code §1194 and prejudgment interest in
3 an amount according to proof.

4 68. By each of the actions, practices and procedures described herein, Defendant
5 engaged in business practices within the jurisdiction of the State of California. As such,
6 Defendant has a duty to comply with the provisions of the Unfair Business Practices Act as set
7 forth in California Business & Professions Code §§ 17200, *et seq.*, which Act prohibits, *inter*
8 *alia*, unlawful, unfair, and/or fraudulent business acts or practices and unfair, deceptive, untrue,
9 or misleading advertising by any person, firm, corporation, or association within the jurisdiction
10 of the State of California.

11 69. By violating the foregoing provisions of California's labor and employment laws,
12 and by failing to take immediate and appropriate measures to address these violations,
13 Defendant's acts constitute unfair business practices under Business and Professions Code §§
14 17200, *et seq.* Defendant's violations of California's labor and employment laws constitute a
15 business practice because they have been done repeatedly over a significant period of time
16 throughout the State of California, and in a systematic manner to the detriment of scores of
17 employees that comprise the proposed Plaintiff Classes.

18 70. As a direct, foreseeable, and proximate result of Defendant's acts and omissions
19 alleged herein, for the four (4) years preceding the filing of this action, Plaintiffs have suffered
20 damages, and Defendant has also been unjustly enriched as a result of unfair competition.
21 Plaintiffs therefore request damages and/or restitution of all moneys and profits to be disgorged
22 from Defendant for the four (4) years preceding the filing of this action in an amount according
23 to proof at time of trial, in lieu of or in addition to other types of relief requested herein, but in
24 excess of the minimum jurisdiction of this Court.

25 71. Defendant has applied, is applying, and will apply the foregoing unfair business
26 policies and practices, in violation of California law, to certain proposed Class Members who are
27 still employed by Defendant, and to certain individuals who will in the future become employed
28 by Defendant. Such employees have been injured and damaged, and are threatened with further

1 injury and damage, by Defendant's unlawful actions as alleged, and are thus threatened with
2 immediate irreparable harm by the continuation of Defendant's unlawful actions as heretofore
3 alleged, and have no complete adequate remedy at law. Therefore, Plaintiffs request the Court
4 enter an order reflecting appropriate injunctive relief to prevent Defendant from committing such
5 acts in the future.

6 **SEVENTH CAUSE OF ACTION**
7 **VIOLATIONS OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA"),**
8 **Labor Code Section 2698 et seq.**
9 **(Plaintiffs, as a Representative Action, Against each Defendant)**

10 72. Plaintiffs incorporate all preceding paragraphs of this Complaint as if fully
11 alleged herein.

12 73. Plaintiffs, by virtue of their respective employment with UNION BANK and the
13 Defendants' failure to pay all overtime wages and unlawful classification scheme, are aggrieved
14 employees with standing to bring an action under the PAGA. Plaintiffs, by virtue of Exhibit
15 "A," have satisfied all prerequisites to serve as a representative of the general public to enforce
16 California's labor laws, including, without limitation, the penalty provisions identified in Labor
17 Code section 2699.5. Since the LWDA took no steps within the time period required to
18 intervene and because UNION BANK took no corrective action to remedy the
19 allegations set forth above Plaintiffs are entitled to act as a representatives of the people of the
20 State of California, will seek any and all penalties otherwise capable of being collected by the
21 Labor Commission and/or the Department of Labor Standards Enforcement (DLSE). This
22 includes, each of the following applicable provisions, as is set forth in Labor Code Section
23 2699.5, which states:

24
25
26 The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation
27 of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201,
28 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205,
205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221,
222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227,
227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of

1 Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and
2 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510,
3 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852,
4 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and
5 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1,
6 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290,
7 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1,
8 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a)
9 of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696,
10 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and
11 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (e) of
12 Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10,
13 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision
14 (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810,
15 subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.

16 74. Plaintiffs are informed and believe that UNION BANK has violated and
17 continues to violate provisions of the California Labor Code related to the payment of overtime
18 wages, the failure to provide meal and rest periods to the affected group of employees, the failure
19 to provide accurate itemized wage statements, and has and continues to knowingly and
20 intentionally fail to pay all wage due in a timely fashion for all employees whose employment is
21 or has been terminated during the class period.

22 75. In addition to restitution, the recovery of unpaid back wages and the recovery of
23 premium pay for unpaid overtime, and violations of the applicable Wage Orders relating thereto,
24 Plaintiffs, as a personal representatives of the general public, will and does seek to recover any
25 and all penalties for each and every violation shown to exist or to have occurred during the
26 proposed Class Period, in an amount according to proof. Said funds recovered will be
27 distributed in accordance with the PAGA, with at least 75% of said PAGA penalty recovery
28 being reimbursed to the State of California and/or the LWDA.

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VII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

a. That the Court issue an Order that this action may be maintained as a class action and certify the Classes and Subclasses herein, appointing the named Plaintiffs SMITH and HERNANDEZ as representatives of all others similarly situated, and appointing the law firm representing the named Plaintiffs as counsel for the members of the Classes and Subclasses;

As to the First Cause of Action for Failure to Pay Hourly and Overtime Wages:

b. For damages, as set forth in Labor Code §1194(a) and the IWC Wage Order(s), including IWC Wage Order 4, section 20, regarding wages due and owing, according to proof;

c. For pre-judgment interest as allowed by Labor Code §218.6, Labor Code §1194(a) and Civil Code §3287;

d. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §1194(a);

As to the Second Cause of Action for Failure to Provide Meal Periods:

e. For one (1) hour of pay at the regular rate of compensation for each member of the Meal Period Classes for each workday that a meal period was not provided;

f. For recovery pursuant to IWC Wage Order 4, section 20;

g. For pre-judgment interest as authorized by Labor Code §218.6 and Civil Code §3287;

h. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §1194 as a derivative claim for exempt classification;

As to the Third Cause of Action for Failure to Provide Paid Rest Periods:

i. For one (1) hour of pay at the regular rate of compensation for each member of the Rest Period Classes for each day worked that a rest period was not provided;

j. For recovery pursuant to IWC Wage Order 4, section 20;

k. For pre-judgment interest as authorized by Labor Code §218.6 and Civil Code §3287;

1 l. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
2 §1194 as a derivative claim for exempt classification;

3 **As to the Fourth Cause of Action for Failure to Timely Pay Wages at Separation:**

4 m. For recovery as authorized by Labor Code section 203;

5 **As to the Fifth Cause of Action for Failure to Timely Furnish Accurate Itemized Wage**
6 **Statements:**

7 n. For recovery as authorized by Labor Code §226(e);

8 o. For injunctive relief to ensure Defendant's compliance with Labor Code §226
9 pursuant to Labor Code §226(g);

10 p. For an award of costs and reasonable attorneys' fees pursuant to Labor Code
11 §226(e) and/or §226(g);

12 **As to the Sixth Cause of Action for Unfair Business Practices:**

13 q. For an Order requiring Defendant to identify each of the members of the Proposed
14 Classes by name, home address, and home telephone number;

15 r. For an Order requiring Defendant to make full restitution and payment to the
16 Plaintiffs and the proposed Plaintiff Classes I-III due to unfair competition, including restitution
17 of its wrongfully withheld wages pursuant to California Business and Professions Code sections
18 17203 and 17204;

19 s. For an Order for a preliminary and/or permanent injunction prohibiting Defendant
20 from continuing the illegal course of conduct, alleged herein;

21 t. That Defendant further be enjoined to cease and desist from unfair competition in
22 violation of sections 17200, et seq. of the California Business and Professions Code;

23 u. That Defendant be enjoined from further acts of restraint of trade or unfair
24 competition;

25 v. For the creation of an administrative process wherein each injured member of the
26 proposed Plaintiff Classes may submit a claim in order to receive his/her money;

27 w. For all other appropriate injunctive, declaratory and equitable relief;

28 x. For interest to the extent permitted by law;

1 y. For an award of attorneys' fees and costs incurred in the investigation, filing and
2 prosecution of this action pursuant to Civil Code §1021.5, Business and Professions Code
3 §17200, et seq., Labor Code §1194 and/or any other applicable provision of law;

4 **As to the Seventh Cause of Action**

5 z. To declare this action a Representative Action brought on behalf of the LWDA
6 and the general public;

7 aa. Penalties as provided, per violation, under the Private Attorneys General Act
8 (PAGA) Labor Code section 2699, et seq.

9 **As to All Causes of Action:**

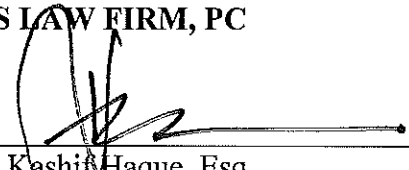
10 bb. For such other and further relief as this Court may deem just and proper; and

11 cc. For reasonable attorneys' fees and costs incurred.

12 Dated: February 28, 2011

AEGIS LAW FIRM, PC

13 By: _____

14 
15 Kashif Haque, Esq.
16 Attorneys for Plaintiff JON KEVIN SMITH
17 and PORFIRIA HERNANDEZ on behalf of
18 themselves and all others similarly situated.

19 **DEMAND FOR JURY TRIAL**

20 Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

21 Dated: February 28, 2011

AEGIS LAW FIRM, PC

22 By: _____

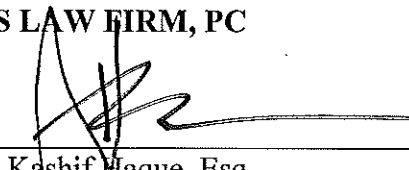
23 
24 Kashif Haque, Esq.
25 Attorneys for Plaintiff JON KEVIN SMITH
26 and PORFIRIA HERNANDEZ on behalf of
27 themselves and all others similarly situated.

EXHIBIT A



AEgis LAW FIRM, PC
8105 Irvine Center Drive, Suite 1070
Irvine, California 92618
telephone (949) 379-6250
facsimile (949) 379-6251
www.aegislawfirm.com

January 25, 2011

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION 2699.3**

To: The California Labor and Workforce Development Agency and Union Bank, N.A., and UnionBanCal Corporation ("Union Bank")

From: Jon Kevin Smith and Porfiria Hernandez, and on behalf of themselves and on behalf of all current and/or former IT Group employees based in California who are or were misclassified as "exempt" and not paid overtime wages in violation of Labor Code Section 1194, et seq.

Factual Statement:

Jon Kevin Smith and Porfiria Hernandez on behalf of themselves and similar current and former employees of Union Bank were information technology group (IT) workers who engaged in non-exempt work activity for the majority of their work time hereby gives notice of his intent to bring a cause of action for violation of the Private Attorneys General Act of 2004 ("PAGA") for Union Bank's failure to comply with California's wage and hour minimum requirements. During the course of his employment, Union Bank failed to provide said employees and those similarly situated with overtime pay meal periods, rest breaks, accurate pay records or timely termination pay. As a consequence, Union Bank has failed to comply with Labor Code Section 201-203, 221-222, 226.7, Labor Code Sections 510, 512, 515, 515.5, 1194, 221-223, and Industrial Welfare Commission Wage Orders 4-2001, Sections 1, 11 and 12. Union Bank has and continues to fail to provide accurate, timely and itemized pay stub accounting records to Smith and Hernandez in violation of Labor Code Section 226(a). Smith and Hernandez are informed and believe that such violations are ongoing, systematic and continuous. Claimants intend to bring an action against Union Bank under the Private Attorney General Act ("PAGA") to recover wages and penalties as provided by California law.¹

¹ Without limitation, Smith and Hernandez, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes, each of the following, as is set forth in Labor Code Section 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683,

California Labor and Workforce Development Agency

Union Bank/UnionBanCal Corporation

January 25, 2011

Page 2

Theories of Labor Code Violations and Remedies:

Smith and Hernandez have been and continues to be employed in a position as an Information Technology (IT) employee at Union Bank and is involved in maintenance, upkeep, upgrade, configuration and troubleshooting of Union Bank's IT infrastructure, network and applications systems. The position, while having varied job titles, essentially involved identical functions and tasks for which a majority work time was spent engaged in tasks that were not consistent with any recognized exemption from the general requirement to pay overtime wages. Union Bank, for a period beginning at least four years prior to the date of this Notice, unlawfully failed to pay such employees overtime wages, but yet regularly required employees to work in excess of eight hours per day and/or forty hours per week without premium pay under Labor Code Sections 510, 515.5 and 1194.

Claimants, (which includes Smith, Hernandez, and the class of California-based ITG employees he seeks to represent) were at all times also entitled to uninterrupted paid meal periods or compensation lieu thereof. Union Bank failed to provide meal periods for claimant and all other similarly situated employees as required by Labor Code Section 226.7, Labor Code Section 512, and Industrial Welfare Commission Wage Orders 4-2001(11) and/or 9-2001(11.) Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code Section 558 and applicable IWC Wage Orders. Furthermore, since Union Bank required Smith, Hernandez and others similarly situated to work during their meal period in violation of Labor Code Section 226.7(a), Claimants seek wages of one additional hour of pay as permitted by Labor Code Section 226.7(b) as well as all available penalties as set forth in Labor Code Section 2699(f.)

Claimants were at all times entitled rest breaks. Union Bank failed to authorize or permit rest breaks for claimant and all other similarly situated employees engaged in the same tasks and function as required by Labor Code Section 226.7, Labor Code Section 512, and Industrial Welfare Commission Wage Orders. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code Section 558 and applicable IWC Wage Orders. Furthermore, since Union Bank required its IT employees to work during rest periods in violation of Labor Code Section 226.7(a), Claimants seek wages of one additional hour of pay as permitted by Labor Code Section 226.7(b) as well as all available penalties as set forth in Labor Code Section 2699(f.)

Union Bank's uniform failure to pay overtime wages, allow rest and meal periods to Smith, Hernandez and other California-based ITG employees during their workday was also done without any payment of an

and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.

California Labor and Workforce Development Agency
Union Bank/UnionBanCal Corporation
January 25, 2011
Page 3

additional one-hour wage per day to said Claimants at their regular rate of pay, or alternatively, premium compensation, if applicable, pursuant to Labor Code Section 1194. Union Bank's failure to provide such compensation in lieu of meals violated Labor Code Section 204 and 204(b), such that penalties are recoverable as set forth in Labor Code Section 210 and/or Section 1194, *et seq.*

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys fees as permitted by Labor Code Section 1194 and other penalties, as permitted by Labor Code Section 2699, Labor Code Section 210, and waiting time penalties for former employees, pursuant to Labor Code Section 203.

Claimant gives this notice as required by law. Union Bank and/or the LWDA may take corrective action and/or the Agency may initiate an investigation. In the event that the LWDA declines to investigate in the proscribed time, Claimant will initiate a Cause of Action seeking penalties under the PAGA.

Respectfully submitted,
AEGIS LAW FIRM, PC


Kashi Haque, Esq.

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

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

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

UNIONBANCAL CORPORATION
c/o Registered Agent Solutions, Inc., as Agent for Service of Process
1220 S Street, Suite 150
Sacramento, CA 95811

Acgis | LAW FIRM

0000 5218 1352

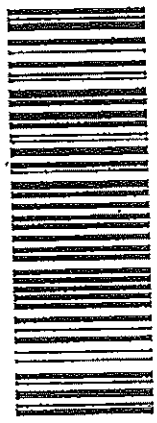
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UNIONBANCAL CORPORATION
 c/o Registered Agent Solutions, Inc., as Agent for
 Service of Process
 1220 S Street, Suite 150
 Sacramento, CA 95811



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UNIONBANCAL CORPORATION
 Registered Agent Solutions, Inc., as Agent for Service
 of Process
 1220 S Street, Suite 150
 Sacramento, CA 95811



PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS FOR A POSTAGE PAID PERMIT

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
1. Article Addressed to: UNIONBANCAL CORPORATION c/o Registered Agent Solutions, Inc., as Agent for Service of Process 1220 S Street, Suite 150 Sacramento, CA 95811		A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee	B. Received by, (Printed Name) C. Date of Delivery
2. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. <input checked="" type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input checked="" type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits.		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below:	
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.		<input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
4. Article Number (Transfer from service label) 7006 3230 0000 5218 1352		Domestic Return Receipt PS Form 3811, February 2004	

102586-02-NI-1540

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery <i>[Signature]</i> 1/28/11</p>
<p>1. Article Addressed to:</p> <p>UNIONBANCAL CORPORATION c/o Registered Agent Solutions, Inc., as Agent for Service of Process 1220 S Street, Suite 150 Sacramento, CA 95811</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label) 7008 3230 0000 5218 1352</p>	
<p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1640</p>	

PLACE STICKER TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD ALONG THIS LINE

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

COMPLETE THIS SECTION ON DELIVERY

A. Signature X Agent

B. Received by (Printed Name) Addressed

C. Date of Delivery

D. Is delivery address different from item 1? Yes No
If yes, address below

1. Article Addressed for:
Secretary
California Labor and Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

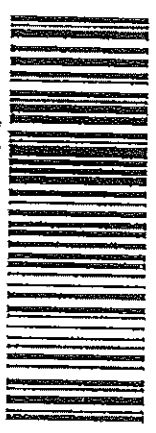
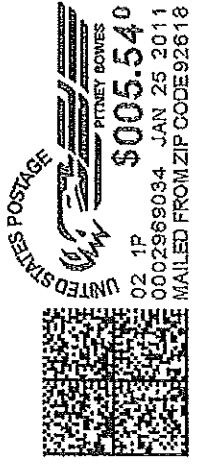
3. Service Type
 Certified Mail
 Registered
 Insured Mail
 Express Mail
 Return Receipt for Merchandise
 C.O.D.

4. Restricted Delivery? (Extra Fee) Yes No

2. Article Number (Transfer from service label) **7009 3410 0000 1489 4354**

PS Form 3811, February 2004 Domestic Return Receipt 102585-02-M-1540

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



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California Labor and Workforce Development Agency
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Sacramento, CA 95814

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SENDER: COMPLETE THIS SECTION

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1. Article Addressed to:

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

2. Article Number
(Transfer from service label)

7009 3410 0000 1489 4354

PS Form 3811, February 2004

Domestic Return Receipt

102695-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

JAN 28 2011

Agent

Addressee

B. Received by (Printed Name)

State of California

C. Date of Delivery

D. Is delivery address for U.S. Government Agency?

YES

address below:

No

3. Service Type

Certified Mail

Express Mail

Registered

Return Receipt for Merchandise

Insured Mail

C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes