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ENDORSED
FILED
ALAMEDA COUNTY

APR 12 2016

CLERK OF THE SUPERIOR COURT
By Jamie Monico Deputy

8 **SUPERIOR COURT OF CALIFORNIA**
9 **ALAMEDA COUNTY**

10 ELIZABETH BRIONES, SABRINA
11 BEHNEY, AARON FARRISH, KAREN
12 GARZA, individually and on behalf of other
13 members of the general public similarly
situated,

14 Plaintiffs,

15 vs.

16 PATELCO CREDIT UNION and DOES 1
17 through 50, inclusive,

18 Defendant.

Case No.: RG16805680

FIRST AMENDED COMPLAINT

[CLASS ACTION]

1. Labor Code § 1194
2. B&P § 17200 - Overtime
3. B&P § 17200 - Meal and Rest Breaks
4. B&P § 17200 - Injunction/Dec. Relief
5. Labor Code § 226, 1174, 1174.5
6. Labor Code § 203 - Waiting Time Penalties
7. Labor Code § 2699 - PAGA

1 **GENERAL ALLEGATIONS**

2 1. Plaintiffs Elizabeth Briones, Sabrina Behney, Aaron Farrish, and Karen Garza
3 are current and former Branch Managers for defendant Patelco Credit Union (“Patelco” or
4 “Defendant”) in the state of California.

5 2. Defendant Patelco is a not-for-profit, full-service credit union incorporated in
6 California. Defendant owns and operates retail banks in this judicial district and in the state of
7 California. Defendant has employees with the title “Branch Manager” and “Branch Manager in
8 Training.”

9 3. Venue is proper in Alameda County as at least some of the acts complained of
10 herein occurred in Alameda County and as Defendant is a citizen of California and has its
11 principal place of business in Pleasanton, Alameda County.

12 4. At all times herein mentioned, Plaintiffs and the class identified herein worked as
13 employees for Defendant in salaried positions in Defendant’s branch and retail locations. At all
14 times herein mentioned, Plaintiffs and the class have been, and continue to be, domiciled in the
15 State of California and are citizens of California. Plaintiffs are informed and believe and thereon
16 allege that there are less than 100 members in the proposed class. The principal injuries for
17 which Plaintiffs complain occurred in California.

18 5. At all times herein mentioned Defendant and Does 1 through 50 are and were
19 corporations, business entities, individuals and partnerships, licensed to do business and actually
20 doing business in the State of California, Alameda County. Defendant owns and operates an
21 industry, business and establishment in a number of separate geographic locations within the
22 State of California, including within Alameda County, for the purpose of selling banking
23 services and products. As such, and based upon all the facts and circumstances incident to
24 Defendant’s business in California, Defendant is subject to California Labor Code §§ 1194 *et*
25 *seq.*, California Business and Professions Code § 17200 *et seq.*, (Unfair Practices Act) and the
26 applicable Industrial Welfare Commission Wage Orders.

27 6. Plaintiffs do not know the true names or capacities, whether individual, partner
28 or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that

1 reason, said Defendants are sued under such fictitious names, and Plaintiffs pray leave to amend
2 this complaint when the true names and capacities are known. Each of said fictitious Defendants
3 was responsible in some way for the matters alleged herein and proximately caused Plaintiffs
4 and members of the class to be subject to the illegal employment practices, wrongs and injuries
5 complained of herein.

6 7. At all times herein mentioned, each of said Defendants participated in the doing
7 of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
8 Defendants, and each of them, were the agents, servants and employees of each of the other
9 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
10 acting within the course and scope of said agency and employment.

11 8. At all times herein mentioned, Defendants, and each of them, were members of,
12 and engaged in, a joint venture, partnership and common enterprise, and acting within the
13 course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

14 9. At all times herein mentioned, the acts and omissions of various Defendants, and
15 each of them, concurred and contributed to the various acts and omissions of each and all of the
16 other Defendants in proximately causing the injuries and damages as herein alleged.

17 10. At all times herein mentioned, Defendants, and each of them, ratified each and
18 every act or omission complained of herein. At all times herein mentioned, the Defendants, and
19 each of them, aided and abetted the acts and omissions of each and all of the other Defendants
20 in proximately causing the damages as herein alleged. Further, at all times mentioned herein,
21 the wage and hour related compensation policies of Defendant's branch locations in California
22 are and were dictated by, controlled by, and ratified by the Defendants herein and each of them.

23 **FACTUAL ALLEGATIONS**

24 11. Pursuant to California Labor Code §§ 218, 218.6, and 1194, Plaintiffs may bring
25 a civil action for overtime wages directly against their employer without first filing a claim with
26 the California Division of Labor Standards Enforcement and may recover such wages, together
27 with interest thereon, penalties, attorney fees and costs.

28 12. Plaintiffs and all members of the class identified herein were regularly scheduled

1 as a matter of uniform company policy to work and in fact worked as salaried bank employees
2 in excess of eight hours per workday and/or in excess of forty hours per workweek without
3 receiving straight time or overtime compensation for such overtime hours worked in violation
4 of California Labor Code § 1194 and California Industrial Welfare Commission Wage Order 4-
5 2001. Plaintiffs and all members of the class were primarily engaged in assisting customers and
6 routine inside sales work consistent with Defendant's realistic expectations. Defendant has
7 failed to meet the requirements for establishing any exemption from California's overtime
8 requirements because all class members (a) regularly spent more than 50% of their time
9 performing nonexempt work, (b) did not customarily and regularly exercise discretion and
10 independent judgment on matters of significance, (c) did not have the authority to hire or fire or
11 make meaningful recommendations regarding same, (d) did not customarily and regularly
12 supervise at least two employees or the equivalent, (e) did not perform work directly related to
13 the management policies or the general business operations of Defendant or Defendant's
14 customers, (f) did perform nonexempt production and/or sales work a majority of their time
15 (i.e., in excess of 50%) consistent with Defendant's realistic expectations, (g) did not
16 customarily and regularly spend more than 50% of their time away from the Defendant's places
17 of business selling or obtaining orders or contracts, and (h) did not earn more than 50% of their
18 compensation in a bona fide commission plan. Thus, Plaintiffs and the class members were not
19 exempt from the overtime requirements of California law for these reasons.

20 CLASS ALLEGATIONS

21 13. This complaint is brought by Plaintiffs pursuant to California Code of Civil
22 Procedure § 382 on behalf of a class. All claims alleged herein arise under California law for
23 which Plaintiffs seek relief authorized under California law. The class is comprised of, and
24 defined as:

25 All current and former California-based employees of Patelco
26 Credit Union with the title "Branch Manager", "Branch Manager
27 in Training", or "Group Manager" (collectively, "class members")
28 who worked at any time from four years prior to the time this case
is filed up to the time of trial.

14. The members of the class are so numerous that joinder of all members is

1 impracticable. The exact number of the members of the class can be determined by reviewing
2 Defendant's records.

3 15. Plaintiffs will fairly and adequately protect the interests of the class and have
4 retained counsel that is experienced and competent in class action and employment litigation.
5 Plaintiffs have no interests that are contrary to, or in conflict with, members of the class.

6 16. A class action suit, such as the instant one, is superior to other available means
7 for fair and efficient adjudication of this lawsuit. The damages suffered by individual members
8 of the class may be relatively small when compared to the expense and burden of litigation,
9 making it virtually impossible for members of the class to individually seek redress for the
10 wrongs done to them.

11 17. A class action is, therefore, superior to other available methods for the fair and
12 efficient adjudication of the controversy. Absent these actions, the members of the class likely
13 will not obtain redress of their injuries and Defendant will retain the proceeds of its violations of
14 California law.

15 18. Even if any member of the class could afford individual litigation against
16 Defendant, it would be unduly burdensome to the judicial system. Concentrating this litigation
17 in one forum will promote judicial economy and parity among the claims of individual members
18 of the class and provide for judicial consistency.

19 19. There is a well-defined community of interest in the questions of law and fact
20 affecting the class as a whole. Questions of law and fact common to each of the class
21 predominate over any questions affecting solely individual members of the action. Among the
22 common questions of law and fact are:

23 a. Whether the class has been properly classified as exempt by Defendant
24 from overtime compensation;

25 b. Whether the class is expected to regularly work hours in excess of forty
26 per week and/or in excess of eight hours per day;

27 c. How the class is compensated; and,

28 d. Whether the class has sustained damages and, if so, what the proper

1 measure of damages is.

2 **FIRST CAUSE OF ACTION**

3 **(Labor Code § 1194)**

4 20. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
5 Complaint as if fully set forth herein.

6 21. California Wage Order 4-2001, 8 C.C.R. § 11040, and Labor Code § 510 state
7 that an employee must be paid overtime, equal to 1.5 times the employee's regular rate of pay,
8 for all hours worked in excess of 40 per week and/or 8 per day.

9 22. Class members regularly work more than 40 hours per week and/or 8 hours per
10 day but are not paid overtime compensation.

11 23. Class members do not meet any of the tests for exempt status under the
12 California Wage Orders and/or the California Labor Code.

13 **SECOND CAUSE OF ACTION**

14 **(Bus. & Prof. Code § 17203 – Overtime)**

15 24. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
16 Complaint as if fully set forth herein.

17 25. Defendant has committed an act of unfair competition under California Business
18 & Professions Code § 17200 *et seq.* by not paying the required state law overtime pay to the
19 members of the class.

20 26. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs request an order requiring
21 Defendant to make restitution of all overtime wages due to the class.

22 **THIRD CAUSE OF ACTION**

23 **(Bus. & Prof. Code § 17203 – Meal and Rest Breaks)**

24 27. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
25 Complaint as if fully set forth herein.

26 28. In violation of Labor Code § 512 and IWC Wage Order 4-2001, Defendant failed
27 to provide, authorize, permit and document meal and rest period breaks for the class in the
28 number, length and manner as required. At no time have Plaintiffs or the class entered into any

1 written agreement with Defendant expressly or impliedly waiving their right to their meal and
2 rest breaks. Plaintiffs and the class have been injured by Defendant's failure to comply with
3 Labor Code § 512 and IWC Wage Order 4-2001 and are thus entitled to the wages set forth in
4 Labor Code § 226.7.

5 29. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs request Defendant make
6 restitution of all wages due to the class under this Third Cause of Action.

7 **FOURTH CAUSE OF ACTION**

8 **(Bus. & Prof. Code § 17203 – Injunction and Declaratory Relief)**

9 30. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
10 Complaint as if fully set forth herein.

11 31. Plaintiffs, and all persons similarly situated, are further entitled to and do seek a
12 both a declaration that the above-described business practices are unfair, unlawful and/or
13 fraudulent and injunctive relief restraining Defendant from engaging in any of such business
14 practices in the future. Such misconduct by Defendant, unless and until enjoined and restrained
15 by order of this Court, will cause great and irreparable injury to all members of the class in that
16 the Defendant will continue to violate California law, represented by labor statutes and IWC
17 Wage Orders, unless specifically ordered to comply with same. This expectation of future
18 violations will require current and future employees to repeatedly and continuously seek legal
19 redress in order to gain compensation to which they are entitled under California law. Plaintiffs
20 have no other adequate remedy at law to insure future compliance with the California labor laws
21 and wage orders alleged to have been violated herein.

22 **FIFTH CAUSE OF ACTION**

23 **(Labor Code §§ 226, 1174, and 1174.5)**

24 32. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
25 Complaint as if fully set forth herein.

26 33. Defendant, as a matter of corporate policy did not maintain or provide accurate
27 itemized statements in violation of Labor Code §§ 226 and 1174.

28 34. For instance, Defendant did not state or did not accurately state, *inter alia*, the

1 total hours worked, hours worked daily, or the actual hourly rate of Plaintiff and other class
2 members in their pay statements. Defendant's failure to maintain accurate itemized statements
3 was willful, knowing, intentional, and the result of Defendant's custom, habit, pattern and
4 practice. Defendant's failure to maintain accurate itemized statements was not the result of
5 isolated, sporadic or unintentional behavior. Due to Defendant's failure to comply with the
6 requirements of Labor Code §§ 226 and 1174, Plaintiffs and other class members were injured
7 thereby.

8 35. Such a pattern and practice as alleged herein is unlawful and creates an
9 entitlement to recovery by Plaintiffs and the class identified herein for all damages and penalties
10 pursuant to Labor Code §§ 226 and 1174.5, including interest thereon, penalties, attorneys' fees
11 and costs.

12 **SIXTH CAUSE OF ACTION**

13 **(Labor Code §§ 201-203)**

14 36. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
15 Complaint as if fully set forth herein.

16 37. Labor Code § 201 provides: "If an employer discharges an employee, the wages
17 earned and unpaid at the time of discharge are due and payable immediately."

18 38. Labor Code § 202 provides: "If an employee not having a written contract for a
19 definite period quits his or her employment, his or her wages shall become due and payable not
20 later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or
21 her intention to quit, in which case the employee is entitled to his or her wages at the time of
22 quitting."

23 39. Labor Code § 203 provides: "If an employer willfully fails to pay, without
24 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any
25 wages of an employee who is discharged or who quits, the wages of the employee shall continue
26 as a penalty from the due date thereof at the same rate until paid or until an action therefor is
27 commenced; but the wages shall not continue for more than 30 days."

28

