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16 UNITED STATES DISTRICT COURT
 17 CENTRAL DISTRICT OF CALIFORNIA

17 YIADIRA CORDOVA; individually
 18 and on behalf of members of the
 19 general public similarly situated;

20 Plaintiffs,

21 vs.

22 COMERICA BANK, a Texas
 23 corporation; COMERICA
 24 INCORPORATED, a Delaware
 25 corporation; COMERICA
 26 MANAGEMENT COMPANY,
 27 INC., a Michigan corporation; and
 28 Does 1 through 100, inclusive.

Defendants.

Case No.: 2:09-cv-08905-MMM (PLAx)
**FIRST AMENDED COMPLAINT FOR
 CLASS ACTION & ENFORCEMENT
 UNDER THE PRIVATE ATTORNEYS
 GENERAL ACT, CALIFORNIA LABOR
 CODE §§ 2698 ET SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198
- (2) Violation of California Labor Code §§ 226.7 and 512(a)
- (3) Violation of California Labor Code § 226.7
- (4) Violation of California Labor Code § 204
- (5) Violation of California Labor Code §§ 201 and 202
- (6) Violation of California Labor Code § 226(a)
- (7) Violation of California Labor Code § 1174(d)
- (8) Violation of California Business & Professions Code § 17200

DEMAND FOR JURY TRIAL

1 COMES NOW, Plaintiff Yiadira Cordova, individually and on behalf of
2 members of the general public similarly situated, and alleges as follows:

3 **PARTIES**

4 1. Plaintiff Yiadira Cordova ("Plaintiff") is an individual residing in the
5 County of Los Angeles, State of California.

6 2. Defendant Comerica Bank is a corporation organized and existing
7 under the laws of the State of Texas, and transacts business throughout the State
8 of California, including the County of Los Angeles.

9 3. Defendant Comerica Incorporated is a corporation organized and
10 existing under the laws of the State of Delaware, and transacts business
11 throughout the State of California, including the County of Los Angeles.

12 4. Defendant Comerica Management Company, Inc. ("CMCI") is a
13 corporation organized and existing under the laws of the State of Michigan, and
14 transacts business in the State of California, including the County of Los Angeles.

15 5. CMCI is a subsidiary of Comerica Bank, which is a subsidiary of
16 Comerica Incorporated.

17 6. Although separate legal entities, Comerica Incorporated, Comerica
18 Bank, and CMCI share Comerica Incorporated's Department of Human
19 Resources, as well as its information systems, technology, legal and treasury.

20 7. At all relevant times, Comerica Incorporated, Comerica Bank, and
21 CMCI were jointly and severally the "employer" of Plaintiff and the other class
22 members within the meaning of all applicable state laws and statutes and will
23 hereinafter collectively be referred to as Comerica.

24 8. Comerica Incorporated owns and operates approximately four-
25 hundred forty-two (442) Comerica Bank centers and/or branches nationally, with
26 approximately forty-five (45) of which located in the State of California.

27 9. At all times herein relevant, Comerica and Does 1 through 100, and
28 each of them, were the agents, partners, joint venturers, representatives, servants,

1 employees, successors-in-interest, co-conspirators and assigns, each of the other,
2 and at all times relevant hereto were acting within the course and scope of their
3 authority as such agents, partners, joint venturers, representatives, servants,
4 employees, successors, co-conspirators and assigns, and that all acts or omissions
5 alleged herein were duly committed with the ratification, knowledge, permission,
6 encouragement, authorization and consent of each defendant designated herein.

7 10. The true names and capacities, whether corporate, associate,
8 individual or otherwise, of defendants Does 1 through 100, inclusive, are
9 unknown to Plaintiff who sues said defendants by such fictitious names. Plaintiff
10 is informed and believes, and based on that information and belief alleges, that
11 each of the defendants designated as a Doe is legally responsible for the events
12 and happenings referred to in this complaint, and unlawfully caused the injuries
13 and damages to Plaintiff and the other class members alleged in this complaint.
14 Plaintiff will seek leave of court to amend this Complaint to show the true names
15 and capacities when the same have been ascertained.

16 11. Comerica and Does 1 through 100 will hereinafter collectively be
17 referred to as Defendants.

18 12. California Labor Code sections 2699 et seq., the "Labor Code
19 Private Attorneys Generals Act" ("PAGA"), authorizes aggrieved employees to
20 sue directly for various civil penalties under the California Labor Code.

21 13. Plaintiff has timely provided notice to the California Labor and
22 Workforce Development Agency ("LWDA") and to Defendants, pursuant to
23 California Labor Code section 2699.3(a).

24 **FACTUAL ALLEGATIONS**

25 14. Defendants employed Plaintiff at a Comerica Bank retail banking
26 branch from approximately March 2007 to May 2009, including in the County of
27 Los Angeles.

28 15. From approximately November 2008 to approximately May 2009,

1 Plaintiff was employed as an "Assistant Manager".

2 16. CMCI issues wage checks to Comerica Bank employees, including
3 Plaintiff and the other class members, who work or worked in the State of
4 California.

5 17. Comerica Incorporated and Comerica Bank had the authority to hire,
6 terminate Plaintiff and the other class members; to set work rules and conditions
7 governing Plaintiff's and the other class member's employment; and, to supervise
8 their daily employment activities.

9 18. Comerica Incorporated and Comerica Bank exercised sufficient
10 authority over the terms and conditions of Plaintiff's and the other class
11 member's employment for them to be joint employers of Plaintiff's and the other
12 class member's in conjunction with CMCI.

13 19. Defendants directly hired and paid wages and benefits to Plaintiff
14 and the other class members.

15 20. Plaintiff is informed and believes, and based thereon alleges, that at
16 all times herein relevant, Defendants were advised by skilled lawyers and other
17 professionals, employees, advisors, and consultants highly knowledgeable about
18 California wage law, employment and personnel practices.

19 21. Plaintiff is informed and believes, and based thereon alleges, that at
20 all times herein relevant, without any justification, Defendants ignored the
21 employment and personnel policy changes proposed by skilled lawyers and other
22 professionals, employees, advisors, and consultants highly knowledgeable about
23 California wage laws, employment and personnel practice.

24 22. Plaintiff is informed and believes, and based thereon alleges, that
25 Defendants knew or should have known that Plaintiff and the other class
26 members were entitled to receive certain wages for overtime compensation and
27 that they were not receiving wages for overtime compensation.

28 23. Plaintiff is informed and believes, and based thereon alleges, that

1 Defendants engaged in a uniform policy and systematic scheme of wage abuse
2 against their salaried Assistant Managers. This scheme involved, *inter alia*,
3 misclassifying these positions as “exempt” managerial employees for purposes of
4 the payment of overtime compensation when, in fact, they were “non-exempt”
5 non-managerial employees according to California law.

6 24. Plaintiff is informed and believes, and based thereon alleges, that
7 Defendants failed to provide the Plaintiff and the other class members the
8 required rest and meal periods during the relevant time period as required under
9 the Industrial Welfare Commission Wage Orders and thus they are entitled to any
10 and all applicable penalties.

11 25. Plaintiff is informed and believes, and based thereon alleges, that
12 Defendants knew or should have known that Plaintiff and the other class
13 members were entitled to receive all meal periods or payment of one additional
14 hour of pay at Plaintiff’s and the other class members’ regular rate of pay when a
15 meal period was missed.

16 26. Plaintiff is informed and believes, and based thereon alleges, that
17 Defendants knew or should have known that Plaintiff and the other class
18 members were entitled to receive all rest periods or payment of one additional
19 hour of pay at Plaintiff’s and the other class members’ regular rate of pay when a
20 rest period was missed.

21 27. Plaintiff is informed and believes, and based thereon alleges, that
22 Defendants knew or should have known that Plaintiff and the other class
23 members were entitled to receive all wages owed to them upon discharge or
24 resignation.

25 28. Plaintiff is informed and believes, and based thereon alleges, that
26 Defendants knew or should have known that Plaintiff and the other class
27 members were entitled to receive complete and accurate wage statements in
28 accordance with California law.

1 36. Plaintiff reserve the right to establish subclasses as appropriate.

2 37. The class is ascertainable and there is a well-defined community of
3 interest in the litigation:

4 a. The class members are so numerous that joinder of all class
5 members is impracticable. The membership of the entire class
6 is unknown to Plaintiff at this time; however, the class is
7 estimated to be greater than two-hundred (200) individuals and
8 the identity of such membership is readily ascertainable by
9 inspection of Comerica's employment records.

10 b. Plaintiff's claims are typical of all other class members' as
11 demonstrated herein. Plaintiff will fairly and adequately
12 protect the interests of the other class members with whom he
13 has a well defined community of interest.

14 c. Plaintiff will fairly and adequately protect the interests of each
15 class member, with whom he has a well-defined community of
16 interest and typicality of claims, as demonstrated herein.
17 Plaintiff has no interest that is antagonistic to the other class
18 members. Plaintiff's attorneys, the proposed class counsel, are
19 versed in the rules governing class action discovery,
20 certification, and settlement. Plaintiff has incurred, and during
21 the pendency of this action will continue to incur, costs and
22 attorneys' fees, that have been, are, and will be necessarily
23 expended for the prosecution of this action for the substantial
24 benefit of each class member.

25 d. A class action is superior to other available methods for the
26 fair and efficient adjudication of this litigation because
27 individual joinder of all class members is impractical.

28 e. Certification of this lawsuit as a class action will advance

1 public policy objectives. Employers of this great state violate
2 employment and labor laws every day. Current employees are
3 often afraid to assert their rights out of fear of direct or indirect
4 retaliation. However, class actions provide the class members
5 who are not named in the complaint anonymity that allows for
6 the vindication of their rights.

7 38. There are common questions of law and fact as to the class members
8 that predominate over questions affecting only individual members. The
9 following common questions of law or fact, among others, exists as to the
10 members of the class:

- 11 a. Whether Defendants' California-based Assistant Managers
12 were classified as "exempt" in violation of California law;
- 13 b. Whether Defendants required Plaintiff and the other class
14 members to work over eight (8) hours per day, over twelve
15 (12) hours per day, and/or over forty (40) hours per week and
16 failed to pay the legally required overtime compensation to
17 Plaintiff and the other class members;
- 18 c. Whether Plaintiff and the other class members were
19 misclassified as exempt;
- 20 d. Whether Defendants deprived Plaintiff and class members of
21 meal periods or required Plaintiff and class members to work
22 during meal periods without compensation;
- 23 e. Whether Defendants deprived Plaintiff and class members of
24 rest periods or required Plaintiff and class members to work
25 during rest periods without compensation;
- 26 f. Whether Defendants failed to pay all wages due to Plaintiff
27 and the other class members within the required time upon
28 their discharge or resignation;

- 1 g. Whether Defendants complied with wage reporting as required
- 2 by the California Labor Code; including, but not limited to,
- 3 Section 226;
- 4 h. Whether Defendants' conduct was willful or reckless;
- 5 i. Whether Defendants engaged in unfair business practices in
- 6 violation of California Business & Professions Code sections
- 7 17200 et seq.;
- 8 j. The appropriate amount of damages, restitution, and/or
- 9 monetary penalties resulting from Defendants' violation of
- 10 California law; and
- 11 k. Whether Plaintiff and the class are entitled to compensatory
- 12 damages pursuant to the California Labor Code.

PAGA ALLEGATIONS

14 39. At all times herein set forth, PAGA was applicable to Plaintiff's
15 employment by Defendants.

16 40. At all times herein set forth, PAGA provides that any provision of
17 law under the California Labor Code that provides for a civil penalty to be
18 assessed and collected by the LWDA for violations of the California Labor Code
19 may, as an alternative, be recovered through a civil action brought by an
20 aggrieved employee on behalf of himself or herself and other current or former
21 employees pursuant to procedures outlined in California Labor Code section
22 2699.3.

23 41. Pursuant to PAGA, a civil action under PAGA may be brought by an
24 "aggrieved employee," who is any person that was employed by the alleged
25 violator and against whom one or more of the alleged violations was committed.

26 42. Plaintiff was employed by Defendants and the alleged violations
27 were committed against them during their time of employment and they are,
28 therefore, aggrieved employees. Plaintiff and other employees are "aggrieved

1 employees” as defined by California Labor Code section 2699(c) in that they are
2 all current or former employees of Defendants, and one or more of the alleged
3 violations were committed against them.

4 43. Pursuant to California Labor Code sections 2699.3 and 2699.5, an
5 aggrieved employee, including Plaintiff, may pursue a civil action arising under
6 PAGA after the following requirements have been met:

- 7 a. The aggrieved employee shall give written notice by certified
8 mail (hereinafter “Employee’s Notice”) to the LWDA and the
9 employer of the specific provisions of the California Labor
10 Code alleged to have been violated, including the facts and
11 theories to support the alleged violations.
- 12 b. The LWDA shall provide notice (hereinafter “LWDA Notice”)
13 to the employer and the aggrieved employee by certified mail
14 that it does not intend to investigate the alleged violation
15 within thirty (30) calendar days of the postmark date of the
16 Employee’s Notice. Upon receipt of the LWDA Notice, or if
17 the LWDA Notice is not provided within thirty-three (33)
18 calendar days of the postmark date of the Employee’s Notice,
19 the aggrieved employee may commence a civil action pursuant
20 to California Labor Code section 2699 to recover civil
21 penalties in addition to any other penalties to which the
22 employee may be entitled.

23 44. On November 10, 2009, Plaintiff provided written notice by certified
24 mail to the LWDA and to Defendants of the specific provisions of the California
25 Labor Code alleged to have been violated, including the facts and theories to
26 support the alleged violations.

27 45. On December 21, 2009, the LWDA sent notice to Plaintiff that it
28 does not intend to investigate her allegations. Therefore, Plaintiff has satisfied

1 the administrative prerequisites under the California Labor Code section
2 2699.3(a) to recover civil penalties against Defendants, in addition to other
3 remedies, for violations of California Labor Code sections 201, 202, 203, 204,
4 226(a), 226.7, 510, 512(a), 1174(d) and 1198.

5 **FIRST CAUSE OF ACTION**

6 **(Violation of California Labor Code §§ 510 and 1198)**

7 **(Against COMERICA and DOES 1 through 100)**

8 46. Plaintiff incorporates by reference the allegations contained in
9 paragraphs 1 through 45, and each and every part thereof with the same force and
10 effect as though fully set forth herein.

11 47. Pursuant to California Labor Code § 1198 and the applicable IWC
12 Wage Order, it is unlawful to employ persons without compensating them at a
13 rate of pay either time-and-one-half or two-times that person's regular rate of
14 pay, depending on the number of hours worked by the person on a daily or
15 weekly basis.

16 48. Pursuant to California Labor Code § 1198, the maximum hours of
17 work and the standard conditions of labor fixed by the commission shall be the
18 maximum hours of work and the standard conditions of labor for employees. The
19 employment of any employee for longer hours than those fixed by the order or
20 under conditions of labor prohibited by the order is unlawful.

21 49. Pursuant to the applicable IWC Wage Order, Defendants are and
22 were required to pay Plaintiff and the other class members at the rate of time-and-
23 one-half for all hours worked in excess of eight (8) hours in a day or more than
24 forty (40) hours in a workweek.

25 50. The applicable IWC Wage Order further provides that Defendants
26 are and were required to pay Plaintiff and the other class members overtime
27 compensation at a rate of two times their regular rate of pay for all hours worked
28 in excess of twelve (12) hours in a day.

1 51. Pursuant to California Labor Code section 510, any work in excess
2 of eight hours in one workday and any work in excess of 40 hours in any one
3 workweek and the first eight hours worked on the seventh day of work in any one
4 workweek shall be compensated at the rate of no less than one and one-half times
5 the regular rate of pay for an employee. Any work in excess of 12 hours in one
6 day shall be compensated at the rate of no less than twice the regular rate of pay
7 for an employee. In addition, any work in excess of eight hours on any seventh
8 day of a workweek shall be compensated at the rate of no less than twice the
9 regular rate of pay of an employee.

10 52. Pursuant to California Labor Code section 510, Plaintiff and the
11 other class members are entitled to overtime compensation at one-and-one-half
12 times the regular hourly rate for hours worked in excess of eight (8) hours in a
13 day or forty (40) hours in a week or for the first eight (8) hours worked on the
14 seventh day of work, and to overtime compensation at twice the regular hourly
15 rate for hours worked in excess of twelve (12) hours in a day or in excess of eight
16 (8) hours in a day on the seventh day of work.

17 53. During the relevant time period, Plaintiff and the other class
18 members regularly and/or consistently worked in excess of eight (8) hours in a
19 day.

20 54. During the relevant time period, Plaintiff and the other class
21 members regularly and/or consistently worked in excess of twelve (12) hours in a
22 day.

23 55. During the relevant time period, Plaintiff and the other class
24 members regularly and/or consistently worked in excess of forty (40) hours in a
25 week.

26 56. During the relevant time period, Defendants intentionally and
27 willfully failed to pay overtime wages owed to Plaintiff and the other class
28 members.

1 63. Pursuant to California Labor Code section 226.7, no employer shall
2 require any employee to work during any meal or rest period mandated by an
3 applicable order of the Industrial Welfare Commission.

4 64. Pursuant to California Labor Code section 512(a), an employer may
5 not employ an employee for a work period of more than five hours per day
6 without providing the employee with a meal period of not less than 30 minutes,
7 except that if the total work period per day of the employee is no more than six
8 hours, the meal period may be waived by mutual consent of both the employer
9 and employee.

10 65. Pursuant to California Labor Code section 512(a), an employer may
11 not employ an employee for a work period of more than 10 hours per day without
12 providing the employee with a second meal period of not less than 30 minutes,
13 except that if the total hours worked is no more than 12 hours, the second meal
14 period may be waived by mutual consent of the employer and the employee only
15 if the first meal period was not waived.

16 66. As alleged herein, Defendants routinely interrupted and/or failed to
17 permit, authorize and/or provide Plaintiff's and class members' meal breaks. By
18 these actions, Defendants violated California Labor Code sections 226.7(a) and
19 512(a), and is liable to Plaintiff and the Class.

20 67. During the relevant time period, Plaintiff and the other class
21 members who were scheduled to work for a period of time in excess of six (6)
22 hours were required to work for a period of time in excess of six (6) hours, and
23 were required to work for periods longer than five (5) hours without an
24 uninterrupted meal period of not less than thirty (30) minutes.

25 68. During the relevant time period, Plaintiff and the other class
26 members who were scheduled to work in excess of ten (10) hours but not longer
27 than twelve (12) hours, and who did not waive their legally mandated meal
28 periods by mutual consent were required to work in excess of ten (10) hours

1 without receiving a second uninterrupted meal period of not less than thirty (30)
2 minutes.

3 69. During the relevant time period, Plaintiff and the other class
4 members were scheduled to work for a period of time in excess of twelve (12)
5 hours was required to work for periods longer than ten (10) hours without a
6 second uninterrupted meal period of not less than thirty (30) minutes.

7 70. During the relevant time period, Defendants intentionally and
8 willfully required Plaintiff and the other class members to work during meal
9 periods and failed to pay Plaintiff and the other class members the full meal
10 period premium for work performed during meal periods.

11 71. Defendants' conduct violates applicable Industrial Welfare
12 Commission Wage Orders, and California Labor Code sections 226.7 and 512(a).

13 72. Pursuant to California Labor Code section 226.7(b), Plaintiff and the
14 other class members are entitled to recover from Defendants one additional hour
15 of pay at the employee's regular rate of compensation for each work day that the
16 meal or rest period is not provided.

17 73. Pursuant to the civil penalties provided for in California Labor Code
18 sections 2699(f) and (g), the State of California, Plaintiffs and other aggrieved
19 employees are entitled to recover civil penalties of one hundred dollars (\$100) for
20 each aggrieved employee per pay period for the initial violation and two hundred
21 dollars (\$200) for each aggrieved employee per pay period for each subsequent
22 violation, plus costs and attorneys' fees for violation of California Labor Code
23 sections 226.7 and 512(a).

24 **THIRD CAUSE OF ACTION**

25 **(Violation of California Labor Code §§ 226.7)**

26 **(Against COMERICA and DOES 1 through 100)**

27 74. Plaintiff incorporates by reference the allegations contained in
28 paragraphs 1 through 73, and each and every part thereof with the same force and

1 effect as though fully set forth herein.

2 75. At all times herein set forth, the California Industrial Welfare
3 Commission Order and California Labor Code section 226.7 was applicable to
4 Plaintiff's and the other class members' employment by Defendants.

5 76. Pursuant to California Labor Code section 226.7, no employer shall
6 require an employee to work during any rest period mandated by an applicable
7 order of the California Industrial Welfare Commission.

8 77. As alleged herein, Defendants routinely interrupted and/or failed to
9 permit, authorize and/or provide Plaintiff's and class members' rest breaks. By
10 these actions, Defendants violated California Labor Code section 226.7(a) and is
11 liable to Plaintiff and the Class.

12 78. During the relevant time period, Defendants required Plaintiff and
13 the other class members of the class to work in excess of four (4) hours without
14 providing them a second ten (10) minute rest period.

15 79. During the relevant time period, Defendants required Plaintiff and
16 the other class members to work an additional four (4) hours without providing a
17 second ten (10) minute rest period.

18 80. During the relevant time period, Defendants willfully required
19 Plaintiff and the other class members to work during rest periods and failed to
20 pay Plaintiff and the other class members the full rest period premium for work
21 performed during rest periods.

22 81. Defendants' conduct violates applicable Industrial Welfare
23 Commission Wage Orders, and California Labor Code section 226.7.

24 82. Pursuant to California Labor Code section 226.7(b), Plaintiff and the
25 other class members of the class are entitled to recover from Defendants one
26 additional hour of pay at the employees' regular hourly rate of compensation for
27 each work day that the rest period was not provided.

28 83. Pursuant to the civil penalties provided for in California Labor Code

1 sections 2699(f) and (g), the State of California, Plaintiffs and other aggrieved
2 employees are entitled to recover civil penalties of one hundred dollars (\$100) for
3 each aggrieved employee per pay period for the initial violation and two hundred
4 dollars (\$200) for each aggrieved employee per pay period for each subsequent
5 violation, plus costs and attorneys' fees for violation of California Labor Code
6 section 226.7.

7 **FOURTH CAUSE OF ACTION**
8 **(Violation of California Labor Code § 204)**
9 **(Against COMERICA and DOES 1 through 100)**

10 84. Plaintiff incorporates by reference the allegations contained in
11 paragraphs 1 through 83, and each and every part thereof with the same force and
12 effect as though fully set forth herein.

13 85. Pursuant to California Labor Code section 204(b)(1), all wages
14 earned for labor in excess of the normal work period shall be paid no later than
15 the payday for the next regular payroll period.

16 86. During the relevant time period, Defendants intentionally and
17 willfully failed to pay Plaintiff and the other class members the overtime and/or
18 regular wages due to them, within any time period permissible under California
19 Labor Code section 204.

20 87. Pursuant to the civil penalties provided for in California Labor Code
21 sections 2699(f) and (g), the State of California, Plaintiffs and other aggrieved
22 employees are entitled to recover civil penalties of one hundred dollars (\$100) for
23 each aggrieved employee per pay period for the initial violation and two hundred
24 dollars (\$200) for each aggrieved employee per pay period for each subsequent
25 violation, plus costs and attorneys' fees for violation of California Labor Code
26 section 204.

27
28

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against COMERICA and DOES 1 through 100)

1
2
3
4 88. Plaintiff incorporates by reference the allegations contained in
5 paragraphs 1 through 87, and each and every part thereof with the same force and
6 effect as though fully set forth herein.

7 89. Pursuant to California Labor Code sections 201 and 202, if an
8 employer discharges an employee, the wages earned and unpaid at the time of
9 discharge are due and payable immediately, and if an employee quits his or her
10 employment, his or her wages shall become due and payable not later than
11 seventy-two (72) hours thereafter, unless the employee has given seventy-two
12 (72) hours notice of his or her intention to quit, in which case the employee is
13 entitled to his or her wages at the time of quitting.

14 90. During the relevant time period, Defendants intentionally and
15 willfully failed to pay Plaintiff and the other class members their wages, earned
16 and unpaid, within seventy-two (72) hours of Plaintiff and the other class
17 members leaving Defendants' employ.

18 91. Defendants' failure to pay Plaintiff and the other class members their
19 wages, earned and unpaid, within seventy-two (72) hours of her leaving
20 Defendants' employ, is in violation of California Labor Code sections 201 and
21 202.

22 92. Pursuant to California Labor Code section 203, if an employer
23 willfully fails to pay, without abatement or reduction, in accordance with
24 Sections 201 and 202, any wages of an employee who is discharged or who quits,
25 the wages of the employee shall continue as a penalty from the due date thereof at
26 the same rate until paid or until an action is commenced; but the wages shall not
27 continue for more than thirty (30) days.

28 93. Plaintiff and the other class members are entitled to recover the

1 statutory penalty for each day they were not paid, at her regular hourly rate of
2 pay, up to thirty (30) days maximum pursuant to California Labor Code section
3 203.

4 94. Pursuant to the civil penalties provided for in California Labor Code
5 sections 2699(f) and (g), the State of California, Plaintiffs and other aggrieved
6 employees are entitled to recover civil penalties of one hundred dollars (\$100) for
7 each aggrieved employee per pay period for the initial violation and two hundred
8 dollars (\$200) for each aggrieved employee per pay period for each subsequent
9 violation, plus costs and attorneys' fees for violation of California Labor Code
10 sections 201 and 202.

11 **SIXTH CAUSE OF ACTION**

12 **(Violation of California Labor Code § 226(a))**

13 **(Against COMERICA and DOES 1 through 100)**

14 95. Plaintiff incorporates by reference the allegations contained in
15 paragraphs 1 through 94, and each and every part thereof with the same force and
16 effect as though fully set forth herein.

17 96. Pursuant to California Labor Code section 226(a), every employer
18 shall furnish each of his or her employees an accurate itemized statement in
19 writing showing (1) gross wages earned, (2) total hours worked by the employee,
20 (3) the number of piece-rate units earned and any applicable piece rate if the
21 employee is paid on a piece-rate basis, (4) all deductions, provided that all
22 deductions made on written orders of the employee may be aggregated and
23 shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
24 which the employee is paid, (7) the name of the employee and his or her social
25 security number, (8) the name and address of the legal entity that is the employer,
26 and (9) all applicable hourly rates in effect during the pay period and the
27 corresponding number of hours worked at each hourly rate by the employee. The
28 deductions made from payments of wages shall be recorded in ink or other

1 indelible form, properly dated, showing the month, day, and year, and a copy of
2 the statement or a record of the deductions shall be kept on file by the employer
3 for at least three years at the place of employment or at a central location within
4 the State of California.

5 97. Defendants intentionally and willfully failed to provide Plaintiff and
6 the other class members with complete and accurate wage statements. The
7 deficiencies included one or more of the following: the failure to include the total
8 number of hours worked by Plaintiff and the other class members, the failure to
9 include the hourly rate, the failure to provide their social security numbers.

10 98. As a result of Defendants' violation of California Labor Code section
11 226(a), Plaintiff and the other class members have suffered injury and damage to
12 their statutorily protected rights.

13 99. More specifically, Plaintiff and the other class members have been
14 injured by Defendants' intentional and willful violation of California Labor Code
15 section 226(a) because they were denied both their legal right to receive, and their
16 protected interest in receiving, accurate and itemized wage statements pursuant to
17 California Labor Code section 226(a).

18 100. Plaintiff and the other class members are entitled to recover from
19 Defendants the greater of their actual damages caused by Defendants' failure to
20 comply with California Labor Code section 226(a), or an aggregate penalty not
21 exceeding four thousand dollars per employee.

22 101. Pursuant to the civil penalties provided for in California Labor Code
23 sections 2699(f) and (g), the State of California, Plaintiffs and other aggrieved
24 employees are entitled to recover civil penalties of one hundred dollars (\$100) for
25 each aggrieved employee per pay period for the initial violation and two hundred
26 dollars (\$200) for each aggrieved employee per pay period for each subsequent
27 violation, plus costs and attorneys' fees for violation of California Labor Code
28 section 226(a).

SEVENTH CAUSE OF ACTION

(Violation of California Labor Code § 1174(d))

(Against COMERICA and DOES 1 through 100)

102. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 101 , and each and every part thereof with the same force and effect as though fully set forth herein.

103. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

104. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Plaintiff and the other class members.

105. As a result of Defendants' violation of California Labor Code section 1174(d), Plaintiff and the other class members have suffered injury and damage to their statutorily protected rights.

106. More specifically, Plaintiff and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 1174(d) because they were denied both their legal right and protected interest, in having available, accurate and complete payroll records pursuant to California Labor Code section 1174(d).

107. Pursuant to the civil penalties provided for in California Labor Code sections 2699(f) and (g), the State of California, Plaintiffs and other aggrieved employees are entitled to recover civil penalties of one hundred dollars (\$100) for

1 each aggrieved employee per pay period for the initial violation and two hundred
2 dollars (\$200) for each aggrieved employee per pay period for each subsequent
3 violation, plus costs and attorneys' fees for violation of California Labor Code
4 section 1174(d).

5 **EIGHTH CAUSE OF ACTION**

6 **(Violation of California Business & Professions Code § 17200 et seq.)**

7 **(Against COMERICA and DOES 1 through 100)**

8 108. Plaintiff incorporates by reference the allegations contained in
9 paragraphs 1 through 107, and each and every part thereof with the same force
10 and effect as though fully set forth herein.

11 109. Defendants' conduct, as alleged in this complaint, has been, and
12 continues to be, unfair, unlawful and harmful to Plaintiff and the other class
13 members, and Defendants' competitors. Accordingly, Plaintiff and the other
14 class members seek to enforce important rights affecting the public interest
15 within the meaning of Code of Civil Procedure section 1021.5.

16 110. Defendants' activities as alleged herein are violations of California
17 law, and constitute unlawful business acts and practices in violation of California
18 Business & Professions Code section 17200 et seq.

19 111. A violation of California Business & Professions Code section 17200
20 et seq. may be predicated on the violation of any state or federal law. As
21 described herein, Defendants violated California Labor Code sections 201, 204,
22 212, 213, 226(a), 226.7, 510, 1174(d), 1198, 2800, and 2802.

23 112. As a result the herein described violations of California law,
24 Defendants unlawfully gained an unfair advantage over other businesses.

25 113. Plaintiff and the other class members have suffered pecuniary loss by
26 Defendants' unlawful business acts and practices alleged herein.

27 114. Pursuant to California Business & Professions Code sections 17200
28 et seq., Plaintiff and the other class members are entitled to restitution of the

1 wages and other monies wrongfully withheld and retained by Defendants
2 pursuant to California Labor Code §§ 510, 1198, 2800, and 2802.

3 115. Pursuant to California Business & Professions Code section 17200 et
4 seq., injunctive relief is necessary to prevent Defendants from continuing to
5 engage in the unfair business practices as alleged herein. Plaintiff is informed
6 and believes that Defendants have committed and will continue to commit the
7 above-described unlawful acts unless restrained or enjoined by this Court. Unless
8 the relief prayed for below is granted, a multiplicity of actions will result.
9 Plaintiff and the other class members have no plain, speedy, or adequate remedy
10 at law, in that pecuniary compensation alone would not afford adequate and
11 complete relief. The above-described acts will cause great and irreparable
12 damage to Plaintiff and the other class members unless Defendant is restrained
13 from committing further illegal acts.

14 116. Plaintiff and the other class members are entitled to an award of
15 attorneys' fees and costs pursuant to California Code of Civil Procedure section
16 1021.5 and other applicable laws.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, individually and on behalf of all other members
19 of the public similarly situated, prays for relief and judgment against Defendants,
20 jointly and severally, as follows:

21 **Class Certification**

- 22 1. That this action be certified as a class action;
- 23 2. That Plaintiff be appointed as the representative of the class;
- 24 3. That counsel for Plaintiff be appointed as class counsel;
- 25 4. That Defendants provide to class counsel, immediately upon its
26 appointment, the names and most current contact information (address and
27 telephone numbers) of all class members.

28

As to the First Cause of Action

1
2 5. For general unpaid wages at overtime wage rates and such general
3 and special damages as may be appropriate;

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

6 7. For the imposition of civil penalties and/or statutory penalties;

7 8. For reasonable attorneys' fees and costs of suit incurred herein
8 pursuant to California Labor Code section 1194;

9 9. For civil penalties pursuant to California Labor Code sections
10 2699(f) and (g) in the amount of \$100 dollars for each violation per pay period
11 for the initial violation and \$200 for each aggrieved employee per pay period for
12 each subsequent violation, plus costs and attorneys' fees for violation of
13 California Labor Code sections 510 and 1198; and

14 10. For such other and further relief as the court may deem just and
15 proper.

As to the Second Cause of Action

16
17 11. For all actual, consequential, and incidental losses and damages,
18 according to proof;

19 12. For wages pursuant to California Labor Code section 226.7(b);

20 13. For the imposition of civil penalties and/or statutory penalties;

21 14. For reasonable attorneys' fees and costs of suit incurred herein;

22 15. For civil penalties pursuant to California Labor Code sections
23 2699(f) and (g) in the amount of \$100 dollars for each violation per pay period
24 for the initial violation and \$200 for each aggrieved employee per pay period for
25 each subsequent violation, plus costs and attorneys' fees for violation of
26 California Labor Code sections 226.7 and 512; and

27 16. For such other and further relief as the court may deem just and
28 proper.

As to the Third Cause of Action

1
2 17. For all actual, consequential, and incidental losses and damages,
3 according to proof;

4 18. For wages pursuant to California Labor Code section 226.7(b);

5 19. For reasonable attorneys' fees and costs of suit incurred herein;

6 20. For civil penalties pursuant to California Labor Code sections
7 2699(f) and (g) in the amount of \$100 dollars for each violation per pay period
8 for the initial violation and \$200 for each aggrieved employee per pay period for
9 each subsequent violation, plus costs and attorneys' fees for violation of
10 California Labor Code section 226.7; and

11 21. For such other and further relief as the court may deem just and
12 proper.

As to the Fourth Cause of Action

13
14 22. For actual, consequential and incidental losses and damages,
15 according to proof;

16 23. For pre-judgment interest on any untimely paid compensation, from
17 the sate such amounts were due;

18 24. For reasonable attorneys' fees and costs of suit incurred herein;

19 25. For civil penalties pursuant to California Labor Code sections
20 2699(f) and (g) in the amount of \$100 dollars for each violation per pay period
21 for the initial violation and \$200 for each aggrieved employee per pay period for
22 each subsequent violation, plus costs and attorneys' fees for violation of
23 California Labor Code section 204; and

24 26. For such other and further relief as the court may deem just and
25 proper.

As to the Fifth Cause of Action

26
27 27. For actual, consequential and incidental losses and damages,
28 according to proof;

1 28. For statutory penalties pursuant to California Labor Code section
2 203 for Plaintiff and all other class members who have left Defendants' employ;

3 29. For reasonable attorneys' fees and costs of suit incurred herein;

4 30. For civil penalties pursuant to California Labor Code sections
5 2699(f) and (g) in the amount of \$100 dollars for each violation per pay period
6 for the initial violation and \$200 for each aggrieved employee per pay period for
7 each subsequent violation, plus costs and attorneys' fees for violation of
8 California Labor Code sections 201, 202, and 203; and

9 31. For such other and further relief as the court may deem just and
10 proper.

11 **As to the Sixth Cause of Action**

12 32. For actual, consequential and incidental losses and damages,
13 according to proof;

14 33. For statutory penalties pursuant to California Labor Code section
15 226(e);

16 34. For injunctive relief to ensure compliance with this section, pursuant
17 to California Labor Code section 226(g);

18 35. For reasonable attorneys' fees and costs of suit incurred herein
19 pursuant to California Labor Code section 226(e);

20 36. For civil penalties pursuant to California Labor Code sections
21 2699(f) and (g) in the amount of \$100 dollars for each violation per pay period
22 for the initial violation and \$200 for each aggrieved employee per pay period for
23 each subsequent violation, plus costs and attorneys' fees for violation of
24 California Labor Code section 226(a); and

25 37. For such other and further relief as the court may deem just and
26 proper.

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

28 38. For actual, consequential and incidental losses and damages,

1 according to proof;

2 39. For statutory penalties pursuant to California Labor Code section
3 1174.5;

4 40. For reasonable attorneys' fees and costs of suit incurred herein;

5 41. For civil penalties pursuant to California Labor Code sections
6 2699(f) and (g) in the amount of \$100 dollars for each violation per pay period
7 for the initial violation and \$200 for each aggrieved employee per pay period for
8 each subsequent violation, plus costs and attorneys' fees for violation of
9 California Labor Code section 1174(d); and

10 42. For such other and further relief as the court may deem just and
11 proper.

12 **As to the Eighth Cause of Action**

13 43. For restitution of unpaid wages and other monies wrongfully
14 withheld and retained by Defendants to Plaintiff and the other class members and
15 prejudgment interest from the day such amount were due and payable;


16 44. For reasonable attorneys' fees and costs of suit incurred herein that
17 Plaintiff and the other class members are entitled to recover under California
18 Code of Civil Procedure section 1021.5.

19 45. For injunctive relief to ensure compliance with this section, pursuant
20 to California Business & Professions Code section 17200 et seq.; and

21 46. For such other and further relief as the court may deem just and
22 proper.

23
24 Dated: February 2, 2010

Respectfully submitted,
Initiative Legal Group APC

25 By: 

26 Gene Williams
27 Dina S. Livhits
Jennifer Grock

28 Attorneys for Plaintiff Yiadira Cordova


1 **DEMAND FOR JURY TRIAL**

2 Plaintiff, individually and on behalf of the members of the public similarly
3 situated, hereby demands a trial by a jury.

4 Dated: February 2, 2010

Respectfully submitted,

Initiative Legal Group APC

6 By: 

7 Gene Williams
8 Dina S. Livhits
9 Jennifer Grock

Attorneys for Plaintiff Yiadira Cordova

INITIATIVE LEGAL GROUP APC
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PROOF OF SERVICE

1
2 UNITED STATES DISTRICT COURT)
3 CENTRAL DISTRICT OF CALIFORNIA) SS

4 I am employed in the State of California, County of Los Angeles. I am over the age of
5 18 and not a party to the within suit; my business address is 1800 Century Park East, 2nd Floor,
Los Angeles, California 90067.

6 On February 2, 2010 I served the document described as: **FIRST AMENDED COMPLAINT**
7 on the interested parties in this action by sending on the interested parties in this action by
8 sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as follows:

9 **PLEASE SEE ATTACHED SERVICE LIST**

10 [✓] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s)
11 for mailing in the ordinary course of business at Los Angeles, California. I am "readily
12 familiar" with this firm's practice of collection and processing correspondence for
13 mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal
14 Service that same day in the ordinary course of business with postage thereon fully
15 prepaid at Los Angeles, California.

16 [] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
17 California, by e-mail delivery on the parties listed herein at their most recent known e-
18 mail address or e-mail of record in this action.

19 [] **BY FAX:** I hereby certify that this document was served from Los Angeles, California,
20 by facsimile delivery on the parties listed herein at their most recent fax number of
21 record in this action.

22 [] **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope,
23 by hand to the offices of the addressee(s) named herein.

24 [] **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of
25 collection and processing correspondence for overnight delivery. Under that practice,
26 overnight packages are enclosed in a sealed envelope with a packing slip attached
27 thereto fully prepaid. The packages are picked up by the carrier at our offices or
28 delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this February 2, 2010, at Los Angeles, California.

Matthew Krout
Type or Print Name


Signature

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