

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**11/25/2020** at 03:54:33 PM  
Clerk of the Superior Court  
By Ines Quirarte, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO

**CASE NO. : 37-2020-00043399-CU-OE-CTL**

**REPRESENTATIVE COMPLAINT  
FOR VIOLATION OF LABOR CODE  
PRIVATE ATTORNEYS GENERAL  
ACT OF 2004, LABOR SECTION  
2698, ET SEQ. (PAGA)**

## DEMAND FOR JURY TRIAL

## DEMAND FOR JURY TRIAL

Defendants.

2. Plaintiff Michael Varni is an individual residing in the State of California, County of San Diego.

3. Defendant Griffin Funding, Inc. was and is a California corporation, and at all times herein mentioned, was the “employer” – as that term is defined in the California Labor Code and the applicable California Industrial Wage Commission (“IWC”) Order(s) – of Plaintiff and other aggrieved employees who were and/or are engaged throughout the State of California, including the County of San Diego.

4. Defendant Griffin Funding, Inc. is a mortgage lender located in San Diego, California. Defendant Griffin Funding, Inc. specializes in loan refinancing.

5. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as DOES 1 through 50, whether individual, corporate, associate, or otherwise and therefore sues such Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's injuries and damages herein were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

6. Plaintiff is informed and believes and thereupon alleges that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged

herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

7. Plaintiff further alleges that Defendants, including each Doe Defendant identified as DOES, directly or indirectly controlled or affected the terms, wages, working hours, and conditions of employment of Plaintiff and the other aggrieved employees so as to make each of said Defendants employers and as employers liable under the statutory provisions set forth herein.

8. Defendant Griffin Funding, Inc. and DOES 1 through 50 will hereinafter collectively be referred to as “Defendants.”

#### **JURISDICTION AND VENUE**

9. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

10. This is a representative action brought under California Labor Code section 2698, et seq. The civil penalties in controversy exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

11. This Court has jurisdiction under Article VI, Section 10 of the California Constitution that grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes underlying this action do not specify any other basis for jurisdiction.

12. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or Defendants have intentionally availed themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

13. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of San Diego. The majority of the acts and omissions alleged herein relating to Plaintiff and the other aggrieved employees took place in the State of California, including the County of San Diego.

**GENERAL ALLEGATIONS**

14. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

15. At all relevant times set forth herein, Defendants employed Plaintiff and other aggrieved employees in San Diego, California. Defendants own and/or operation a mortgage company. William “Bill” Lyons is the CEO. Defendants’ principal office is located at 2445 5th Avenue, Suite 300, San Diego, CA 92101, which is where the events giving rise to this dispute occurred. As a California employer, Defendants were at all times subject to California law, including, but not limited to, the Labor Code and the Industrial Welfare Commission Wage Orders.

16. Defendants, jointly and severally, employed Plaintiff from October 2016 to on or about February 24, 2020. Defendants hired Plaintiff and other aggrieved employees and permitted and suffered them to work, but failed to compensate them timely and properly, failed to provide proper meal periods and rest breaks or premium compensation in lieu thereof, and failed to indemnify Plaintiff and other aggrieved employees for expenditures and losses incurred in direct consequence of the discharge of their duties for Defendants, among other violations described herein.

17. Defendants had the authority to hire and fire Plaintiff and other aggrieved employees, establish the terms and conditions of their employment, and determine their compensation and manage their daily employment activities. Defendants exercised sufficient authority over Plaintiff’s and the other aggrieved employees’ employment for them to be joint employers of Plaintiff and the other aggrieved employees.

18. Defendants hired and paid wages and benefits to Plaintiff and the other aggrieved employees, and Defendants continue to employ employees within the State of California.

19. Plaintiff is informed and believes, and based thereon alleges, that Defendants subjected their employees to uniform wage and hour policies and practices that deprived them of full compensation, including reimbursement. The practices included, but are not limited to, failing to accurately record and timely pay Plaintiff and other aggrieved employees for all wages due, provide and/or compensate them for improper (i.e., short, late, interrupted, and altogether

missed) meal periods and rest periods, as well as reimbursement for necessary business expenditures, all in in violation of California law.

20. Plaintiff worked as a loan officer. Plaintiff and other aggrieved employees' primary duties involved the generation, processing, preparation, and closing of loan products and financing real estate transactions. Plaintiff and other aggrieved employees regularly communicated with potential borrowers and clients on the phone. Upon information and belief, Defendants paid their employees, including Plaintiff and other aggrieved employees, straight commissions or an hourly wage with the possibility of earning additional incentive compensation. Throughout their employment Defendants violated and/or continue to violate the Labor Code by engaging in conduct such as not maintaining code-compliant commission agreements, failing to pay all minimum and overtime wages, failing to pay commissions, and failing to timely pay wages and commissions to Plaintiff and other aggrieved employees.

21. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that aggrieved employees were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for all hours worked. Upon information and belief, Defendants required aggrieved employees, for instance, to perform work off-the-clock, including after regular hours and on the weekends to follow up with potential borrowers and clients for which they were not compensated. Upon information and belief, Defendants did not record this time, nor did Defendants pay aggrieved employees for all hours worked and/or at the correct regular rate of pay for all hours worked on the weekends.

22. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that aggrieved employees were entitled to receive certain wages for overtime compensation. Upon information and belief, aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week and, thus, were entitled to receive overtime compensation. But aggrieved employees were not paid for all overtime hours worked and/or at the appropriate overtime rate. Upon information and belief, Defendants required Plaintiff and aggrieved employees to perform work off-the-clock, including after regular hours and on the weekends to follow up with potential borrowers and clients for which they were not

1 compensated.

2 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
3 knew or should have known that Plaintiff and the other aggrieved employees were entitled to  
4 receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other  
5 aggrieved employee's regular rate of pay when a meal period was missed, late or interrupted, and  
6 they did not receive all meal periods or payment of one additional hour of pay at Plaintiff's and  
7 the other aggrieved employee's regular rate of pay when an improper meal period occurred.

8 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
9 knew or should have known that Plaintiff and the other aggrieved employees were entitled to  
10 receive all rest periods or payment of one additional hour of pay at Plaintiff's and the other  
11 aggrieved employees' regular rate of pay when a rest period was missed, late or interrupted, and  
12 they did not receive all timely and uninterrupted rest periods or payment of one additional hour  
13 of pay at Plaintiff's and the other aggrieved employees' regular rate of pay when an improper rest  
14 period occurred.

15 25. Upon information and belief, Defendants lacked meal and rest period policies and  
16 practices that comply with California law. Plaintiff and other aggrieved employees did not  
17 always receive proper meal and rest periods because of Defendants' break schedule or lack  
18 thereof. Moreover, Plaintiff and other aggrieved employees often worked late and after hours and  
19 on weekends, working shifts longer than 5 and 10 hours without being provided proper meal and  
20 rest periods. Plaintiff and other aggrieved employees would also be forced to delay or work  
21 through their meal and rest periods in order to assist clients. Plaintiff and other aggrieved  
22 employees did not receive all timely and uninterrupted meal and rest periods to which they were  
23 entitled, and Defendants failed to compensate them properly for non-compliant meal and rest  
24 periods including, inter alia, late and interrupted meal and rest periods

25 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
26 failed to provide Plaintiff and the other aggrieved employees the required meal periods and rest  
27 periods during the relevant time period as required under the Industrial Welfare Commission  
28 Wage Orders and thus they are entitled to any and all applicable penalties.

27. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other aggrieved employees were entitled to receive all wages owed to them during their employment. Plaintiff and the other aggrieved employees did not receive payment of all wages, including overtime and minimum wages and commission wages and meal and rest period premiums, within any time permissible under California Labor Code section 204. On information and belief, on several occasions throughout Plaintiff and other aggrieved employees' employment, Defendants required Plaintiff and other aggrieved employees to delay payment of their wages, including commission wages, beyond their designated pay dates due to insufficient funds. Defendants told Plaintiff and other aggrieved employees not to cash their checks, resulting in untimely payment of employees' wages and commissions.

28. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other aggrieved employees were entitled to receive all wages owed to them upon discharge or resignation, including overtime and minimum wages and commission wages, and meal and rest period premiums, and they did not, in fact, receive all such wages owed to them at the time of discharge.

29. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other aggrieved employees were entitled to receive complete and accurate wage statements in accordance with California law, but they did not receive complete and accurate wage statements from Defendants. The deficiencies included, but were not limited to, the failure to include the total number of hours worked by Plaintiff and the other aggrieved employees as well as all hourly rates in effect during the applicable pay period, as well as proper gross wages and net wages, among other violations.

30. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Defendants had to keep complete and accurate payroll records for Plaintiff and the other aggrieved employees in accordance with California law, but Defendants did not keep complete and accurate payroll records.

1           31. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
2 knew or should have known that because Plaintiff's and other aggrieved employees'  
3 compensation involved commissions, the law requires a written agreement clearly setting forth  
4 the method by which the commissions is computed and paid. But Defendants did not enter into  
5 written agreements with Plaintiff and other aggrieved employees that set forth the method of  
6 compensation for Plaintiff's and other aggrieved employees' commissions.

7           32. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
8 knew or should have known that Plaintiff and the other aggrieved employees were entitled to  
9 reimbursement for necessary business-related expenses and costs. Plaintiff and aggrieved  
10 employees incurred expenses in direct consequence of the discharge of their duties, including  
11 expenditures and losses for cell phone, internet, and/or data usage. Upon information and belief,  
12 Defendants required and encouraged Plaintiff and aggrieved employees to use their personal cell  
13 phones for business purposes. But Defendants have not reimbursed Plaintiff and aggrieved  
14 employees for these and other expenses.

15           33. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
16 knew or should have known that they had a duty to compensate and indemnify Plaintiff and  
17 the other aggrieved employees pursuant to California law, and that Defendants had the  
18 financial ability to pay such compensation and indemnification, but willfully, knowingly,  
19 and intentionally failed to do so, and falsely represented to Plaintiff and the other aggrieved  
20 employees that they were properly paid wages and reimbursements.

21           34. At all material times set forth herein, Defendants failed to provide timely and  
22 uninterrupted meal periods and rest periods to Plaintiff and the other aggrieved employees; failed  
23 to pay Plaintiff and the other aggrieved employees at least minimum wages for all hours worked,  
24 and overtime where applicable; failed to pay Plaintiff and the other aggrieved employees all  
25 wages owed to them upon discharge or resignation; failed to pay Plaintiff and the other  
26 aggrieved employees' wages within any time permissible under California law, including, *inter*  
27 *alia*, California Labor Code section 204; failed to provide complete and accurate wage  
28 statements to Plaintiff and the other aggrieved employees; failed to keep complete and accurate

1 payroll records for Plaintiff and the other aggrieved employees; failed to reimburse Plaintiff and  
2 the other aggrieved employees for necessary business-related expenses and costs; and failed to  
3 properly compensate Plaintiff and the other aggrieved employees in compliance with California  
4 law in order to enrich themselves at the expense of Plaintiff and the other aggrieved employees.

5 35. California Labor Code section 218 states that nothing in Article 1 of the  
6 Labor Code shall limit the right of any wage claimant to "sue directly . . . for any wages or  
7 penalty due to him [or her] under this article."

8 **FIRST CAUSE OF ACTION**

9 **(Violation of the Labor Code Private Attorneys General Act, Labor Code §§ 2698, et seq.)**

10 **(Against All Defendants)**

11 36. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

12 37. At all times herein set forth, PAGA applied to Plaintiff's employment with  
13 Defendants.

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

20 39. Plaintiff is an "Aggrieved Employee" under PAGA, as Plaintiff was employed by  
21 Defendant during the applicable statutory limitations period and suffered one or more of the  
22 Labor Code violations set forth herein. Plaintiff and the other employees are "aggrieved  
23 employees" as defined by California Labor Code section 2699(c) in that they are all current  
24 or former employees of Defendants, and one or more of the alleged violations were  
25 committed against them. Accordingly, Plaintiff seeks to recover on behalf of himself and all  
26 other current and former aggrieved employees the civil penalties provided by PAGA, plus  
27 reasonable attorney's fees and costs.

28 40. Plaintiff seeks to recover the PAGA civil penalties through a representative action

permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009).

41. Therefore, under the provisions of PAGA and Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 510 512, 558, 558.1, 1102.5, 1174(d), 1194, 1197, 1197.5, 1198, 2751, 2800, 2802, 2804, 2927, 2699 and all applicable Wage Orders, as well as all interpretations of these laws by California Courts and administrative bodies, and any other law that is enforceable through PAGA, Defendants are liable for: (1) All statutorily-specified penalties recoverable under PAGA as enumerated in the relevant California Labor Code provisions listed herein only if permitted by the PAGA statute; and (2) Default PAGA penalties for any violation of the enumerated list of Labor Code violations without a civil penalty recoverable under the PAGA, all in the default amounts provided by Labor Code Section 2699(f).

42. The proper measure of penalties under PAGA is the number of violations, whether those violations were committed as against Plaintiff or any aggrieved employee, whether a party to this action or not. Further, as a PAGA action, this claim need not be certified as a class action to proceed with a company-wide recovery. (*See generally, Arias v. Superior Court* (2009) 46 Cal.4th 969; *Williams v. Superior Court* (2017) 3 Cal.5th 531.)

43. Plaintiff complied with the procedures for bringing suit specified in Labor Code sections 2699.3 and 2699.5. On or about May 18, 2020, Plaintiff gave written notice to the California Labor and Workforce Development Agency (“LWDA”) via electronic mail at [PAGAFilings@dir.ca.gov](mailto:PAGAFilings@dir.ca.gov), and via certified mail to Defendants, of the specific provisions of the Labor Code and Wage Orders allegedly violated, including the facts and theories to support the alleged violations. Plaintiff paid the appropriate filing fee. A true and copy of Plaintiff’s written notice is attached hereto as Exhibit 1.

44. Under Labor Code section 2699.3, the LWDA must give written notice by certified mail to the parties that it intends to investigate the alleged violations within 65 days of the date of the Plaintiff’s written notice. As of the date of this Complaint, the LWDA has not provided the parties any notice of its intention to investigate Plaintiff’s claims on behalf of

1 himself and other aggrieved employees. Defendants further have not responded to Plaintiff's  
2 PAGA notice in an attempt to cure. Accordingly, Plaintiff has satisfied the administrative  
3 prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against  
4 Defendants for violations of California Labor Code sections 201, 202, 203, 204, 210, 226(a),  
5 226.3, 226.7, 510 512, 558, 558.1, 1102.5, 1174(d), 1194, 1197, 1197.5, 1198, 2751, 2800, 2802,  
6 2804, and 2927. Plaintiff has exhausted all administrative remedies required by law.

7 45. Pursuant to Labor Code § 2699(g), and/or any and all other applicable laws,  
8 Plaintiff is entitled to recover civil penalties, costs, and attorney's fees.

9 **PRAYER**

10 WHEREFORE, Plaintiff, individually, and on behalf of other aggrieved employees  
11 pursuant to the Private Attorneys General Act, prays for judgment against each Defendant,  
12 jointly and severally, as follows:

- 13 1. For all civil penalties according to proof;
- 14 2. For reasonable attorneys' fees and costs of suit; and
- 15 3. For such other and further relief as the Court deems just and proper

16  
17 Respectfully submitted,

18 LURTZ LEGAL

19  
20 

21 By: \_\_\_\_\_  
22 Marshall R. Lurtz  
23 Attorneys for Plaintiff  
24 MICHAEL VARNI  
25  
26  
27  
28

LURTZ LEGAL  
3511 Camino del Rio South, Suite 101  
San Diego, California 92108

**DEMAND FOR JURY TRIAL**

Plaintiff MICHAEL VARNI demands a trial by jury on all claims so triable.

DATED: November 25, 2020

Respectfully submitted,

LURTZ LEGAL



By: \_\_\_\_\_  
Marshall R. Lurtz  
Attorneys for Plaintiff  
MICHAEL VARNI

# **EXHIBIT 1**



3511 CAMINO DEL RIO SOUTH, SUITE 101  
SAN DIEGO, CA 92108  
PHONE: (858) 260-5241  
WWW.LURTZLEGAL.COM

May 18, 2020

**FILED VIA LWDA'S PAGA CLAIM NOTICE ONLINE FORM**

**COPY SENT VIA U.S. CERTIFIED MAIL TO:**

William A. Lyons  
Griffin Funding, Inc.  
2445 5th Avenue, Suite 300  
San Diego, California 92101

William A. Lyons, individually and as agent of Griffin Funding, Inc.  
2445 5th Avenue, Suite 300  
San Diego, California 92101

RE: Michael Varni, et al. v. Griffin Funding, Inc., William A. Lyons, et al.  
California Labor Code § 2699.3 – *Notice of Intent to File Suit*

Dear PAGA Administrator:

We represent Messrs. Michael Varni and Chris White (“Plaintiffs”) and they seek to commence a civil action pursuant to the Private Attorneys General Act of 2004 (“PAGA”) against Griffin Funding, Inc. (“GFI”) and William A. Lyons to recover civil penalties on behalf of the State of California and “aggrieved employees” for Labor Code violations. (*See generally* Cal. Lab. Code § 2698 *et seq.*) The “aggrieved employees” are all current and former similarly situated employees of GFI in the State of California. The purpose of this letter is to identify the Labor Code violations at issue and the facts and theories underlying the violations.<sup>1</sup>

Griffin Mortgage, Inc. (“GFI”) is a California corporation authorized to do the business in the State of California, including the County of San Diego. GFI is a mortgage company. Williams “Bill” Lyons is the CEO. GFI’s principle office is located at 2445 5th Avenue, Suite 300, San Diego, CA 92101, which is where the events giving rise to this dispute occurred. As a

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<sup>1</sup> This letter further reserves every right by Messrs. Varni and White to amend this notice to include, amend, or add further charges upon discovery of violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis per Labor Code sections such as 558, 558.1, and 1197.1 — Messrs. Varni and White reserve any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue, including Mr. William Lyons. Amendments shall relate back to the date of this notice.

California employer, GFI was at all times subject to California law, including, but not limited to, the Labor Code, the Industrial Welfare Commission Wage Orders.

GFI hired Mr. Varni in or around October 2013. GFI hired Mr. White in August 2019. Mr. Varni held the position of loan officer, the position he held throughout his employment. Mr. White worked as a junior loan officer. Mr. Varni's primary duties involved the generation, processing, and closing of loan products and financing real estate transactions. Mr. White performed and assisted in performing the same. GFI classified and paid Mr. Varni as a commission based sales employee. GFI paid Mr. White and hourly wage with the possibility of earning additional incentive compensation. Throughout their employment GFI violated and/or continues to violate the Labor Code by engaging in conduct such as not maintaining code-compliant commission agreements; failing to pay all minimum and overtime wages; failing to pay commissions; failing to timely pay wages and commissions; failing to provide proper meal and rest periods or pay premium compensation in lieu thereof; and failing to reimburse Messrs. Varni and White and other aggrieved employees for all business expenditures. Based on this and other conduct described herein, GFI has violated and/or continues to violate California Labor Code sections 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 510 512, 558, 558.1, 1102.5, 1174(d), 1194, 1197, 1197.5, 1198, 2751, 2800, 2802, 2804, 2927, and all applicable IWC Wage Orders.

### **I. Violation of California Labor Code Section 2751**

Employers must enter into written agreements with employees whose compensation involves commissions. (Labor Code § 2751(a).) Critically, the agreement must set forth the method by which the commission is computed and paid. (*Id.*) Here, while GFI entered into a written agreement with Mr. Varni and, upon information and belief, other aggrieved employees providing that their compensation would involve commissions, the agreements failed to explain how the commission is actually computed and paid. The agreements purportedly represent that commissions will be based on "basis points" but fail to explain the basis for the "basis points" themselves. Moreover, the agreements do not explain the formula for how the commission will be calculated, when the commission is earned, when the commission will be paid in the event the employee is terminated or quits when the earned but unpaid commissions that cannot then be calculated will be paid. Accordingly, GFI has violated the Labor Code by failing to adequately explain in its written commission agreements how commissions are computed and paid.

### **II. Violation of California Labor Code Section 2927**

An employee who is not employed for a specified term and who quits the service of his employer is entitled to compensation for services rendered up to the time of such quitting. (Labor Code § 2927.) Here, Mr. Varni was not employed for a specified term and resigned from GFI on or about February 24, 2020. Mr. Varni had several outstanding loans at the time of his resignation, loans for which Mr. Varni had performed all that was required of him to receive the resulting commission wages. To this day, however, Mr. Varni has still not been paid the remainder of his commission wages, which are substantial. GFI has refused to pay Mr. Varni for all services rendered up to the time of his resignation. Accordingly, Mr. Varni is an aggrieved employee and GFI has violated the Labor Code with respect to Mr. Varni and other aggrieved employees.

### **III. Violation of California Labor Code Sections 515, 510, 1194, 1198**

California law mandates that employers pay employees at least minimum wage for all time worked. California law requires that an overtime premium be paid at one and one-half times

an employee's regular rate of pay for all hours worked in excess of eight (8) hours in a day, forty (40) hours in a week, and for the first eight (8) hours on the seventh consecutive day of work. (Cal. Lab. Code § 510.) An overtime premium must be paid at twice the regular rate of pay for all hours worked in excess of twelve (12) hours in a day and for all hours in excess of eight (8) hours on the seventh consecutive day of work. (Cal. Lab. Code § 511(b).)

Here, Mr. White often worked in excess of 8 in a day and 40 hours in a week and, thus, was entitled to receive overtime compensation. But Mr. White was not paid for all minimum and overtime hours worked and/or at the appropriate overtime rate. Upon information and belief, GFI failed to record and compensate Mr. White for all hours worked, including work performed outside of the office, after hours and on the weekends following up with potential borrower and clients. This resulted in underpayment of minimum and overtime wages. GFI also frequently failed to incorporate all incentive compensation then due into his pay, which forced Mr. White to have his paychecks adjusted to resolve discrepancies. Moreover, during pay periods in which Mr. White worked overtime and earned incentive compensation, GFI failed to incorporate the additional incentive compensation into Mr. White's regular rate of pay for purposes of calculating and paying overtime, which resulted in underpayment of overtime wages. Mr. White has not compensated for this time. Accordingly, GFI has violated the labor code with respect to Mr. White.

#### **IV. Violation of California Labor Code Sections 512 and 226.7**

Employers must provide a meal period of at least thirty (30) minutes to employees who work more than five (5) hours in a workday, and an additional meal period of at least thirty (30) minutes if the employee works ten (10) hours or more in a single workday absent a written on-duty meal period agreement waiver. (Cal. Lab. Code § 512(a); *Brinker v. Super. Ct.* (2012) 53 Cal.4th 1004.) Employers must also authorize and permit rest periods for non-exempt employees of ten (10) minutes for every four (4) hours worked or major fraction thereof. Moreover, no employer may require an employee to work during a meal or rest period. An employer who fails to provide meal and rest periods must pay the employee one additional hour of pay at the employee's regular rate of pay for each work day that a meal or rest period was not provided. (Cal. Lab. Code § 226.7.)

Here, GFI often failed to provide Messrs. Varni and White and, upon information and belief, other employees with timely uninterrupted meal and rest periods. Upon information and belief, GFI lacked meal and rest period policies and practices that comply with California law. Mr. Varni and Mr. White and other employees did not always receive proper meal and rest periods because of GFI's break schedule or lack thereof. Moreover, Mr. Varni and Mr. White and other employees often worked late and after hours and even on weekends, working shifts longer than 5 and 10 hours without being provided proper meal and rest periods. Furthermore, GFI did not record Mr. Varni and other employees' meal periods as required by California law. Mr. Varni and Mr. White and other aggrieved employees would also be forced to delay or work through their meal and rest periods in order to assist clients. Messrs. Varni and White and other employees did not receive all timely and uninterrupted meal and rest periods to which they were entitled, and GFI failed to compensate them properly for non-compliant meal and rest periods including, inter alia, late and interrupted meal and rest periods. Accordingly, Messrs. Varni and White are aggrieved employees and GFI has violated the Labor Code.

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#### **V. Violation of California Labor Code Section 204 and 210**

Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

Here, on several occasions throughout his employment, GFI required Mr. Varni and other employees to delay payment of their wages, including commission wages, beyond their designated pay dates due to insufficient funds. GFI asked Mr. Varni and other aggrieved employees not to cash their checks, resulting in untimely payment of employees' wages. GFI asked Mr. Varni and other employees to hold and not cash their checks in violation of California law. GFI failed to pay Mr. Varni and other aggrieved employees all wages due to them within any time period specified by Labor Code section 204, including earned and unpaid wages, commissions and premium wages as discussed above.

#### **VI. Violation of California Labor Code Sections 226(a) and 226.3**

Labor Code section 226(a) obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement providing information including, but not limited to: gross wages earned; total hours worked by the employee; all deductions; net wages earned; the inclusive dates of the period for which the employee is paid; the name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period and the corresponding number of hours at each hourly rate by the employee.

Here, given GFI's failure to pay Messrs. Varni and White and other employees for all hours worked, including all minimum and overtime and commission wages owed, or provide proper meal and rest periods as detailed above, the wage statements issued by GFI failed to reflect the correct amount of gross wages earned, total hours worked, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a). Upon information and belief, GFI failed to record the hours worked by Mr. Varni and other aggrieved employees, including their meal periods. Messrs. Varni and White are therefore an aggrieved employees and GFI has violated Labor Code § 226(a) with respect to Mr. Varni and Mr. White and other employees.

#### **VII. Violation of California Labor Code Sections 201, 202, 203**

If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Moreover, if an employer willfully fails to pay any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty for up to 30 days. (Cal. Lab. Code § 203.) Here, GFI has failed to pay Mr. Varni and Mr. White and other aggrieved employees all wages due within any time period specified by California Labor Code sections 201 and 202, including all earned and unpaid minimum and overtime wages and commission wages, and premium

wages for improper meal and rest periods as discussed above. Accordingly, GFI has violated the Labor Code with respect to Messrs. Varni and White.

### **VIII. Violation of California Labor Code Section 1174(d)**

Employers must 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 three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.” (Cal. Lab. Code § 1174(d).) Here, GFI has failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Messrs. Varni and White and other aggrieved employees, including earned and unpaid minimum and overtime wages and commissions wages, including premium wages for improper meal and rest periods as discussed above.

### **IX. Violation of California Labor Code Section 1102.5**

Section 1102.5(b) makes it unlawful for an employer to retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation. (Lab. Code § 1102.5(b).) Section 1102.5 also makes it unlawful for an employer to retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation. Any employee who has been retaliated against may recover in a civil action **back pay, benefits, actual damages, civil penalties** in the amount of **\$10,000.00** per employee for each violation, and **punitive damages**. (See *Mathews v. Happy Valley Conference Center, Inc.* (2019) 43 Cal.App.5th 236, 266-267.)

Here, GFI was Mr. White’s employer. Mr. White and, upon information and belief, other aggrieved employees disclosed to GFI issues with their paychecks, including, but not limited to, that their paychecks were short, inaccurate, and/or failed to contain all earnings earned within the applicable pay period. Mr. White frequently reported and disclosed GFI issues with his paychecks. Mr. White and other aggrieved employees had reasonable cause to believe that the information disclosed violations of or noncompliance with local, state and/or federal rules, statutes and/or regulations concerning timely and full payment of wages. Following their disclosures, GFI subjected Mr. White and other aggrieved employees to adverse, retaliatory employment actions, including but not limited to, termination. Mr. White is informed and believes that his disclosures played a substantial role into how he and other aggrieved employees were treated. Mr. White and other aggrieved employees have incurred damages from GFI’s retaliatory conduct. Accordingly, GFI has violated the Labor Code with respect to Mr. White and other aggrieved employees.

### **X. Violation of California Labor Code Section 2800 and 2802**

Employers must indemnify employees for all necessary expenditures or losses incurred by the employees in direct consequence of the discharge of their duties, or their obedience to the directions of the employer. (Lab. Code § 2802.) Here, Mr. Varni and Mr. White and other

aggrieved employees incurred expenses in direct consequence of the discharge of their duties, including having to use their personal cell phones and data for business purposes and to call and follow up with potential clients and borrowers. GFI has not reimbursed Mr. Varni and Mr. White and other aggrieved employees for these and other expenses.

#### **XI. Violation of California Labor Code Section 558 and 558.1**

Labor Code section 558 states that, “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.” The Section goes on to state that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

Labor Code section 558.1 (a) also states that, “[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, sections 203, 226, 226.7, 1194, or 2802, may be held liable as the employer for such violation.”

Mr. William Lyons was an owner and/or agent of GFI during all times relevant herein. Mr. Lyons violated, or caused to be violated, Labor Code Sections and Wage Orders including, but not limited to, those requiring: payment of wages due at the time of separation, maintenance of accurate time records, and payment of meal and rest period premiums, alleged herein. Mr. Lyons is therefore individually and personally liable for various labor code violations alleged herein. Accordingly, Mr. Varni and Mr. White and other aggrieved employees are entitled to recovery of such penalties as set forth in Labor Code sections 558 and 558.1 against each defendant, and all of them.

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**CONCLUSION**

Therefore, Messrs. Varni and White, acting in their individual capacities and on behalf of other aggrieved employees, respectfully request that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, Messrs. Varni and White fully intend to bring a Superior Court action on their behalf and in a representative capacity on behalf of other current and former aggrieved employees, for all applicable civil penalties arising out of the above-referenced violations, or which could be assessed and collected by the Labor and Workforce Development Agency ("LWDA"), for violations of the California Labor Code pursuant to PAGA.

Thank you for your time and attention to this matter. If you have any questions or require additional information, please do not hesitate to contact us.

Best regards,

A handwritten signature in black ink, appearing to read 'M. R. Lurtz', with a stylized flourish at the end.

Marshall R. Lurtz  
LURTZ LEGAL