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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

LESLIE THOMPSON; JOHN
MACFARLANE; and for all current and
former aggrieved employees,

Plaintiffs,

V.

SUN WEST MORTGAGE COMPANY,
INC.; KEVIN MICHAEL KILLEEN;
WAYNE EPPRECHT; PAULA KROST; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 37-2020-00037814-CU-WT-CTL

**FIRST AMENDED COMPLAINT
FOR DAMAGES AND CIVIL
PENALTIES FOR:**

- 1. RETALIATION (L.C. 1102.5);**
- 2. RETALIATION (L.C. 98.6);**
- 3. MISREPRESENTATION (L.C.970);**
- 4. INTENT. MISREPRESENTATION;**
- 5. NEG. MISREPRESENTATION;**
- 6. WAGE STATEMENTS;**
- 7. WAITING TIME PENALTIES;**
- 8. FAILURE TO INDEMNIFY;**
- 9. VIOLATION OF PAGA;**
- 10. WRONGFUL TERMINATION**

DEMAND FOR JURY TRIAL

2. Plaintiffs are individuals residing or formerly residing in the State of California, County of San Diego.

3. At all times relevant herein, Plaintiffs were employed in San Diego County, California, and each Plaintiff was an “employee” as defined by the California Labor Code, the applicable California Industrial Wage Commission ("IWC") Order(s), and/or the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.).

4. Defendant Sun West Mortgage Company, Inc. (“Defendant” or “Sun West”) is a California Corporation and, at all times relevant herein, was an “employer” as defined by the California Labor Code, the applicable California Industrial Wage Commission ("IWC") Order(s), and/or the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.).

5. Upon information and belief, Defendant Kevin Michael Killeen (“Mr. Killeen”) is an individual residing in the State of Arizona, and he was and/or is an employee of Defendant Sun West. Defendant Wayne Epprecht (“Mr. Epprecht”) is an individual residing in the State of Arizona, and he was and/or is an employee of Defendant Sun West. Defendant Paula Krost is an individual residing in the State of Arizona, and she was and/or is an employee of Defendant Sun West.

6. Defendant Sun West owns and operates a mortgage lending company in the State of California. Defendant Sun West's principal place of business is located in Buena Park, California. Defendant Sun West has offices throughout the State of California, including an office in San Diego, California. Defendant Sun West employed Plaintiffs and other aggrieved employees who were and/or are engaged throughout the State of California, including the County of San Diego.

7. Plaintiffs are 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

1 therefore sues such Defendants by these fictitious names. Plaintiffs will amend this Complaint to
2 allege their true names and capacities when ascertained. Plaintiffs are informed and believe, and
3 on that basis allege, that each of the fictitiously named Defendants is responsible in some manner
4 for the occurrences herein alleged and that Plaintiffs' injuries and damages herein were legally
5 caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the
6 course and scope of said agency and/or employment, with the knowledge and/or consent of said
7 co-Defendant.

8 8. Plaintiffs are informed and believes and thereupon alleges that at all times
9 mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the
10 agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of
11 the remaining Defendants, including each Doe Defendant, in doing the things herein alleged,
12 while at all times acting within the course and scope of such agency, service, employment
13 partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged
14 herein, was acting both individually and within the course and scope of such agency and/or
15 employment, with the knowledge and/or consent of the remaining Defendants.

16 9. Plaintiffs further allege that Defendants, including each Doe Defendant identified
17 as DOES, directly or indirectly controlled or affected the terms, wages, working hours, and
18 conditions of employment of Plaintiffs and the other aggrieved employees so as to make each of
19 said Defendants employers and, as employers, liable under the statutory provisions set forth
20 herein.

21 10. Defendant Sun West Mortgage Company, Inc., Defendant Kevin Killeen ("Mr.
22 Killeen"), Defendant Wayne Epprecht ("Mr. Epprecht"), Defendant Paula Krost ("Ms. Krost"),
23 and DOES 1 through 50 will hereinafter collectively be referred to as "Defendants" unless
24 specifically identified otherwise.

25 JURISDICTION AND VENUE

26 10. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

27 11. This Court has jurisdiction under Article VI, Section 10 of the California
28 Constitution that grants the superior court "original jurisdiction in all other causes" except

1 those given by statute to other courts. The statutes underlying this action do not specify any
2 other basis for jurisdiction.

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

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

13 **GENERAL ALLEGATIONS**

14 14. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

15 15. Plaintiffs Thompson and MacFarlane were recruited to work at Defendant Sun
16 West by a man who introduced himself as Michael Killeen ("Mr. Killeen"). Upon information
17 and belief, Defendant Killeen was and/or is an employee of Defendant Sun West. Mr. Killeen
18 manages one of Sun West's offices in Scottsdale, Arizona, with other Sun West employees
19 named Jim Shewchuk, Defendant Wayne Epprecht, and Defendant Paula Krost.

20 16. Defendants and Mr. Killeen discussed with Plaintiff MacFarlane in August 2019
21 the prospect of opening up a branch office in San Diego, California. The idea was that Mr.
22 MacFarlane would manage the branch. Mr. Killeen told Mr. MacFarlane that once the office was
23 running he could expect to earn "at minimum 25K+ per month consistently." Defendants and Mr.
24 Killeen agreed to cover the start up costs and asked that Mr. MacFarlane look for loan officers
25 and support staff to hire. Mr. Killeen told Mr. MacFarlane that he was under a non-compete
26 clause with another company and therefore he would be briefly working under his brother's
27 name, Wayne Epprecht. Mr. Killeen communicated all of this to Mr. MacFarlane by phone and
28 through Mr. Killeen's personal yahoo email account, and Mr. Epprecht's Sun West email

1 account. Defendants offered and Plaintiff MacFarlane accepted a position at Sun West in
2 September 2019. The San Diego office opened in November 2019.

3 17. In September 2019, per Defendants' direction, Plaintiff MacFarlane reached out
4 to Plaintiff Thompson to see if she would be interested in working for Defendant Sun West as a
5 loan officer. Plaintiffs MacFarlane and Thompson, along with Mr. Shewchuk, had worked
6 together in the past. Ms. Thompson expressed interest in the position, but she was already
7 employed at the time and was doing well. Ms. Thompson eventually agreed to leave her then
8 current job and join Defendants after talking to Mr. Killeen.

9 18. Defendants and Mr. Killeen confirmed that Sun West was opening a branch office
10 in San Diego and that Sun West wanted to hire Plaintiff Thompson as a loan officer. Ms.
11 Thompson told Mr. Killeen that she was already working as a loan officer and had closed several
12 loans in the last month. Mr. Killeen inquired into Ms. Thompson's then compensation plan and,
13 after discussing the issue thoroughly, Mr. Killeen promised that at Sun West Ms. Thompson
14 would not only earn more, but also have more potential for growth. At all times herein
15 mentioned, Defendants never paid Plaintiffs what they were promised. And Defendants never
16 intended to pay Plaintiffs what they were promised.

17 19. At the end of their conversation, Defendant Killeen told Plaintiff Thompson that
18 Defendants would be sending her an offer of employment, but to be alert, as the offer would not
19 come from him personally, but from either Defendant Paula Krost or Defendant Wayne
20 Epprecht. Confused by the statement, Ms. Thompson asked why, and Mr. Killeen stated that he
21 was under a temporary non-compete clause with another company. Mr. Killeen told Ms.
22 Thompson that Paula Krost is his wife and she manages the Scottsdale branch; and that Wayne
23 Epprecht is his brother. Ms. Thompson researched Paula Krost and confirmed that Ms. Krost was
24 both his wife and the manager of the Scottsdale branch. Defendants offered and Plaintiff
25 Thompson accepted a position in San Diego at Sun West in October 2019. Defendants also hired
26 another employee in San Diego by the name of Juan Castenada around this time.

27 20. Plaintiffs MacFarlane and Thompson are informed and believe and based thereon
28 allege that Defendants, including Defendants Sun West, Mr. Killeen, Mr. Epprecht and Ms.

1 Krost, at all times knew or had reason to know about Defendant Killeen's prior employment
2 history and felony convictions involving consumer mortgage lending and financing, knew or had
3 reason to know about the relationship(s) between Defendants Michael Killeen, Wayne Epprecht,
4 and Paula Krost, and knew or had reason to know that Defendant Killeen was working with, as,
5 or through Defendants Sun West, Wayne Epprecht and Paula Krost.

6 21. Plaintiffs MacFarlane and Thompson met Defendant Killeen face-to-face in
7 November 2019 when Messrs. Killeen and Shewchuk came to San Diego to open the San Diego
8 office for Defendant Sun West. Defendant Sun West's San Diego office was and/or is located at
9 5752 Oberlin Drive, Suite 107, San Diego, California 92121. Plaintiff MacFarlane later joined
10 Defendant Killeen and Mr. Shewchuk at Defendants' corporate training conference in Buena
11 Park, California. There were a lot of people at the Sun West conference. During the conference,
12 Mr. MacFarlane witnessed another Sun West employee, Kate Harris, correct Mr. Shewchuk
13 when he referred to Defendant Mr. Killeen as "Michael." Ms. Harris told Mr. Shewchuk that his
14 name is "Wayne."

15 22. The intensity with which Ms. Harris corrected Mr. Shewchuk concerned Plaintiff
16 MacFarlane. He suddenly remembered how only a few weeks ago, after talking with a friend
17 whom he had referred to Defendant Killeen (i.e., Michael) for a job at Defendant Sun West, the
18 friend told him that Mr. Killen had introduced himself as Kevin. Mr. MacFarlane texted Mr.
19 Killeen about the confusion, to which Mr. Killeen said: "It is 'Kevin Michael Killeen' – Jim
20 [Shewchuk] call[s] me Michael." Mr. MacFarlane then remembered his hiring paperwork that
21 identified his supervisor as "Wayne." But Mr. MacFarlane had never known a Wayne. Mr.
22 MacFarlane felt disconcerted and resolved to investigate Mr. Killeen.

23 23. In late November 2019, Plaintiff Thompson went to visit family in Scottsdale,
24 Arizona. While she was there she visited Defendant Sun West's Scottsdale office because
25 Defendant Killeen had invited her after Ms. Thompson told him she would be in town visiting
26 family. When she arrived she saw only Mr. Killeen and Mr. Shewchuk in the Sun West office.
27 Paula Krost wasn't there, nor was Wayne Epprecht. During this meeting, Mr. Killeen discussed
28 with Ms. Thompson the prospect of Ms. Thompson moving to Arizona to work and manage the

1 Scottsdale office. Ms. Thompson had never considered moving to Arizona. Ms. Thompson
2 indicated she and Mr. Killeen would need to have a serious discussion about her future role in
3 the branch, compensation, as well as the logistics of uprooting her life in San Diego and moving
4 to Arizona. Mr. Killeen told Ms. Thompson to consider the proposal. Mr. Killeen assured Ms.
5 Thompson that not only would the compensation be worth it, but that Sun West would help her
6 relocate to Arizona.

7 24. Plaintiff MacFarlane's investigation of Defendant Killeen revealed some startling
8 results. Upon information and belief, Mr. Killeen is a convicted felon – counts involving fraud
9 and dishonesty. Upon further information and belief, Defendant Sun West lost its license to
10 operate in Georgia for employing convicted felons in October 2014. (See
11 [https://www.housingwire.com/articles/31612-state-of-georgia-bans-two-lenders-for-employing-](https://www.housingwire.com/articles/31612-state-of-georgia-bans-two-lenders-for-employing-felons/)
12 [felons/](https://www.housingwire.com/articles/31612-state-of-georgia-bans-two-lenders-for-employing-felons/)) Moreover, in a "Final Decision" issued in the State of Washington in July 2015, Mr.
13 Killeen is permanently barred and "prohibited from participation in the conduct of the affairs of
14 any Consumer Loan Company. . . ." (See **Exhibit A** (Orders); see also
15 www.nmlsconsumeraccess.org.) Mr. Killeen also has little to no online presence. Mr. Killeen
16 connected with Mr. MacFarlane on Facebook and Mr. MacFarlane viewed his Facebook page
17 and was surprised to find no pictures and hardly any content, as if it was fake. The more Mr.
18 MacFarlane thought about what he had discovered the more fearful and anxious he became.

19 25. Since opening the office, Defendants, including Defendants Messrs. Killeen and
20 Epprecht, were requiring Plaintiffs MacFarlane and Thompson to run and process their loan
21 applications through Mr. Killeen. Mr. Killeen had instructed them to take loan applications over
22 the phone but to send all loan documentation – which included highly sensitive personal and
23 private financial consumer borrower information – through Defendant Killeen. Plaintiff
24 MacFarlane soon had no other word to describe what was happening: fraud. Mr. Killeen is not
25 properly licensed. Mr. Killeen is impersonating Defendant Wayne Epprecht, and working under
26 his wife Defendant Paula Krost's license. The real Wayne Epprecht has nothing to do with Sun
27 West or Sun West is allowing Mr. Killeen to work for Sun West as Wayne Epprecht. Mr.
28 MacFarlane wanted to confirm his suspicions and findings.

26. Based on his findings, Plaintiff MacFarlane began reporting his findings and concerns of illegal and fraudulent activity to Defendants, including Defendant Sun West's human resources personnel. Mr. MacFarlane disclosed to Defendants his findings, his complaints of illegal and fraudulent activity of Defendants, his complaints about Defendants, including Defendant Killeen's related criminal background and unlicensed handling of private and confidential consumer financial information, and requested that Defendants immediately take action. But Defendants did not address Plaintiff MacFarlane's complaints. Defendants ignored Mr. MacFarlane's complaints and instead retaliated against Mr. MacFarlane.

27. Plaintiff Thompson returned to Arizona in late December 2019 and visited Sun West's Scottsdale office. Once again, Ms. Thompson arrived only to find Mr. Killeen and Mr. Shewchuk in the office. Mr. Killeen told Ms. Thompson that he wanted her to move to Arizona and manage the branch. Ms. Thompson liked the idea of managing a branch office. Mr. Killeen told Ms. Thompson that she could have Defendant Krost's (i.e., his wife's) office "because she is never here and wants nothing to do with the business." Mr. Killeen made written assurances to Ms. Thompson regarding compensation. Mr. Killeen promised to pay Ms. Thompson what Mr. Killeen had previously offered Mr. MacFarlane. Mr. Killeen also structured Ms. Thompson's compensation in such a way to allow her to obtain a loan through Defendant Krost via Sun West to help her and family relocate to Arizona.

28. In February 2020, Defendant Killeen had Plaintiff Thompson work with Michelle Kane, another Sun West employee, to start interviewing employees to staff the Scottsdale office. Ms. Thompson then discovered that Mr. MacFarlane was no longer working for Defendant Sun West. Mr. Killeen told Ms. Thompson that Mr. MacFarlane was "not a producer" and unimportant. Ms. Thompson did not buy Mr. Killeen's characterization of Mr. MacFarlane's work ethic, as she had always known Mr. MacFarlane to be a good employee and loan officer. She decided to call Mr. MacFarlane. Mr. MacFarlane told Ms. Thompson what he had found out about Mr. Killeen.

29. Mr. MacFarlane told Ms. Thompson that he had to leave Defendant Sun West because no one addressed his complaints to Defendants, including human resources personnel

1 about Defendant Killeen. Mr. MacFarlane stated that once he began raising questions about Mr.
2 Killeen and reporting his complaints to Defendants, Defendants ignored him and his loans started
3 to disappear. Mr. MacFarlane told Ms. Thompson that he believed Defendants and Defendant
4 Killeen were stealing his clients and commissions and giving them to someone else and not
5 communicating with him about his complaints as retaliation, and that he had no choice but to
6 leave out of fear of further retaliation, losing his license, damaging his professional career, or
7 worse, accused of being an accomplice.

8 30. After the call and in the ensuing days, stress and anxiety overwhelmed Ms.
9 Thompson. Ms. Thompson researched Mr. Killeen and discovered what Mr. MacFarlane had
10 found. She couldn't eat. She couldn't sleep. All she could think about was that she would soon
11 be running an office for Defendants, and Defendant Killeen is running the branch under his
12 wife's license and using his brother's name to conceal his true identity.

13 31. In late February 2020, after another sleepless night, Plaintiff Thompson drove
14 from San Diego to Defendant Sun West's corporate headquarters in Buena Park, California, to
15 personally deliver her complaints to Defendants about Mr. Killeen and Mr. Epprecht. Ms.
16 Thompson arrived so early that she slept in her car. When the office opened, Ms. Thompson
17 entered the office and asked to speak to human resources. She met with Sun West employees
18 Miriam Guerrero and Patricia Cibrian. Ms. Thompson explained that Defendant Killeen has a
19 criminal record; that he is unlicensed; that he is running Sun West's Scottsdale office under his
20 wife, Defendant Paula Krost's, license; that Defendant Killeen should not be working for
21 Defendants; that loan officers should not be communicating private and confidential consumer
22 borrower information to Defendant Killeen; and that he is using his brother, Defendant Wayne
23 Epprecht, to conceal his true identity. Like Mr. MacFarlane, Ms. Thompson stressed the privacy,
24 ethical and legal issues at stake, such as the California Residential Mortgage Lending Act
25 (CRMLA), and implored Defendants to take action.

26 32. Ms. Thompson told Mses. Guerrero and Cibrian about her experiences visiting
27 Sun West's Scottsdale office. Mr. Killeen is Wayne Epprecht or Defendants and Mr. Epprecht
28 are allowing Mr. Killeen to use Mr. Epprecht's name to work for Defendants. Ms. Thompson

1 further explained that Defendant Killeen was requiring her to send all of her Sun West files and
2 documents to him; that Mr. Killeen is locking loans and handling private consumer borrower
3 information. Ms. Thompson told Mses. Guerrero and Cibrian, as Mr. MacFarlane had done, that
4 she believed what Defendants and Mr. Killeen are doing is unlawful and violates federal and
5 state laws governing the making and servicing of residential mortgage loans. After their meeting
6 Ms. Guerrero sent Ms. Thompson an email summarizing parts of their conversation regarding
7 Defendants and Mr. Killeen. Ms. Guerrero assured Mr. Thompson that Defendant Sun West
8 would investigate.

9 33. After her meeting with human resources, Plaintiff Thompson's work situation
10 went from bad to worse. Defendant Killeen and/or Defendant Epprecht ceased emailing her
11 about work. Loans Ms. Thompson had put in the pipeline vanished or were cancelled without
12 explanation. Despite originating a number of loans, Ms. Thompson has only made two
13 commissions at Sun West. Upon information and belief, Defendants, including Defendants
14 Killeen and Epprecht, ceased communicating with Ms. Thompson and diverted her loans
15 elsewhere and did not pay her commissions on loans in retaliation for reporting Defendants
16 Killeen, Epprecht, and Paula Krost to Defendant Sun West. Moreover, to date no one has
17 contacted Ms. Thompson about the status of the investigation into Mr. Killeen. The CEO of Sun
18 West even promised a conference call with Mr. Killeen (or Wayne) and Ms. Thompson in March
19 2020 to get to the bottom of the issue, but to date nothing has happened.

20 34. Plaintiff Thompson uprooted her entire life in San Diego and moved to
21 Scottsdale, Arizona based on Defendants' misrepresentations at great expense for the purpose of
22 continuing to work at Sun West in Arizona as she had in San Diego, California. Shortly after Ms.
23 Thompson complained and reported to Defendants what she reasonably believed to be
24 fraudulent, unethical, and unlawful business practices in connection with mortgage loan
25 origination, lending and financing by Defendants, Defendants retaliated against Mr. Thompson.
26 Ms. Thompson's loan pipeline vanished, loans were diverted, commissions not paid, and
27 Defendants ceased communicating with Ms. Thompson about work and failed to process her
28 loans. Defendants ignored her complaints of fraudulent and unlawful activity. Defendants'

1 retaliatory conduct against Ms. Thompson for reporting Defendants Killeen, Epprecht, and Krost
2 to Defendant Sun West's human resources left Ms. Thompson with no other option but to leave
3 Sun West out of fear for her family, license, career, and professional reputation. Thereafter, in a
4 further act of retaliation, Defendant Killeen sent Ms. Thompson an email threatening her not to
5 take any action against himself or Sun West.

6 35. In early March 2020, in a further action of retaliation, Defendant Sun West sent
7 Mr. MacFarlane a letter demanding that he return several thousand dollars for draws taken
8 during his employment. Mr. MacFarlane returned a letter to Defendant Sun West explaining the
9 multiple attempts he had made during his employment to notify Defendant Sun West about
10 Defendant Killeen, and what he believed to be fraudulent and unlawful business practices. But
11 Defendant Sun West never followed up. Mr. MacFarlane explained that he had no choice but to
12 leave Defendants, as he feared for his family, career, license, professional reputation and further
13 retaliation.

14 36. Defendant Sun West contacted Plaintiff MacFarlane days later and apologized
15 and acted like they did not know anything. Mr. MacFarlane again explained his issues and
16 concerns with Defendant Killeen, the retaliatory actions taken against him, and that Defendant
17 Sun West promised to investigate and take action. To date no one at Sun West has contacted
18 Plaintiffs about the status of any investigation. Defendants' fraudulent and retaliatory conduct
19 and behavior placed Plaintiffs Thompson and MacFarlane in a position that no reasonable person
20 would or could continue to work for Defendants. Plaintiffs have suffered substantial damages
21 and continue to suffer damages as a result of Defendants' fraudulent, unlawful and retaliatory
22 conduct.

23 37. Upon information and belief, Defendants had the authority to hire and fire
24 Plaintiffs and other aggrieved employees, establish the terms and conditions of their
25 employment, and determine their compensation and manage their daily employment activities.
26 Defendants exercised sufficient authority over Plaintiffs' and the other aggrieved employees'
27 employment for them to be joint employers of Plaintiffs and the other aggrieved employees.

28 38. Plaintiffs are informed and believe, and based thereon allege, that Defendants

1 knew or should have known that it is an unlawful employment practice to discriminate,
2 retaliate, or take any adverse action against an employee for reporting suspected violations
3 of state or federal statutes, or violations of or noncompliance with a local, state, or federal rules
4 or regulations. But Defendants discriminated, retaliated, and took adverse actions against
5 Plaintiffs and other aggrieved employees for reporting suspected violations of and
6 noncompliance with federal and state statutes, rules and regulations, all in violation of
7 California law.

8 39. Plaintiffs are informed and believe, and based thereon allege, that Defendants
9 knew or should have known that it is an unlawful employment practice for an employer (or
10 any person working on behalf of the employer), directly or indirectly, to influence, persuade,
11 induce or engage any person to move from California to another state for the purpose of working
12 in any branch of labor, through or by means of knowingly false representations concerning the
13 kind, character or existence of such work. But Defendants knowingly made false representations
14 concerning the kind and character of work to Plaintiffs and other aggrieved employees to
15 persuade them to move from California to Arizona, in violation of California law.

16 40. Plaintiffs are informed and believe, and based thereon allege, that Defendants
17 knew or should have known that Plaintiffs and the other aggrieved employees were entitled to
18 receive all wages owed to them upon discharge or resignation, including all wages and
19 commission earnings, and they did not, in fact, receive all such wages owed to them at the time
20 of discharge.

21 41. Plaintiffs are informed and believe, and based thereon allege, that
22 Defendants knew or should have known that Plaintiff and the other aggrieved employees
23 were entitled to receive complete and accurate wage statements in accordance with
24 California law, but they did not receive complete and accurate wage statements from
25 Defendants. The deficiencies included, but were not limited to, the failure to include all
26 wages and commissions earned or the total number of hours worked by Plaintiffs and the
27 other aggrieved employees as well as all hourly rates, earnings, in effect during the
28 applicable pay period, among other violations.

6 43. Plaintiffs are informed and believe, and based thereon allege, that Defendants
7 knew or should have known that Plaintiffs and the other aggrieved employees were entitled to
8 reimbursement for necessary business-related expenses and costs. Plaintiff and aggrieved
9 employees incurred expenses in direct consequence of the discharge of their duties for
10 Defendants, including having to purchase and/or use their personal cell phones, data, memory,
11 and internet for business purposes, such as to communicate with Defendants, clients, and
12 customers. Defendants have not reimbursed Plaintiffs and aggrieved employees for these and
13 other expenses.

44. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that they had a duty to compensate Plaintiff and the other aggrieved employees pursuant to California law, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiffs and the other aggrieved employees that they were properly denied wages.

RETALIATION LABOR CODE SECTION 1102.5

23 45. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

46. At all times set forth herein, Section 1102.5 was in effect and binding on Defendants. This section prohibits employers from retaliating against employees 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

1 reasonable cause to believe that the information discloses a violation of state or federal statute, or
2 a violation of or noncompliance with a local, state, or federal rule or regulation. An employer
3 further shall not retaliate against an employee for refusing to participate in an activity that would
4 result in the violation of a federal, state, or local rule or regulation.

5 47. As stated herein, Plaintiffs had reasonable cause to believe that Defendants had
6 violated or were not in compliance with state and/or federal laws and regulations.

7 48. As stated herein, Plaintiffs disclosed to Defendants on numerous occasions their
8 belief that Defendants were not in compliance with and/or that federal, state, and/or local rules
9 and regulations governing consumer loan and mortgage origination, lending, and financing had
10 been or were being violated.

11 49. Defendants had authority over Plaintiffs, and had the authority and resources to
12 investigate and/or correct the violations and/or noncompliance issues raised by Plaintiffs.

13 50. Defendants, and persons acting on behalf of Defendants, retaliated against
14 Plaintiffs for disclosing and reporting that information, including by termination and/or
15 constructive termination, mistreatment, materially reducing job responsibilities and job related
16 benefits, commissions and earnings, and denying promotion and/or advancement, among other
17 adverse employment actions.

18 51. Defendants' conduct was in violation of Section 1102.5 of the California Labor
19 Code.

20 52. As a proximate result of the aforesaid acts of Defendants, Plaintiffs have suffered
21 actual, consequential and incidental financial losses, including without limitation, loss of wages
22 and benefits, and the intangible loss of employment related opportunities in their field and
23 damage to their professional reputations, all in an amount subject to proof at the time of trial.

24 53. As a proximate result of the wrongful acts of Defendants, Plaintiffs have suffered
25 and continue to suffer emotional distress, humiliation, mental anguish and embarrassment.
26 Plaintiffs are informed and believe, and thereupon allege, that they will continue to experience
27 said physical and emotional suffering for period in the future not presently ascertainable, all in an
28 amount to prove at the time of trial.

54. The retaliatory actions taken against Plaintiffs were carried out and ratified by officers and manager of Defendants. Defendants additionally had in place policies and procedures that specifically prohibited retaliation and required Defendants' managers, officers, and agents to prevent retaliation. However, Defendants chose to consciously and willfully ignore said policies and procedures and therefore, their outrageous conduct was fraudulent, malicious, oppressive, and was done in wanton disregard for the rights of Plaintiffs and the rights and duties owed by each Defendant to Plaintiffs. Each Defendant aided, abetted, participated in, authorized, ratified, and/or conspired to engage in the wrongful conduct alleged above. Plaintiffs should, therefore, be awarded exemplary and punitive damages against each Defendant in an amount to be established that is appropriate to punish each Defendant and deter others from engaging in such conduct in the future.

SECOND CAUSE OF ACTION

RETALIATION LABOR CODE SECTION 98.6

(Against ALL Defendants)

55. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

56. At all times set forth herein, Section 98.6 was in effect and binding on Defendants. This section also prohibits employers from retaliating against employees 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.

57. As stated herein, Plaintiffs had reasonable cause to believe that Defendants had violated or were not in compliance with state and/or federal laws and regulations.

58. As stated herein, Plaintiffs disclosed to Defendants on numerous occasions their belief that Defendants were not in compliance with and/or that federal, state, and/or local rules and regulations governing consumer loan and mortgage origination, lending, and financing had been or were being violated.

59. Defendants had authority over Plaintiffs, and had the authority and resources to investigate and/or correct the violations and/or noncompliance issues raised by Plaintiffs.

60. Defendants, and persons acting on behalf of Defendants, retaliated against Plaintiffs for disclosing and reporting that information, including by termination and/or constructive termination, mistreatment, materially reducing job responsibilities and job related benefits, and denying promotion and/or advancement, among other adverse employment actions.

61. Defendants' conduct was in violation of Section 98.6 of the California Labor Code.

62. As a proximate result of the aforesaid acts of Defendants, Plaintiffs have suffered actual, consequential and incidental financial losses, including without limitation, loss of wages and benefits, commissions and earnings, and the intangible loss of employment related opportunities in their field and damage to their professional reputations, all in an amount subject to proof at the time of trial.

63. As a proximate result of the wrongful acts of Defendants, Plaintiffs have suffered and continue to suffer emotional distress, humiliation, mental anguish and embarrassment. Plaintiffs are informed and believe, and thereupon allege, that they will continue to experience said physical and emotional suffering for period in the future not presently ascertainable, all in an amount to prove at the time of trial.

64. The retaliatory actions taken against Plaintiffs were carried out and ratified by officers and manager of Defendants. Defendants additionally had in place policies and procedures that specifically prohibited retaliation and required Defendants' managers, officers, and agents to prevent retaliation. However, Defendants chose to consciously and willfully ignore said policies and procedures and therefore, their outrageous conduct was fraudulent, malicious, oppressive, and was done in wanton disregard for the rights of Plaintiffs and the rights and duties owed by each Defendant to Plaintiffs. Each Defendant aided, abetted, participated in, authorized, ratified, and/or conspired to engage in the wrongful conduct alleged above. Plaintiffs should, therefore, be awarded exemplary and punitive damages against each Defendant in an amount to be established that is appropriate to punish each Defendant and deter others from engaging in

such conduct in the future.

THIRD CAUSE OF ACTION

MISREPRESENTATION LABOR CODE SECTION 970

(Against ALL Defendants)

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

66. At all times set forth herein, Section 970 was in effect and binding on Defendants. This section prohibits any person from knowingly using false representations concerning the nature, kind, character of work, or compensation related to the work, to influence, persuade, or engage any person to change from any place within the State of California to any place outside of the State of California.

67. As stated herein, Defendants knowingly used false representations to Plaintiffs concerning the nature, kind, character, and/or compensation of work in effort to influence, persuade, and engage Plaintiffs to move from California to Arizona. Plaintiffs reasonably relied on the Defendants' statements. The representations Defendants made concerning the kind and character of the work were not true and Defendants knew they were not true when they made them.

68. Defendants' conduct was in violation of Section 970 of the California Labor Code.

69. As a proximate result of the aforesaid acts of Defendant, Plaintiffs have suffered actual, consequential and incidental financial losses, including without limitation, loss of wages and benefits, and the intangible loss of employment related opportunities in her field and damage to her professional reputation, all in an amount subject to proof at the time of trial.

70. As a proximate result of the wrongful acts of Defendant, Plaintiffs have suffered and continue to suffer emotional distress, humiliation, mental anguish and embarrassment. Plaintiffs are informed and believes, and thereupon allege, that they will continue to experience said physical and emotional suffering for period in the future not presently ascertainable, all in an amount to prove at the time of trial.

71. The retaliatory actions taken against Plaintiffs were carried out and ratified by

officers and manager of Defendant. Defendant additionally had in place policies and procedures that specifically prohibited retaliation and required Defendants' managers, officers, and agents to prevent retaliation. However, Defendant chose to consciously and willfully ignore said policies and procedures and therefore, their outrageous conduct was fraudulent, malicious, oppressive, and was done in wanton disregard for the rights of Plaintiff and the rights and duties owed by each Defendant to Plaintiff. Each Defendant aided, abetted, participated in, authorized, ratified, and/or conspired to engage in the wrongful conduct alleged above. Plaintiff should, therefore, be awarded exemplary and punitive damages against each Defendant in an amount to be established that is appropriate to punish each Defendant and deter others from engaging in such conduct in the future.

FOURTH CAUSE OF ACTION
INTENTIONAL MISREPRESENTATION
(Against ALL Defendants)

72. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

73. As set forth herein, Defendants expressly and implicitly represented to Plaintiff that certain facts about Defendants and the nature of their business were true.

74. As set forth herein, Defendants' representations were false and Defendants knew them to be false when they made them, or that Defendants made the false representations without regard for their truth.

75. Defendants intended Plaintiffs to rely on the false representations and Plaintiffs reasonably relied on those representations.

76. Plaintiffs were harmed as a result. Plaintiffs' reliance was a substantial factor in causing them harm.

77. Plaintiffs suffered actual damages, emotional damages, and consequential damages in an amount to be determined by the court according to proof.

78. Defendants' conduct was malicious, oppressive and fraudulent warranting punitive damages.

///

FIFTH CAUSE OF ACTION

NEGLIGENT MISREPRESENTATION

(Against ALL Defendants)

79. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

80. As set forth herein, Defendants expressly and implicitly represented to Plaintiff that certain facts about Defendants and the nature of their business were true.

81. As set forth herein, Defendants' representations were false and Defendants had no reasonable grounds for believing that the representations were true when Defendants made them to Plaintiffs.

82. Defendants intended Plaintiffs to rely on the false representations and Plaintiffs reasonably relied on the representations.

83. Plaintiffs were harmed as a result. Plaintiffs' reliance was a substantial factor in causing them harm.

84. Plaintiffs suffered actual damages, emotional damages, and consequential damages in an amount to be determined by the court according to proof.

85. Defendants' conduct was malicious, oppressive and fraudulent warranting punitive damages.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(Against ALL Defendants)

86. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

87. The California Labor Code provides that, at the time of each payment of wages, the employer must provide each employee with an itemized statement showing, inter alia, gross wages earned, total hours worked, all deductions taken, net wages earned, the inclusive dates for which the employee is being paid, the employee's name and last four digits of their social security number, the name and address of the legal entity that it is the employer, and all applicable hourly rates in effect during the pay period and all hours worked at each rate.

88. Defendants knowingly and intentionally failed to provide Plaintiffs and, upon

information and belief, other employees with proper, itemized wage statements as the wage statements provided do not accurately state, *inter alia*, gross wages and commissions earned, total hours worked, net wages earned, and/or the proper hourly rate for each hour worked.

89. Accordingly, under Labor Code section 226, Plaintiffs are entitled to statutory penalties in the amount of \$50.00 for the initial pay period in which a violation occurred, and \$100.00 for each subsequent pay period in which a violation occurred, up to an aggregate penalty of \$4,000.00, plus attorney's fees and costs, all in an amount to be proved at trial.

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Against ALL Defendants)

90. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

91. The California Labor Code provides that, at the time of termination of employment, an employer must pay an employee all wages due and owing within the time frames set forth in Labor Code sections 201, et seq. Here, Defendants willfully failed to pay Plaintiffs and, upon information and belief, other employees who no longer are employed by Defendants all wages and earnings due and owing within the deadlines set forth in Labor Code sections 201, et seq.

92. Under Labor Code section 203, Plaintiffs, who are no longer are employed with Defendants, are entitled to recover waiting time penalties of up to 30 days' pay, plus attorney's fees and costs, in an amount to be proved at trial.

EIGHTH CAUSE OF ACTION

FAILURE TO REIMBURSE OR INDEMNIFY BUSINESS EXPENSES

(Against ALL Defendants)

93. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

94. At all times herein mentioned, the California Labor Code was in full force and effect and was binding on Defendants.

95. California Labor Code section 2802 provides an employer shall fully reimburse an employee for all reasonable and necessary expenses incurred in the performance of the

1 employee's job duties. Plaintiffs are informed and believes, and based thereon alleges, that
2 Defendants knew or should have known that Plaintiffs were entitled to reimbursement for
3 necessary business-related expenses and costs. Plaintiff incurred expenses in direct consequence
4 of the discharge of her duties as an employee, including having to incur cell phone, data, and
5 internet and communication expenses for business related activities as otherwise described
6 herein. Defendants have not reimbursed Plaintiff for these and other expenses.

7 96. Pursuant to Labor Code section 2802, Plaintiffs are entitled to recover
8 unreimbursed business expenses, including attorney's fees and costs, all in an amount to be
9 proved at trial.

10 **NINTH CAUSE OF ACTION**

11 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT**

12 **(Against ALL Defendants)**

13 97. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

14 98. Plaintiffs are "Aggrieved Employees" under PAGA, as Plaintiffs were employed
15 by Defendants during the applicable statutory limitations period and suffered one or more of the
16 Labor Code violations set forth herein. Accordingly, Plaintiffs seek to recover on behalf of
17 themselves and all other current and former Aggrieved Employees, the civil penalties provided
18 by PAGA, plus reasonable attorney's fees and costs.

19 99. Plaintiffs seek to recover the PAGA civil penalties through a representative action
20 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th
21 969 (2009). Therefore, class certification of the PAGA claims is not required.

22 100. Therefore, under the provisions of PAGA and Labor Code §§ 98.6, 201, 202, 203,
23 204, 210, 223, 226(a), 226.3, 970, 1102.5, 2800, 2802, and 2699, and all applicable Wage
24 Orders, as well as all interpretations of these laws by California Courts and administrative
25 bodies, as well as any other law that is enforceable through PAGA, Defendants are liable for the
26 following penalties:

27 (i) All statutorily-specified penalties recoverable under PAGA as enumerated in the
28 relevant California Labor Code provisions listed herein only if permitted by the PAGA statute;

1 and

2 (ii) Default PAGA penalties for any violation of the enumerated list of Labor Code
3 violations without a civil penalty recoverable under the PAGA, all in the default amounts
4 provided by Labor Code Section 2699(f).

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

10 102. Plaintiffs complied with the procedures for bringing suit specified in Labor
11 Code sections 2699.3 and 2699.5. By letter postmarked May 18, 2020, Plaintiffs gave
12 written notice to the California Labor and Workforce Development Agency (“LWDA”) via
13 electronic mail at PAGAfiling@dir.ca.gov, and via certified mail to Defendants, of the
14 specific provisions of the Labor Code and Wage Orders allegedly violated, including the facts
15 and theories to support the alleged violations. A true and correct copy of Plaintiff’s written
16 notice to Defendants and the LWDA is attached hereto as **Exhibit B**.

17 103. Under Labor Code section 2699.3, the LWDA must give written notice by
18 certified mail to the parties that it intends to investigate the alleged violations within 65 days
19 of the date of the Plaintiffs’ written notice. As of the date of this Complaint, the LWDA has not
20 provided the parties any notice of its intention to investigate Plaintiffs’ claims on behalf of
21 themselves and other similarly aggrieved employees. Furthermore, Defendants have not
22 responded to Plaintiff’s PAGA notice in an attempt to cure. Accordingly, Plaintiffs have
23 exhausted all administrative remedies required by law.

24 **TENTH CAUSE OF ACTION**

25 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

26 **(Against ALL Defendants)**

27 104. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

28 105. At all times mentioned, the public policy of the State of California, as codified,

expressed and mandated in the California Labor Code, is to prohibit employers from retaliating against an employee for reporting to his or her employer suspected unlawful activity and/or noncompliance with a local, state, or federal rule, regulation or statute, or retaliating against an employee for refusing to participate in an activity that would result in a violation of a local, state, or federal rule or regulation. This public policy of the State of California is designed to protect all employees and to promote the welfare and well being of the community at large. Accordingly, the actions of Defendants, and each of them, in terminating Plaintiffs on the grounds alleged and described herein were wrongful and in contravention of the express public policy of the State of California and the laws and regulations promulgated thereunder.

106. As a proximate result of the aforesaid acts of Defendants, Plaintiffs have suffered actual, consequential and incidental financial losses, including without limitation, loss of wages and benefits, and the intangible loss of employment related opportunities in her field and damage to her professional reputation, all in an amount subject to proof at the time of trial. Plaintiffs claim such amounts as damages pursuant to California Civil Code 3287 and/or 3288 and/or any other provision of law providing for prejudgment interest.

107. The actions taken against Plaintiffs were carried out and ratified by officers and manager of Defendants. Defendants additionally had in place policies and procedures that specifically prohibited discrimination and retaliation and required Defendants' and their managers, officers, and agents to prevent such discrimination and retaliation. However, Defendants chose to consciously and willfully ignore said policies and procedures and therefore, their outrageous conduct was fraudulent, malicious, oppressive, and was done in wanton disregard for the rights of Plaintiffs and the rights and duties owed by each Defendant to Plaintiffs. Each Defendant aided, abetted, participated in, authorized, ratified, and/or conspired to engage in the wrongful conduct alleged above. Plaintiffs should, therefore, be awarded exemplary and punitive damages against each Defendant in an amount to be established that is appropriate to punish each Defendant and deter others from engaging in such conduct in future.

PRAYER

WHEREFORE, Plaintiffs, pray for judgment against each Defendant, jointly and

severally, as follows:

1. For all general damages in an amount within the jurisdictional limits of this Court;
2. For all special damages, according to proof;
3. For all punitive damages;
4. For all loss of earnings, according to proof;
5. For all prejudgment interest, according to proof;
6. For all civil penalties, according to proof;
7. For all reasonable attorney's fees;
8. For costs of suit incurred herein; and
9. For such other and further relief as the Court deems just and proper

Respectfully submitted,

DATED: December 8, 2020

LURTZ LEGAL



By: _____
Marshall R. Lurtz
Attorneys for Plaintiffs
LESLIE THOMPSON &
JOHN MACFARLANE

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

DEMAND FOR JURY TRIAL

Plaintiffs LESLIE THOMPSON & JOHN MACFARLANE demand a trial by jury on all claims so triable.

DATED: December 8, 2020

Respectfully submitted,

LURTZ LEGAL



By: _____
Marshall R. Lurtz
Attorneys for Plaintiff
LESLIE THOMPSON &
JOHN MACFARLANE

EXHIBIT A

ORDER SUMMARY – Case Number: C-19-2686

Name(s): Kevin Michael Killeen

Order Number: C-19-2686-20-CO01

Effective Date: 3/9/2020

NMLS Identifier: NMLS No. 1736051

License Effect: N/A

Not Apply Until: N/A

Not Eligible Until: N/A

Prohibition/Ban Until: Indefinite

Investigation Costs	\$		Paid ☐ Y ☐ N	Date
Fine (partially stayed)	\$20,000 (\$15,000 stayed)	Due \$835 within 90 days; \$833 the last weekday of each of the subsequent 5 months	Paid ☐ Y ☒ N	Date
Assessment(s)	\$	Due	Paid ☐ Y ☐ N	Date
Restitution	\$	Due	Paid ☐ Y ☐ N	Date
Financial Literacy and Education	\$	Due	Paid ☐ Y ☐ N	Date
Cost of Prosecution	\$	Due	Paid ☐ Y ☐ N	Date
No. of Victims:				

Comments:

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

CARDINAL FINANCIAL COMPANY,
LIMITED PARTNERSHIP, NMLS No. 66247;
and KEVIN MICHAEL KILLEEN, NMLS No.
1736051,

Respondents.

No.: C-19-2686-20-CO01

CONSENT ORDER AS TO KEVIN
MICHAEL KILLEEN

COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Lucinda Fazio, Division of Consumer Services Director, and Kevin Michael Killeen (Respondent Killeen), and finding that the issues raised in the above-captioned matter may be economically and efficiently settled, agree to the entry of this Consent Order. This Consent Order is entered pursuant to chapter 31.04 of the Revised Code of Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

AGREEMENT AND ORDER

The Department of Financial Institutions, Division of Consumer Services (Department) and Respondent Killeen have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-19-2686-20-SC01 (Statement of Charges), entered January 13, 2020, (copy attached hereto). Pursuant to chapter 31.04 RCW, the Consumer Loan Act (Act), and RCW 34.05.060 of the Administrative Procedure Act, Respondent Killeen hereby agrees to the Department's entry of this Consent Order and further agrees that the issues raised in the above-captioned matter may be economically and efficiently settled by entry of this Consent Order solely as related to Respondent Killeen. The parties intend this Consent Order to fully resolve the Statement of Charges solely as related to Respondent Killeen.

Based upon the foregoing:

A. Jurisdiction. It is AGREED that the Department has jurisdiction over the subject matter of the activities discussed herein.

B. Waiver of Hearing. It is AGREED that Respondent Killeen has been informed of the right to a hearing before an administrative law judge (ALJ), and hereby waives his right to a hearing and any and all administrative and judicial review of the issues raised in this matter, or of the resolution reached herein. Accordingly, Respondent Killeen, by his signature below, withdraws his appeal to the Office of Administrative Hearings (OAH).

C. Cease and Desist. It is AGREED that Respondent Killeen shall cease and desist from engaging in activity in a manner that is injurious to the public or that violates the Act, including unlicensed loan origination and all activity in violation of any order issued by the Department.

D. Prohibition from Industry. It is AGREED that Respondent Killeen is prohibited and will refrain from participating, in any capacity, in the conduct of the affairs of any consumer loan company licensed by the Department or subject to licensure or regulation by the Department.

E. Fine (Partially Stayed). It is AGREED that Respondent Killeen shall pay a fine to the Department in the amount of \$20,000. It is FURTHER AGREED that Respondent Killeen shall pay \$5,000 of the fine in accordance with Paragraph F. It is FURTHER AGREED that, contingent upon Respondent Killeen's compliance with this Consent Order, \$15,000 of the fine (the "stayed fine") shall be stayed for three years from the date of this Consent Order unless lifted pursuant to Paragraph G. If the Department does not seek to lift the stay and impose the stayed fine pursuant to Paragraph G, the stayed fine shall expire without further notice or action by the Department. It is FURTHER AGREED that, if Respondent Killeen fails to comply with this Consent Order, the Department may lift the stay and impose the \$15,000 fine pursuant to Paragraph G, at which time Respondent Killeen

1 shall pay the remainder of the fine in the form of a cashier's check made payable to the "Washington
2 State Treasurer."

3 **F. Payments.** It is AGREED that Respondent Killeen shall pay \$5,000 of the fine in the form
4 six cashier's checks made payable to the "Washington State Treasurer." The first payment shall be
5 \$835 and made within 90 days of delivery of the properly dated and signed Consent Order to the
6 Department. The five remaining payments shall be \$833 each. Respondent Killeen shall make one
7 \$833 payment in each of the five months following the month in which he made the \$835 payment.
8 Each \$833 payment is due by the last business day of the month in which it is to be paid. It is
9 FURTHER AGREED that Respondent Killeen understands that failure to timely make a payment
10 will result in all unpaid amounts to be referred to a collections agency for collection.

11 **G. Lifting of Stay and Imposition of Stayed Fine.** It is AGREED that:

- 12 1. If, during the three-year stay, the Department determines that Respondent Killeen has
13 not complied with this Consent Order and the Department seeks to lift the stay and
14 impose the stayed fine, the Department will first serve Respondent Killeen with a
15 written notice of alleged noncompliance.
- 16 2. The notice will include:
 - 17 i. A description of the alleged noncompliance;
 - 18 ii. A statement that the Department seeks to lift the stay and impose the stayed
19 fine;
 - 20 iii. Notice that Respondent Killeen can contest the notice of alleged
21 noncompliance by either requesting an adjudicative hearing before an ALJ
22 from the OAH or by submitting a written response to the Department
23 contesting the alleged noncompliance; and

- 1 iv. Notice that the process for lifting the stay applies only to this Consent Order.
- 2 3. Respondent Killeen has 20 days from the date of service of the notice of alleged
- 3 noncompliance to submit a written request to the Department for an adjudicative
- 4 hearing.
- 5 4. The scope and issues of the adjudicative hearing are limited solely to whether or not
- 6 Respondent Killeen is in violation of the terms of this Consent Order.
- 7 5. At the conclusion of the adjudicative hearing, the ALJ will issue an initial decision.
- 8 Any party may file a Petition for Review of that initial decision with the Director of
- 9 the Department.
- 10 6. DEFAULT. If Respondent Killeen does not timely request an adjudicative hearing or
- 11 submit a written response contesting the notice of alleged noncompliance, the
- 12 Department may lift the stay and impose the stayed fine without further notice.

13 **H. Change of Address.** It is AGREED that for the duration of the period this Consent Order

14 is in effect, unless otherwise agreed to in writing by the Department, Respondent Killeen shall

15 provide the Department with a mailing address and telephone number at which Respondent Killeen

16 can be contacted and Respondent Killeen shall notify the Department in writing of any changes to his

17 mailing address or telephone number within fifteen days of any such change.

18 **I. Complete Cooperation with the Department.** It is AGREED that, upon written request

19 by the Department, Respondent Killeen shall provide the Department truthful and complete sworn

20 statements outlining his activities with respect to Cardinal Financial Company, Limited Partnership

21 (CFC) and any and all persons involved or in any way associated with CFC, including but not limited

22 to owners, employees, independent contractors, agents, businesses and persons with whom CFC

23 dealt, communicated, or otherwise related. The “sworn statements” may take the form of affidavits,

1 declarations, or deposition testimony, at the Department's discretion. In addition to providing sworn
2 statements, it is AGREED that, upon written request by the Department, Respondent Killeen shall
3 cooperate fully, truthfully, and completely with the Department and provide any and all information
4 known to him relating in any manner to CFC and any and all persons involved or in any way
5 associated with CFC, including but not limited to owners, employees, independent contractors,
6 agents, businesses and persons with whom CFC dealt, communicated, or otherwise related. It is
7 FURTHER AGREED that, upon written request by the Department, Respondent Killeen shall
8 provide any and all documents, writings or materials, or objects or things of any kind in his
9 possession or under his care, custody, or control that he is authorized to possess, obtain, or distribute
10 relating directly or indirectly to all areas of inquiry and investigation. It is FURTHER AGREED that
11 Respondent Killeen shall testify fully, truthfully, and completely at any and all proceedings related to
12 any Department investigation or enforcement action or both related to any and all persons involved or
13 in any way associated with CFC, and any respondents named therein. A failure to cooperate fully,
14 truthfully, and completely is a breach of this Consent Order.

15 **J. Reporting Possible Violations to the Department.** It is AGREED Respondent Killeen
16 represents that he has knowledge regarding possible violations of laws by individuals and a company
17 regulated by the Department. It is FURTHER AGREED that Respondent Killeen shall provide the
18 Department truthful and complete sworn statements outlining his knowledge with respect to the
19 activities of the individuals and company. The "sworn statements" may take the form of affidavits,
20 declarations, or deposition testimony, at the Department's discretion. In addition to providing sworn
21 statements, it is AGREED that, upon written request by the Department, Respondent Killeen shall
22 cooperate fully, truthfully, and completely with the Department and provide any and all information
23 known to him relating in any manner to the individuals and company. It is FURTHER AGREED that,

upon written request by the Department, Respondent Killeen shall provide any and all documents, writings or materials, or objects or things of any kind in his possession or under his care, custody, or control that he is authorized to possess, obtain, or distribute relating directly or indirectly to all areas of inquiry and investigation. It is FURTHER AGREED that Respondent Killeen shall testify fully, truthfully, and completely at any and all proceedings related to any Department investigation or enforcement action or both related to any and all persons involved or in any way associated with the individuals or company, and any respondents named therein. It is FURTHER AGREED that the Department will not take formal action against Respondent Killeen based upon information he provides pursuant to this Paragraph J that may implicate himself in violations of the Act. A failure to cooperate fully, truthfully, and completely is a breach of this Consent Order.

K. Non-Compliance with Order. It is AGREED that Respondent Killeen understands that failure to abide by the terms and conditions of this Consent Order may result in further legal action by the Director. In the event of such legal action, Respondent Killeen may be responsible to reimburse the Director for the cost incurred in pursuing such action, including but not limited to, attorney fees.

L. Voluntarily Entered. It is AGREED that Respondent Killeen has voluntarily entered into this Consent Order, which is effective when signed by the Director's designee.

M. Completely Read, Understood, and Agreed. It is AGREED that Respondent Killeen has read this Consent Order in its entirety and fully understands and agrees to all of the same.

N. Counterparts. This Consent Order may be executed by the Respondent Killeen in any number of counterparts, including by facsimile or e-mail of a .pdf or similar file, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Consent Order.

1 **RESPONDENT:**

2 **Kevin Michael Killeen**

3
4 /s/
Kevin Michael Killeen, Individually

2-24-2020
Date

5
6 **DO NOT WRITE BELOW THIS LINE**

7 THIS ORDER ENTERED THIS 9th DAY OF March, 2020.

8
9 /s/
Lucinda Fazio, Director
10 Division of Consumer Services
11 Department of Financial Institutions

12 Presented by:

13
14 /s/
DREW STILLMAN
15 Financial Legal Examiner

16 Approved by:

17 /s/
18 STEVEN C. SHERMAN
Enforcement Chief

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

CARDINAL FINANCIAL COMPANY,
LIMITED PARTNERSHIP, NMLS No. 66247;
and KEVIN MICHAEL KILLEEN, NMLS No.
1736051,

Respondents.

No. C-19-2686-20-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENT TO ENTER AN
ORDER TO CEASE AND DESIST, REVOKE
LICENSE, PROHIBIT FROM INDUSTRY,
IMPOSE FINES, COLLECT
INVESTIGATION FEE, and RECOVER
COSTS AND EXPENSES

INTRODUCTION

Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee, Division of Consumer Services Director Lucinda Fazio, institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents.

A. Cardinal Financial Company, Limited Partnership (Respondent Cardinal) was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a consumer loan company on or about April 25, 2013, and continues to be licensed to date.

B. Kevin Michael Killeen (Respondent Killeen) was the Retail Market Manager of Respondent Cardinal from about June 4, 2018, through March 18, 2019. Respondent Killeen was

1 licensed by the Department to conduct business as a loan originator from March 12, 2007, to
2 December 31, 2008, when his license expired.

3 **1.2 Prior Order.** On July 14, 2015, the Department issued a Final Decision and Order, No. C-14-
4 1532-15-FO01, which prohibited Respondent Killeen from participation in the conduct of the affairs
5 of any Consumer Loan Company subject to licensure by the Director under the Act based upon
6 Respondent Killeen's prior felony convictions involving fraud, dishonesty, or breach of trust.

7 **1.3 Violation of Prior Order.** Between approximately June 2018 and March 2019, Respondent
8 Killeen participated in the conduct of the affairs of Respondent Cardinal, a Consumer Loan Company
9 subject to licensure by the Director under the Act, in violation of the order identified in paragraph
10 1.2. Respondent Cardinal compensated Respondent Killeen for engaging the conduct, which involved
11 Killeen holding supervisory responsibilities with respect to three branches that held a Washington
12 Consumer Loan Company branch license.

13 **1.4 Unlicensed Loan Originator.** Respondent Killeen, while working on behalf of Respondent
14 Cardinal, supervised Washington-licensed loan originators and assisted at least one borrower in
15 applying for a residential mortgage loan for property located in the state of Washington. In doing so,
16 Respondent Killeen took a residential mortgage loan application, or offered or negotiated the terms of
17 a residential mortgage loan, or held himself out as being able to perform these activities. The conduct
18 occurred in at least July 2018 and August 2018.

19 **1.5 Aiding and Abetting Unlicensed Mortgage Loan Originator Activity and Violation of**
20 **Prior Order.** Between about June 2018 and March 2019, Respondent Cardinal aided and abetted
21 Respondent Killeen's unlicensed mortgage loan originator activity and Respondent Killeen's
22 violation of the order identified in paragraph 1.2, as described above.

23 **1.6 On-Going Investigation.** The Department's investigation into the alleged violations of the
24 Act by Respondents continues to date.

1 //

2 II. GROUNDS FOR ENTRY OF ORDER

3 **2.1 Responsibility for Conduct of Employees.** Pursuant to RCW 31.04.027¹, RCW 31.04.165,
4 and WAC 208-620-372, a consumer loan company is responsible for any conduct violating the act or
5 these rules by any person employed, or engaged as an independent contractor, to work in the business
6 covered by its license.

7 **2.2 Unlicensed Loan Originator.** Based on the Factual Allegations set forth in Section I above,
8 Respondents are in apparent violation of RCW 31.04.027(2) (2015), RCW 31.04.027(1)(b) (2018),
9 RCW 31.04.221, and WAC 208-620-301 for engaging in the business of a mortgage loan originator
10 without first obtaining a license from the Department.

11 **2.3 Employing Someone Prohibited for Prior Felony Convictions.** Based on the Factual
12 Allegations set forth in Section I above, Respondent Cardinal is in apparent violation of RCW
13 31.04.027(2) (2015), RCW 31.04.027(1)(b) (2018), and WAC 208-620-371 for employing someone
14 to participate in Respondent Cardinal's affairs when such person has been prohibited from
15 participation based upon prior felony convictions.

16 **2.4 Violation of Prior Order.** Based on the Factual Allegations set forth in Section I above,
17 Respondent Killeen is in apparent violation of RCW 31.04.027(2) (2015), RCW 31.04.027(1)(b)
18 (2018), and WAC 208-620-550(14) for failing to completely comply with an order issued by the
19 Department.

20 **2.5 Aiding and Abetting Unlicensed Mortgage Loan Originator Activity and Violation of**
21 **Prior Order.** Based on the Factual Allegations set forth in Section I above, Respondent Cardinal is
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23 ¹ The Act was amended effective June 7, 2018. Among the statutes cited herein, the only amendments relevant to this
24 Statement of Charges were numerical changes to provisions of RCW 31.04.027. When relevant, the former version of
RCW 31.04.027 is designated by the reference "(2015)," while the current version is designated by the reference
"(2018)."

1 in apparent violation of RCW 31.04.027(2) (2015), RCW 31.04.027(1)(b) (2018), RCW 31.04.165,
2 RCW 31.04.175(1), WAC 208-620-550(14), and WAC 208-620-570(8) for aiding or abetting an
3 unlicensed person to practice in violation of the Act and for aiding or abetting a person to violate an
4 order issued by the Director.

5 **III. AUTHORITY TO IMPOSE SANCTIONS**

6 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 31.04.093(5)(a), the
7 Director may issue orders directing a licensee, its employee, loan originator, or other person subject
8 to the Act to cease and desist from conducting business in a manner that is injurious to the public or
9 violates any provision of the Act.

10 **3.2 Authority to Revoke License.** Pursuant to RCW 31.04.093(3) and WAC 208-620-570, the
11 Director may revoke a license if the Director finds that the licensee, either knowingly or without the
12 exercise of due care, has violated any provision of the Act or any rule adopted under the Act; a fact or
13 condition exists that, if it had existed at the time of the original application for the license, clearly
14 would have allowed the Director to deny the application for the original license; the licensee failed to
15 comply with any directive, order, or subpoena issued by the Director under the Act; or the licensee
16 holds a consumer loan company license and aided or abetted an unlicensed person to practice in
17 violation of the Act.

18 **3.3 Authority to Prohibit from the Industry.** Pursuant to RCW 31.04.093(6), the Director may
19 issue an order prohibiting from participation in the affairs of any licensee, any officer, principal,
20 employee, mortgage loan originator, or any other person subject to the Act for failure to comply with
21 any order or subpoena issued under the Act; a violation of RCW 31.04.027, RCW 31.04.102, RCW
22 31.04.155, or RCW 31.04.221; or failure to obtain a license for activity that requires a license.

23 **3.4 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of
24 up to one hundred dollars per day, per violation, upon the licensee, its employee or loan originator, or

any other person subject to the Act for any violation of the Act or failure to comply with any order or subpoena issued by the Director under the Act.

3.5 Authority to Charge Investigation Fee. Pursuant to RCW 31.04.145(3) and WAC 208-620-610(7), every licensee investigated by the Director or the Director's designee shall pay for the cost of the investigation, calculated at the rate of \$69.01 per staff hour devoted to the investigation.

3.6 Authority to Recover Costs and Expenses. Pursuant to RCW 31.04.205(2), the Director may recover the state's costs and expenses for prosecuting violations of the Act.

IV. NOTICE OF INTENT TO ENTER ORDER

Respondents' violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC, as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, RCW 34.04.202, and RCW 31.04.205. Therefore, it is the Director's intent to ORDER that:

4.1 Respondents Cardinal Financial Company, Limited Partnership and Kevin Michael Killeen cease and desist from engaging in activity in violation of the Act, including unlicensed loan origination and all activity in violation of any order issued by the Department.

4.2 Respondent Cardinal Financial Company, Limited Partnership's license to conduct the business of a consumer loan company be revoked.

4.3 Respondent Cardinal Financial Company, Limited Partnership be prohibited from participation in the conduct of the affairs of any consumer loan company subject to licensure by the Director, in any manner, for a period of three years.

4.4 Respondent Kevin Michael Killeen be prohibited from participation, in any manner, in the conduct of the affairs of any consumer loan company subject to licensure by the Director.

4.5 Respondent Cardinal Financial Company, Limited Partnership pay a fine. As of the date of this Statement of Charges, the fine totals \$40,000.

4.6 Respondent Kevin Michael Killeen pay a fine. As of the date of this Statement of Charges, the fine totals \$20,000

- 1 **4.7** Respondent Cardinal Financial Company, Limited Partnership pay an investigation
2 fee. As of the date of this Statement of Charges, the investigation fee totals at least
3 \$2,800.
- 4 **4.8** Respondents Cardinal Financial Company, Limited Partnership and Kevin Michael
5 Killeen maintain records in compliance with the Act and provide the Department with
6 the location of the books, records and other information relating to Respondents'
7 consumer loan business, and the name, address and telephone number of the
8 individual responsible for maintenance of such records in compliance with the Act.
- 9 **4.9** Respondents Cardinal Financial Company, Limited Partnership and Kevin Michael
10 Killeen pay the Department's costs and expenses for prosecuting violations of the Act
11 in an amount to be determined at hearing or by declaration with supporting
12 documentation in event of default by a Respondent.

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1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist, Revoke
3 License, Prohibit from Industry, Impose Fine, Collect Investigation Fee, and Recover Costs and
4 Expenses (Statement of Charges) is entered pursuant to the provisions of RCW 31.04.093, RCW
5 31.04.165, RCW 31.04.202, and RCW 31.04.205, and is subject to the provisions of chapter 34.05
6 RCW (The Administrative Procedure Act). Each Respondent may make a written request for a
7 hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR
8 HEARING accompanying this Statement of Charges.

9 Dated this 13th day of January, 2020.

10
11 /s/
12 LUCINDA FAZIO
13 Director
Division of Consumer Services
Department of Financial Institutions

14 Presented by:

15
16 /s/
DREW STILLMAN
Financial Legal Examiner

17 Approved by:

18
19 /s/
STEVEN C. SHERMAN
20 Enforcement Chief

ORDER SUMMARY – Case Number: C-14-1532

Name(s): Kevin Michael Killeen

Order Number: C-14-1532-15-FO01

Effective Date: July 14, 2015

License Number: NMLS #274124
Or NMLS Identifier [U/L]

License Effect: n/a

Not Apply Until: n/a

Not Eligible Until: n/a

Prohibition/Ban Until: Permanent Prohibition

Investigation Costs	\$	Due	Paid ☐ Y ☐ N	Date
Fine	\$	Due	Paid ☐ Y ☐ N	Date
Assessment(s)	\$	Due	Paid ☐ Y ☐ N	Date
Restitution	\$	Due	Paid ☐ Y ☐ N	Date
Judgment	\$	Due	Paid ☐ Y ☐ N	Date
Satisfaction of Judgment Filed?		☐ Y ☐ N		
No. of Victims:				

Comments:



State of Washington
DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF Determining Whether
there has been a violation of the Consumer Loan
Act of Washington by:

KEVIN M. KILLEEN,

Respondent.

DFI NO. C-14-1532-15-FO01
OAH NO. 2014-DFI-0032

FINAL DECISION & ORDER DENYING
PETITION FOR REVIEW AND
AFFIRMING INITIAL ORDER GRANTING
SUMMARY JUDGMENT

THIS MATTER comes now before SCOTT JARVIS, Director ("Director") of the WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS ("Department"), pursuant to the Findings of Fact,¹ Conclusions of Law,² and Initial Order on Summary Judgment ("Initial Order"), in relation to the Statement of Charges in the above-entitled matter ("Statement of Charges") against KEVIN M. KILLEEN ("Respondent"), on the Petition for Review of Initial Order ("Petition for Review"), brought by Respondent and his counsel of record, Elizabeth de Bagara Steen, Esq. ("Respondent's Counsel"), from the Initial Order by Administrative Law Judge Leslie Birnbaum ("ALJ Birnbaum"), from which the Department's Division of Consumer Services ("Division"), represented by Assistant Attorney General Jong M. Lee ("Division's Counsel"), has lodged a Reply to the Petition for Review of Initial Order ("Reply to Petition");

¹ References herein to specific Findings of Fact of the Initial Order are denoted "FOF."

² References to specific Conclusions of Law of the Initial Order are denoted "COL."

and the Director having taken into consideration the entire record on review, including, without limitation, any pleadings, testimony, and recorded oral and written argument before the ALJ, the Initial Order, the Petition for Review, and the Reply to Petition (collectively, the "Record on Review");

NOW, THEREFORE, the Director issues the following Final Decision and Order:

1.0 PROCEDURAL HISTORY

The Statement of Charges was filed July 21, 2014. The Respondent made a timely Request for Administrative Hearing. The matter was then referred to the Office of Administrative Hearings ("OAH") and assigned to ALJ Birnbaum. Respondent filed a Motion to Dismiss with OAH on November 26, 2014. ALJ Birnbaum denied Respondent's Motion to Dismiss, first making an oral ruling on January 5, 2015, followed by a written interlocutory order issued on February 19, 2015. Then the Division filed its Motion for Summary Judgment on January 28, 2015. ALJ Birnbaum granted the Division's Motion for Summary Judgment, first by oral at a hearing held on February 23, 2015, followed by a written order ("Initial Order") issued on March 18, 2015. Respondent then filed his Petition for Review of Initial Order, which was received on April 10, 2014, in a timely manner.

2.0 DIRECTOR'S CONSIDERATION

Notwithstanding all the briefing in this matter, the facts and applicable law in this matter are fairly straightforward and undisputable.

2.1 Respondent Has No MLO License. Respondent has not been licensed by the Division since January 1, 2009, when he did not renew his MLO License after its expiration as of December 31, 2008.³

2.2 Timing of Respondent's Employment with Bay Equity LLC. Bay Equity, LLC ("Bay Equity") is currently licensed by the Division as a Consumer Loan Company and has been so licensed since at least 2010. Bay Equity informed the Division of the following:

2.2.1 Respondent began his employment with Bay Equity March 21, 2012, with a job title of Area Sales Manager;

2.2.2 Respondent's employment location began at Bay Equity's branch in Spanaway, Washington, and then moved, along with the entire branch, to its current Puyallup, Washington location on October 24, 2013; and

2.2.3 Respondent's job title changed from Area Sales Manager to Regional Manager effective February 6, 2014. Respondent's last day of employment with Bay Equity was reported to be December 31, 2014.

Accordingly, as of the filing of the Statement of Charges, July 21, 2014, Respondent was employed by Bay Equity, LLC.

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³ On or about December 11, 2006, Respondent applied for a mortgage loan originator license ("MLO License") with the Division and disclosed that that he had theft/forgery convictions from 1992.

2.3 Respondent's Prior Felony Convictions. On or about September 28, 1990, Respondent pleaded guilty in Ocean County Superior Court, State of New Jersey, to two counts of Theft by Deception in the Third Degree⁴ in violation of the New Jersey Statutes, NJS 2C:20-4,⁵ under Case No. 1113-9-90. The plea form identified that these criminal charges carried statutory maximum imprisonment of five (5) years each and maximum fines of \$7,500.00 for each charge. A judgment of conviction as to those two counts of Theft by Deception in the Third Degree was also subsequently entered by the same court. The certified court records from New Jersey as to these two convictions are conclusive. These are felony convictions.⁶

2.4 Respondent's Admissions. Respondent has admitted he has a prior felony conviction for theft/forgery, as he stated in his application to the Division for an MLO

⁴ NJS 2C:20-2(b)(2) sets forth the grading of Theft by Deception in the Third Degree, as follows:
b. Grading of theft offenses.

....
(2) Theft constitutes a crime of the third degree if:
(a) The amount involved exceeds \$500.00 but is less than \$75,000.00;
(b) The property stolen is a firearm, automobile, boat, horse or airplane;
(c) The property stolen is a controlled dangerous substance or controlled substance analog as defined in N.J.S. 2C:35-2 and the amount involved is less than \$75,000.00 or is undetermined and the quantity is one kilogram or less;
(d) It is from the person of the victim;
(e) It is in breach of an obligation by a person in his capacity as a fiduciary;
(f) It is by threat not amounting to extortion; or
(g) It is of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant.

⁵ The Theft by Deception Statute of the New Jersey Code of Criminal Justice, at NJS 2C:20-4, declares:
A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:
a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
b. Prevents another from acquiring information which would affect his judgment of a transaction; or
c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship. The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

⁶ NJS 2C:43-6 declares:
a. Except as otherwise provided, a person who has been convicted of a crime may be sentenced to imprisonment, as follows:
....
(3) In the case of a crime of the third degree, for a specific term of years which shall be fixed by the court and shall be between three years and five years;"

license.⁷ Respondent also conceded in his Motion to Dismiss that he has two felony convictions in New Jersey.⁸

2.5 Nature of Respondent's Prior Felony Convictions. Respondent does not dispute that he has prior felony convictions involving fraud, dishonesty, or breach of trust. While Respondent has argued that the felonies could be expunged or vacated had the conduct occurred in Washington State, the conviction has not yet been expunged either in New Jersey or in Washington. Such hypothetical possible actions are not material fact for consideration. Until such a time a competent New Jersey Court grants relief vacating or expunging the felony convictions in question, it is not a material fact relevant for consideration in this case.

2.6 Scope of Director's Authority to Prohibit. The Consumer Loan Act declares, as follows:

(6) The director may issue an order removing from office or prohibiting from participation in the affairs of any licensee, or both, any officer, principal, employee or loan originator, or any person subject to this chapter for:

....
*(b) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony;*⁹

[Emphasis added.]

The Division's Consumer Loan Company Rules state in relevant part, as follows:

May I employ someone to work with Washington residents or Washington property who has been convicted of a felony, or who has had a lending-related license revoked?

No. (1) Pursuant to **RCW 31.04.093(6)**, the director may prohibit any officer, principal, or employee from participating in the affairs of any licensee if that officer, principal, or employee has been

⁷ Declaration of Greg Sandoz.

⁸ Respondent's Motion to Dismiss, p. 2.

⁹ RCW 31.04.093(6).

convicted of or pled guilty or nolo contendere [contendere] to a felony in a domestic, foreign, or military court:

(a) During the seven-year period preceding the date of the proposed employment; or

(2) For purposes of this section, "participation in the affairs of any licensee" means an officer, principal, or *employee* or independent contractor who will or does originate loans, supervise employees or independent contractors, or manage the loan production or other activities of the licensee.¹⁰

[Emphasis added.]

The Director thus has the authority to prohibit Respondent from participation in the conduct of the affairs of any Consumer Loan Company subject to licensure by the Director under the Consumer Loan Act¹¹ and Consumer Loan Company Rules,¹² in any manner.

Respondent argues that he was not engaged in unlawful conduct when he was charged. However, Bay Equity, LLC, is a Consumer Loan Company Licensee. At the time the Statement of Charges was issued, Mr. Killeen was an employee of Bay Equity, LLC, managing licensed loan originators who are in the business of offering consumer loan services to consumers in Washington State. While specific job duties were not established, it is undisputed that Respondent was employed as a manager within a licensed consumer loan company and performed "activities of a licensee."

The court accords deference to an administrative agency's interpretation of a statute which it sponsored before the Legislature and which it is charged with administering and enforcing, including an interpretation of law in matters involving an agency's special knowledge

¹⁰ WAC 208-620-371.

¹¹ Chapter 31.04 RCW.

¹² Chapter 208-620 WAC.

or expertise.¹³ Here, however, the plain language of the statute supports the Division's interpretation of the Consumer Loan Act and Division's Consumer Loan Company Rules.

2.7 Consumer Loan Act and the Division's Consumer Loan Company Rules

Consistent with Chapter 9.96A RCW. Washington State statute related to restoration of employment rights declares, in relevant part, as follows:

RCW 9.96A.020 (1) allows exception for contrary law

(1) . . . *[U]nless there is another provision of law to the contrary*, a person is not disqualified . . . to practice, pursue or engage in any occupation, trade, vocation, or business for which a license, permit, certificate or registration is required to be issued by the state of Washington . . . solely because of a prior conviction of a felony. However, *this section does not preclude the fact of any prior conviction of a crime from being considered.*¹⁴

[Emphasis added.]

The above-referenced statute provides that if there is another provision of law to the contrary, a person may be disqualified from engaging in a business for which a license is required on account of a prior conviction of a felony. In this case, the provision of law in question is the prohibition in the Consumer Loan Act against participation in the business affairs of a Consumer Loan Company if one has been convicted of a gross misdemeanor involving dishonesty or financial misconduct or a felony.¹⁵ Thus, the Division's application of the Consumer Loan Act¹⁶ and the Division's Consumer Loan Company Rules¹⁷ is consistent with Chapter 9.96A RCW.

¹³ *Cashmere Valley Bank v. State, Dept. of Revenue*, 181 Wn.2d 622, 635-636, 334 P.3d 1100, 1106-1107 (2014); citing *Leonard v. City of Bothell*, 87 Wash.2d 847, 557 P.2d 1306 (1976); *Impeccoven v. Dep't of Revenue*, 120 Wash.2d 357, 363, 841 P.2d 752 (1992) [considerable deference given to interpretation by agency charged with enforcing statute]; *Chi. Title Ins. Co. v. Office of Ins. Comm'r*, 178 Wash.2d 120, 133, 309 P.3d 372 (2013) [special knowledge of agency]. See also *Nationscapital Mortg. Corp. v. State Dept. of Financial Institutions*, 133 Wash.App. 723, 737-738, 137 P.3d 78, 86 (Div. 2 – 2006).

¹⁴ RCW 9.96A.020 (1).

¹⁵ RCW 31.04.093(6).

¹⁶ *Id.*

2.8 Proper Summary Judgment Standard Applied. Summary judgment is available in administrative actions.¹⁸ A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.¹⁹ A material fact is one upon which the outcome of the litigation depends.²⁰ The party moving for summary judgment has the burden of showing the absence of any issue of material fact.²¹ However, once the moving party has presented competent summary judgment proof, the non-moving party may not rest on mere allegations in its pleadings, but must respond by affidavit or other proper method setting forth specific facts showing that there is a genuine disputed issue of material fact that must be resolved at trial.²² A non-moving party may not rely on speculation or argumentative assertions that unresolved factual issues remain to be tried.²³ In making this determination, the Court will consider any evidence and inferences therefrom in a light most favorable to the non-moving party.²⁴ Summary judgment may be granted if reasonable minds could reach only one conclusion

¹⁷ WAC 208-620-371.

¹⁸ WAC 10-08-135; *Verizon NW, Inc. v. ESD*, 164 Wn.2d 909, 915, 194 P.3d 255 (2008).

¹⁹ WAC 10-08-135; *Stewart v. State*, 162 Wn. App. 266, 270, 252 P.3d 920, 922-23 (2011).

²⁰ *Hudesman v. Foley*, 73 Wn.2d 880, 886, 441 P.2d 532 (1968).

²¹ *Vallandigham v. Clover Park School District No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005).

²² *McGough v. City of Edmonds*, 1 Wn. App. 164, 168, 460 P.2d 302 (1969).

²³ *White v. State*, 131 Wn.2d 1, 9, 929 P.2d 396 (1997).

²⁴ *Yakima Fruit & Cold Storage Co. v. Central Heating & Plumbing Co.*, 81 Wn.2d 528, 530, 503 P.2d 108 (1972).

based on the facts in evidence.²⁵ The object and function of a summary judgment is to avoid a useless trial.²⁶

2.9 No Factual Dispute Regarding Nature of Criminal Convictions. It has never been disputed that Respondent was convicted in New Jersey of two felony counts of theft by deception, which are felonies that involved "an act of fraud, dishonesty, breach of trust, or money laundering."²⁷ The ALJ properly apply the relevant statute and rule to the facts.

2.10 Correct Application of Statutes and Rules. Respondent was an employee of a Consumer Loan Company Licensee. Respondent argues that the relevant statute and rule do not apply to him because he is not a licensee. However, this ignores the plain language of the relevant statute. It has never been disputed that when the Statement of Charges was filed, Respondent was an employee of a Consumer Loan Company Licensee. Respondent's employment ended December 31, 2014, but that alone would not prevent him from being employed with another licensee or exempt him from the relevant statute. The initial Order applies to Respondent regardless of his license status.

2.11 Misconstruing the Initial Order. The phrase "in any manner" was part of the language of the Initial Order. It was never quoted as part of the relevant statute or rule. Its usage in the Division's Statement of Charges, as part of the prayer or relief requested, does not change the relevant statute and rule in this case nor should it be construed as doing so. Contrary to Respondent's argument here, the Director finds no error. The Respondent claims the Initial Order prohibits the licensee from working as a mortgage loan originator. This is an incorrect

²⁵ Vallandigham, 154 Wn.2d at 26.

²⁶ Hudesman, 73 Wn.2d at 886.

²⁷ COL 5:11.

statement. Rather, it clearly states that "Mr. Killeen is prohibited from participation in the conduct of the affairs of any consumer loan company subject to licensure by the director under chapter 31.04 RCW and chapter 208-620 WAC, in any manner."²⁸

2.12 There Was No Fine. There was no fine, restitution, or fee directed by the Initial Order. There was no fine, restitution or fee requested by the Statement of Charges. Respondent's employer is not a party to this case. There is no case record regarding any \$50,000 fine. It is improper for the Director to review this case in light of purported facts from another matter, which is neither part of the record in this case nor pending before the Director.

All other arguments of the Respondent bearing on the issue before the Director – the propriety of the ALJ's Initial Order – are without merit.

Accordingly, the Director having considered the arguments in both the Petition for Review and the Reply to the Petition in light of the Record on Review, the Director now makes the following Findings of Fact and Conclusions of Law:

3.0 FINDINGS OF FACT & CONCLUSIONS OF LAW

3.1 Findings of Fact. The Director hereby affirms and incorporates herein FOF 4.1 through 4.14, inclusive,²⁹ of the Initial Order.

3.2 Conclusions of Law. The Director hereby affirms and incorporates herein COL 5.1 through 5.13, inclusive,³⁰ together with Paragraph 6.1³¹ of the Initial Order.

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²⁸ See Initial Order, ¶6.1.

²⁹ Initial Order, pp. 3-5.

³⁰ Initial Order, pp. 5-8.

³¹ Initial Order, p. 9.

4.0 FINAL DECISION & ORDER

WHEREFORE, the Director having made Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED THAT:

4.1 Summary Judgment Affirmed. Respondent's Petition for Review is denied and the ALJ's Initial Order Granting Summary Judgment is affirmed.

4.2 Order of Prohibition. Respondent, KEVIN M. KILLEEN, is prohibited from participation in the conduct of the affairs of any Consumer Loan Company subject to licensure by the Director under the Washington Consumer Loan Act, chapter 31.04 RCW, and the Rules for Washington Consumer Loan Companies, chapter 208-620 WAC.

5.0 RECONSIDERATION

Pursuant to RCW 34.05.470, Respondent has the right to file a Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition must be filed in the Office of the Director of the Department of Financial Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of service of this Final Order upon Respondent. The Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in this matter. A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on a petition.

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6.0 STAY OF ORDER

The Director has determined not to consider a Petition to Stay the effectiveness of this order. Any such requests should be made in connection with a Petition for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

7.0 JUDICIAL REVIEW

Respondent has the right to petition the superior court for judicial review of this agency action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

8.0 SERVICE

For purposes of filing a Petition for Reconsideration or a Petition for Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of service attached hereto.

9.0 EFFECTIVENESS AND ENFORCEMENT OF FINAL ORDER

Pursuant to the Administrative Procedures Act, at RCW 34.05.473, this Final Decision and Order shall be effective immediately upon deposit in the United States Mail.

Dated at Tumwater, Washington, on this 14th day of July, 2015.

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By:



Scott Jarvis, Director

NOTICE TO THE PARTIES

In accordance with RCW 34.05.470 and WAC 10-08-215, any Petition for Reconsideration of this FINAL DECISION & ORDER must be filed with the Director within ten (10) days of service of this FINAL DECISION & ORDER. It should be noted that Petitions for Reconsideration do not stay the effectiveness of said FINAL DECISION & ORDER. Judicial Review of this FINAL DECISION & ORDER is available to a party according to provisions set out in the Washington Administrative Procedure Act, RCW 34.05.570.

This is to certify that this FINAL DECISION & ORDER has been served upon the following parties on July 14, 2015, by depositing a copy of same in the United States mail, postage prepaid.

WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS

By: 

Susan Putzier
Executive Assistant to the Director

Mailed to the following:

Kevin M. Killeen
c/o Elizabeth de Bagara Steen
Washington Business Advocates, PLLC
1001 Fourth Avenue, Suite 3200
Seattle, WA 98154

Jong Lee, Esq.
Assistant Attorney General
1125 Washington Street NE
P.O. Box 40100
Olympia, WA 98504

Elizabeth de Bagara Steen, Esq.
Washington Business Advocates, PLLC
1001 Fourth Avenue, Suite 3200
Seattle, WA 98154

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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER Under the Consumer Loan
Act of Washington RE:

KEVIN M. KILLEEN,

Respondent.

No. C-14-1532-14-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER AN
ORDER TO PROHIBIT FROM INDUSTRY

INTRODUCTION

Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Kevin M. Killeen (Respondent) is employed by Bay Equity, LLC as a Regional Manager, but is not licensed as a Mortgage Loan Originator (MLO) by the Department of Financial Institutions (Department) under the Consumer Loan Act (Act).

1.2 Bay Equity, LLC, License # CL-76988 (Bay Equity), is a consumer loan company licensed by the Department of Financial Institutions (Department). On or about February 19, 2014, Bay Equity provided the Department with employment information regarding Respondent, specifically:

A. Respondent was hired as an Area Sales Manager with his first day of employment March 21, 2012;

B. Respondent initially worked out of the office located at 222 162nd Street S., Spanaway, Washington 98387;

STATEMENT OF CHARGES
C-14-1532-14-SC01
Kevin M. Killeen

1

DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8703

1 C. Respondent's place of employment moved, along with the entire Spanaway office to 615
2 Pioneer Ave. E., STE 201-206, Puyallup, Washington on October 24, 2013; and

3 D. Respondent's job title changed to Regional Manager effective February 6, 2014.

4 **I.2 Prior Felony Conviction.** On or about September 28, 1990, Respondent plead guilty to two
5 felony counts involving fraud, dishonesty, or breach of trust in Case No. 1113-9-90, in Ocean County
6 Superior Court, State of New Jersey. The Ocean County Superior Court also entered a Judgment of
7 Conviction against Respondent on this same date regarding these criminal charges.

8 **I.3 Ongoing Investigation.** The Department's investigation is still ongoing.

9 **II. GROUNDS FOR ENTRY OF ORDER**

10 **2.1 Requirement of No Prior Felony Convictions Involving Fraud, Dishonesty or Breach of**
11 **Trust.** Based on the Factual Allegations set forth in Section I above, the Respondent's felony
12 convictions involving acts of fraud, dishonesty and/or breach of trust permit the Director to issue an
13 order prohibiting Respondent from participation in the affairs of any licensee subject to the Act
14 pursuant to RCW 31.04.093(6) and WAC 208-620-371.

15 **III. AUTHORITY TO IMPOSE SANCTIONS**

16 **3.1 Authority to Prohibit from Industry.** Pursuant to RCW 31.04.093(6) and WAC 208-620-
17 371, the Director may issue orders prohibiting from participation in the conduct of the affairs of any
18 licensee any employee or any person subject to this chapter for conviction of a gross misdemeanor
19 involving dishonesty or financial misconduct or a felony.

20 **IV. NOTICE OF INTENTION TO ENTER ORDER**

21 Respondent's violations of the provisions of chapter 31.04 and chapter 208-620 WAC, as set
22 forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose
23

Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, RCW and RCW 31.04.205. Therefore, it is the Director's intention to ORDER that:

- 4.1 Respondent Kevin M. Killeen be prohibited from participation in the conduct of the affairs of any consumer loan company subject to licensure by the Director under chapter 31.04 and chapter 208-620, in any manner.

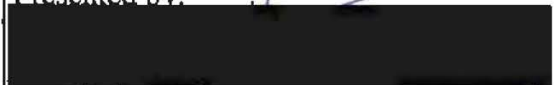
V. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry (Statement of Charges) is entered pursuant to the provisions of RCW 31.04.093, RCW 31.04.165, and RCW 31.04.202, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondent may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

Dated this 21st day of July, 2014.


DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:


GREGORY SANDOZ
Financial Legal Examiner

Approved by:

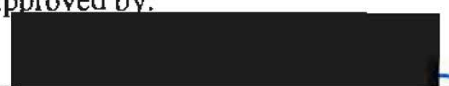

CHARLES CLARK
Enforcement Chief



EXHIBIT B



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:

Pavan S. Agarwal
Chief Executive Officer
Sun West Mortgage Company, Inc. NMLS 3277
6131 Orangethorpe Ave, Ste. 500
Buena Park, California 90620

Miriam Guerrero
Patricia Cibrian
Sun West Mortgage Company, Inc. NMLS 3277
6131 Orangethorpe Ave, Ste. 500
Buena Park, California 90620

RE: Leslie Thompson, et al. v. Sun West Mortgage Company, Inc., et al.
California Labor Code § 2699.3 – Notice of Intent to File Suit

Dear PAGA Administrator:

We represent Leslie Thompson and John MacFarlane (“Plaintiffs”) and they seek to commence a civil action pursuant to the Private Attorneys General Act of 2004 (“PAGA”) against Sun West Mortgage Company, Inc. (“Sun West”) and Pavan Agarwal 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 who worked for Sun West 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.¹

¹ This letter further reserves every right by Leslie Thompson and John MacFarlane 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 – Leslie Thompson and John MacFarlane 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. Kevin Killeen and Mr. Pavan Agarwal. Amendments shall relate back to the date of this notice.

Sun West is a mortgage lender that operates throughout the State of California, including in San Diego County, California. Sun West offers mortgage and related services. Sun West employed Plaintiffs as loan officers and/or sales managers in San Diego, California from on or about August 2019 to on or about March 2020. As loan officers and sales managers, Plaintiffs helped borrowers secure mortgage financing. Plaintiffs normally worked 5 or more days a week, 8 or more hours a day. Plaintiffs' supervisor was Kevin Killeen and/or Wayne Epprecht.

Throughout Plaintiffs' employment Sun West violated and/or continues to violate the Labor Code by retaliating against Plaintiffs and other aggrieved employees for disclosing to Sun West and their superiors information they had reasonable cause to believe represented violations of or noncompliance with local, state, and federal rules, statutes and regulations concerning mortgage lending; knowingly making false representations to Ms. Thompson and other aggrieved employees concerning the kind and character of work to be performed in order to influence and induce Ms. Thompson and other aggrieved employees to move from California to Arizona; failing to provide Plaintiffs and other aggrieved employees with accurate itemized wage statements; failing to reimburse Plaintiffs and other aggrieved employees for all business expenses; and failing to pay all wages to Plaintiffs and former aggrieved employees at the time of discharge. Based on this and other conduct described herein, Sun West has violated and/or continues to violate California Labor Code sections 98.6, 201, 202, 203, 204, 223, 226(a), 226.3, 970, 1102.5, 2800, 2802, and all applicable IWC Wage Orders.

I. Retaliation in 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.

Here, Sun West was Plaintiffs' employer. Plaintiffs disclosed to Sun West and its human resources personnel, including Mses. Guerrero and Cibrian, information regarding Mr. Killeen, including, but not limited to, his past, impersonations, fake identities, loan servicing and management, and handling and use of private financial borrower information. Both Plaintiffs had reasonable cause to believe that the information disclosed violations of or noncompliance with local, state and federal rules, statutes and/or regulations. Following their disclosures, Sun West subjected Plaintiffs to adverse, retaliatory employment actions, including but not limited to, failure to communicate, disappearance of loans, failure to pay commissions, and constructive termination. Plaintiffs' disclosures indisputably played a substantial role into how they were treated by Sun West. Plaintiffs have suffered harm from Sun West's retaliatory conduct. Accordingly, Plaintiffs are aggrieved employees and Sun West has violated the Labor Code.

II. Retaliation in Violation of California Labor Code Section 98.6

Section 98.6 makes it unlawful for an employer to discharge an employee or in any manner discriminate, retaliate, or take any adverse action against an employee for disclosing

information to an employer that the employee has reason to believe discloses the violation or noncompliance of a local, state, or federal rule or regulation. (Lab. Code § 98.6(a).)

Here, Sun West was Plaintiffs' employer. Plaintiffs disclosed to Sun West and its human resources personnel, including Mses. Guerrero and Cibrian, information regarding Mr. Killeen, including, but not limited to, his past, impersonations, fake identities, loan servicing and management, and handling and use of private financial borrower information. Both Plaintiffs had reasonable cause to believe that the information disclosed violations of or noncompliance with local, state and federal rules, statutes and/or regulations. Following their disclosures, Sun West subjected Plaintiffs to adverse, retaliatory employment actions, including but not limited to, failure to communicate, disappearance of loans, failure to pay commissions, and constructive termination. Plaintiffs' disclosures indisputably played a substantial role into how they were treated by Sun West. Plaintiffs have suffered harm from Sun West's retaliatory conduct. Accordingly, Plaintiffs are aggrieved employees and Sun West has violated the Labor Code.

III. Misrepresentation in Violation of California Labor Code Section 970

Section 970 makes it unlawful for an employer (or any person working on behalf of the employer), directly or indirectly, to influence, persuade, induce or engage any person to move from California to another state for the purpose of working in any branch of labor, through or by means of knowingly false representations concerning the kind, character or existence of such work. (Lab. Code §§ 970(a), 971; *see Seubert v. McKesson Corp.* (1990) 223 Cal.App.3d 1514.)

Here, Mr. Killeen and Sun West knowingly made false statements to Ms. Thompson and Mr. MacFarlane and other aggrieved employees concerning the nature, kind and character of work in California and in Arizona. Mr. Killeen falsely represented who he was; falsely represented management in the Scottsdale, Arizona office; falsely represented his ability to service loans and handle private financial information of borrowers; and Mr. Killeen falsely represented Plaintiffs' future earnings and role within the Scottsdale and San Diego branches. Mr. Killen communicated these false statements directly to Ms. Thompson and Mr. MacFarlane. Mr. Killeen and Sun West made the misrepresentations to induce Plaintiffs to work and/or relocate from San Diego, California to Scottsdale, Arizona. As a result of Mr. Killeen and Sun West's misrepresentations, Plaintiffs have incurred significant harm. Accordingly, Sun West has violated the Labor Code with respect to Plaintiffs and other aggrieved employees.

IV. 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 Sun West's failure to pay Ms. Thompson and Mr. MacFarlane for all commission wages as detailed above, the wage statements issued by Sun West failed to reflect the correct amount of gross wages and commissions 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) Ms. Thompson and Mr. MacFarlane are therefore aggrieved employees and Sun West has violated Labor Code § 226(a). Ms. Thompson and Mr. MacFarlane will prevail on their claims.

V. 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. (Lab. Code §§ 201-203.)

Here, upon information and belief, Sun West failed to pay Ms. Thompson and Mr. MacFarlane all wages due within any time period specified by California Labor Code sections 201 and 202, including earned and unpaid commissions as discussed above. Ms. Thompson and Mr. MacFarlane are therefore entitled to waiting time penalties for the unpaid commissions that Mr. Killeen and Sun West withheld from Ms. Thompson and Mr. MacFarlane in retaliation for reporting Mr. Killeen. Ms. Thompson and Mr. MacFarlane will prevail on their claim for waiting time penalties.

VI. Violation of California Labor Code Sections 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, Ms. Thompson and Mr. MacFarlane 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. Sun West has not reimbursed Plaintiffs and other aggrieved employees for these and other expenses.

CONCLUSION

Therefore, on behalf themselves and all other aggrieved employees, Ms. Thompson and Mr. MacFarlane seek 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.

We are amenable and encourage attempts to negotiate an early resolution of all matters where possible and beneficial to the aggrieved class of employees. If Sun West is interested in attempting to resolve this matter, please contact our office or have your lawyer contact our office so that we can discuss an informal discovery plan and the possibility of early mediation. If we do not hear from you, we will proceed with this matter with the understanding that Sun West does not wish to engage in early resolution efforts.

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,



Marshall R. Lurtz
LURTZ LEGAL