

SEMNR & HARTMAN, LLP
Babak Semnar (SBN 224890)
bob@sandiegoconsumerattorneys.com
Jared M. Hartman (SBN 254860)
jared@sandiegoconsumerattorneys.com
41707 Winchester Road, Suite 201
Temecula, CA 92590
Telephone: (951) 293-4187
Fax: (888) 819-8230

MEYER WILSON CO., LPA
Matthew R. Wilson (SBN 290473)
mwilson@meyerwilson.com
Michael J. Boyle, Jr. (SBN 258560)
mboyle@meyerwilson.com
305 W Nationwide Blvd.
Columbus, OH 43215
Telephone: (614) 224-6000
Fax: (614) 224-6066

Attorneys for Plaintiffs Erika Maldonado and Cynthia Soriano and the proposed class

**In the Superior Court for the
County of Orange**

30-2020-01175149-CU-OE-CJC

ERIKA MALDONADO and
CYNTHIA SORIANO,

Plaintiff,

vs.

BROKER SOLUTIONS, INC. d/b/a
NEW AMERICAN FUNDING; and
DOES 1 through 5,

Defendants.

Case No.: **Assigned for All Purposes**
Judge Derek W. Hunt

**PAGA COMPLAINT FOR
RECOVERY OF PENALTIES
UNDER THE LABOR CODE
PRIVATE ATTORNEYS GENERAL
ACT (Labor Code § 2698 et seq.)**

Plaintiffs Erika Maldonado and Cynthia Soriano, individually and on behalf of all
others similarly situated (hereinafter collectively referred to as “Plaintiffs”), allege on
personal knowledge, investigation of counsel, and on information and belief, as follows:

1 **NATURE OF THE ACTION**

2 1. Plaintiffs bring this action against Defendant Broker Solutions, Inc. d/b/a
3 New American Funding (hereafter “NAF”), alleging multiple and wide-spread
4 violations of the California Labor Code with regard to its California employees and
5 former employees. These violations include: (a) failure to reimburse travel expenses,
6 personal cellular telephone usage, and other business expenses; (b) improper
7 classification of mortgage loan officers as “outside sales persons,” and as a result failing
8 to pay minimum wage for meal breaks and other non-sales time, and failure to pay
9 overtime; (c) failure to pay wages on a timely basis, with proper documentation; and (d)
10 failing to provide prompt payment of wages and other moneys due to separated
11 employees.

12 2. Pursuant to Labor Code Private Attorney General Act (“PAGA”), §§ 2698,
13 2699 of the California Labor Code, Plaintiffs bring this action against Defendant for
14 wage and hour violations of the California Labor Code and the Industrial Welfare
15 Commission Wage Orders (the “IWC Wage Orders”), all of which contribute to
16 Defendant’s deliberate unfair competition.

17 3. Plaintiffs, on behalf of themselves and all Aggrieved Employees, bring
18 this action seeking reimbursement, penalties, restitution, injunctive and other
19 equitable relief, reasonable attorneys’ fees, and costs.

20 **THE PARTIES**

21 4. Plaintiff Erika Maldonado is, and for all times relevant was, a citizen of the
22 State of California.

23 5. Plaintiff Cynthia Soriano is, and for all times relevant was, a citizen of the
24 State of California.

25 6. Defendant Broker Solutions, Inc. d/b/a New American Funding is a
26 California Corporation with its principal place of business in Tustin, California.

27 7. The true names and capacities, whether individual, corporate, or otherwise
28 of Defendants named herein as DOES 1 through 5 are unknown to Plaintiff who

1 therefore sues said Defendants by such fictitious names. Plaintiffs will seek leave to
2 amend this Complaint to allege their true names and capacities when the same have
3 been ascertained. Plaintiffs are informed and believes that each of the fictitiously named
4 Defendants and/or their agents and employees are responsible for the violative conduct
5 alleged in this Complaint, and proximately caused Plaintiffs' damages.

6 **FACTUAL ALLEGATIONS**

7 8. Plaintiff Maldonado was hired to start working for NAF on or about
8 November 26, 2018 in the position of Sales Manager.

9 9. Plaintiff Soriano was hired to start working for NAF on or about January
10 13, 2020 in the position of Sales Manager.

11 10. Each of these Plaintiffs is an "Aggrieved Employee" because each was
12 employed by Defendants within the previous one year prior to the foiling of this
13 Complaint, and each of them have had one or more of the alleged violations
14 committed against each of them, and therefore each is properly suited to represent the
15 interests of other current and former similarly situated and other Aggrieved
16 Employees who also have been employed by Defendants within the previous one year
17 and have had one or more of the alleged violations committed against them.

18 11. During the relevant time period, Defendants have required all salespersons,
19 regardless of position title, to utilize in the discharge of necessary work duties their
20 personal cellular telephones, including personal cellular telephone service, and to also
21 utilize their personal vehicles to meet with customers and potential customers and to
22 inspect homes and properties, and to also utilize personal home office equipment such
23 as computers and printers and printer ink and paper.

24 12. Further, Defendants required Plaintiffs and all salespersons, regardless of
25 position or title, to pay out of pocket for their own annual fingerprinting, annual
26 background checks, annual training registration costs, and annual licensing renewal
27 fees, all of which were required to maintain their licensing to perform the work
28 necessary for Defendants.

1 13. However, Defendants had, and continue to have, a policy and/or practice of
2 failing to provide any reimbursement or stipend to any salespersons, including Plaintiffs
3 and other Aggrieved Employees, for any reimbursement of such personal expenses.

4 14. Also during the relevant time period, Defendants had, and continue to have,
5 a policy and/or practice of misclassifying commission-based employees, including
6 Plaintiffs and other Aggrieved Employees, as “outside sales persons” in an effort to
7 avoid having to provide Plaintiffs and other Aggrieved Employees with protections they
8 were and are entitled to under California state wage and hour laws.

9 15. Under Defendants’ pay plan, Plaintiffs and other Aggrieved Employees
10 were, and are, paid a monthly commission based on the amount of loans that closed in a
11 given month. Defendants provided to Plaintiffs and other Aggrieved Employees a pre-
12 determined, up-front advance at the beginning of each month, but then deducted (i.e.
13 “clawed back”) those advances from commissions paid each month.

14 16. The pre-determined, up-front advance each month was not sufficient to pay
15 Plaintiffs and other Aggrieved Employees any overtime for hours worked more than 8
16 hours per day or more than 40 hours per week, was not sufficient to pay Plaintiffs and
17 other Aggrieved Employees any premium wages owed for missed meal and rest breaks,
18 and did not reflect a proper hourly wage for all hours worked.

19 17. Furthermore, IWC Wage Order No. 4(2)(M) provides the conditions under
20 which an employee may be deemed exempt as a bona fide “outside salesperson.” An
21 employer must prove that all of the following criteria are met for an employee to
22 qualify for the outside salesperson exemption: (1) A person 18 years of age or over, (2)
23 who customarily and regularly works more than half the working time away from the
24 employer’s place of business, and (3) the working time away from the business is spent
25 selling tangible or intangible items or obtaining orders or contracts for products,
26 services, or use of facilities.

27 18. Additionally, the courts evaluate four factors in considering a disputed
28 classification under California law. In *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.

1 4th 785, 803, the Court stated:

2 A trial court, in determining whether the employee is an outside
3 salesperson, must ... inquire into the *realistic* requirements of the job.
4 In so doing, the court should consider, first and foremost, how the
5 employee actually spends his or her time. But the trial court should also
6 consider whether the employee's practice diverges from the employer's
7 realistic expectations, whether there was any concrete expression of
8 employer displeasure over an employee's substandard performance,
9 and whether these expressions were themselves realistic given the
10 actual overall requirements of the job. (emphasis in original.)

11 19. Plaintiffs and other Aggrieved Employees were not employed in an
12 "outside salesperson" capacity within the meaning of IWC Order No. 4, and therefore
13 were misclassified by Defendants as exempt from wage and hour protections, because
14 Plaintiffs and other Aggrieved Employees did not spend more than half of their working
15 time away from Defendants' place of business selling or obtaining orders.

16 20. Instead, Plaintiffs and other Aggrieved Employees spend the vast majority
17 of their time (approximately 75-80%) performing *non-sales* tasks, including
18 administrative tasks such as obtaining non-sales related paperwork, to obtain signatures
19 on non-sales related paperwork, attending meetings and trainings, responding to emails
20 and voicemails for non-sales issues, recruiting and training other new loan officers, and
21 making non-sales related phone calls.

22 21. Defendants had, and continue to have, a policy and/or practice of requiring
23 all salespersons to pay 10% of every loan towards a "loan assistant" who was supposed
24 to help the salespersons with these non-sales administrative tasks, but this "loan
25 assistant" was never provided, which resulted in Plaintiffs and other Aggrieved
26 Employees having to perform all administrative tasks, even after they had completed a
27 sale. But Plaintiffs and other Aggrieved Employees still lost the mandatory 10% that
28 was paid to Defendants for no reason other than enriching Defendants at Plaintiffs' and
other Aggrieved Employees' expense.

22. Plaintiffs and other Aggrieved Employees often work, in a regular week,

1 upwards of 50-60 hours, with only approximately 8-10 of those hours in direct sales-
2 related activities.

3 23. Despite working upwards of 50-60 hours per week on a regular basis,
4 Plaintiffs and other Aggrieved Employees were paid 100% via commission and never
5 received any hourly wages or salary.

6 24. In violation of Labor Code §§1194 and 1197, Defendants failed to pay
7 Plaintiffs and other class members for non-sales work time, including mandatory
8 meetings, loan processing, training and coaching sessions, loan tracking, customer
9 surveys, attending open houses, attending events and galas, and engaging in
10 administrative tasks.

11 25. Plaintiffs and other Aggrieved Employees never received any overtime pay
12 for any hours worked in excess of 8 hours per day nor for any hours worked in excess
13 of 40 hours per week.

14 26. Plaintiffs and other Aggrieved Employees were never provided the
15 opportunity to take meal or rest breaks, and have never been paid any premium pay for
16 any missed meal or rest breaks.

17 27. During pay-periods when Plaintiffs and other Aggrieved Employees did not
18 make enough commission to equate to at least a minimum wage, Defendants were
19 obligated to, but failed to, pay Plaintiffs and other Aggrieved Employees a wage of at
20 least minimum wage.

21 28. Furthermore, Plaintiffs and other Aggrieved Employees were not paid for
22 all hours worked, because all hours worked were not recorded or documented in any
23 way.

24 29. Although Plaintiffs both quit working for Defendants effective June 2,
25 2020, Defendants continue to employ hundreds of commission-based employees
26 throughout California and, upon information and belief, continue to misclassify such
27 persons as exempt employees.

28 30. Plaintiffs both gave more than 72 hours' notice of their resignation.

1 31. However, Defendants terminated both Plaintiffs short of their noticed date
2 of resignation.

3 32. Despite being terminated, Plaintiffs did not receive all wages or
4 compensation owed to them promptly at the time of their termination.

5 33. Plaintiffs are informed and believe that at all times herein mentioned
6 Defendants were advised by skilled lawyers and other professionals, employees, and
7 advisors knowledgeable about California labor and wage law, employment and
8 personnel practices, and about the requirements of California law.

9 34. Plaintiffs are informed and believe, and thereon allege, that at all times
10 during the relevant time period, Defendants engaged in a systematic business practice
11 and policy of misclassifying Plaintiffs and other Aggrieved Employees as exempt from
12 the requirements of the California Labor Code and the applicable IWC Wage Orders.
13 As mentioned above, the majority of Plaintiffs' and class members' working time
14 outside of the office was spent performing non-sales-related tasks. Defendants willfully,
15 knowingly, and intentionally misclassified Plaintiffs and other Aggrieved Employees
16 and falsely represented to Plaintiffs and other Aggrieved Employees that they were
17 properly classified, all in order to avoid paying wages and to increase Defendants'
18 profits.

19 35. Plaintiffs are informed and believe, and thereon allege, that Defendants
20 knew or should have known that they were obligated to separately compensate
21 Plaintiffs and class members for rest periods and other nonproductive time when paying
22 them on a commission basis at their regular rate of pay. In violation of California law,
23 Defendants failed to separately compensate Plaintiffs and class members for rest
24 periods and other nonproductive time.

25 36. Plaintiffs are informed and believe, and thereon allege, that Defendants
26 knew or should have known that Plaintiffs and other Aggrieved Employees were
27 entitled to receive at least minimum wages for compensation and that they were not
28 receiving at least minimum wages for work that was required to be done off-the-clock.

1 In violation of the California Labor Code, Plaintiffs and other Aggrieved Employees
2 were not paid at least minimum wages for work done off-the-clock.

3 37. Plaintiffs are informed and believe, and thereon allege, that Defendants
4 knew or should have known that Plaintiffs and other Aggrieved Employees were
5 entitled to meal periods in accordance with the Labor Code or payment of one (1)
6 additional hour of pay at their regular rates of pay when they were not provided with
7 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiffs and other
8 Aggrieved Employees were not provided with all meal periods or payment of one (1)
9 additional hour of pay at their regular rates of pay when they did not receive a timely,
10 uninterrupted, thirty (30) minute meal period.

11 38. Plaintiffs are informed and believe, and thereon allege, that Defendants
12 knew or should have known that Plaintiffs and other Aggrieved Employees were
13 entitled to rest periods in accordance with the Labor Code and applicable IWC Wage
14 Order or payment of one (1) additional hour of pay at their regular rates of pay when
15 they were not authorized and permitted to take a compliant rest period. In violation of
16 the California Labor Code, Plaintiffs and other Aggrieved Employees were not
17 authorized and permitted to take compliant rest or meal periods, nor did Defendants
18 provide Plaintiffs and other Aggrieved Employees with payment of one (1) hour of pay
19 at their regular rates of pay when they were not authorized and permitted to take a
20 compliant rest or meal period.

21 39. Plaintiffs are informed and believe, and thereon allege, that Defendants
22 knew or should have known that Plaintiffs and other Aggrieved Employees were
23 entitled to receive complete and accurate wage statements in accordance with California
24 law. In violation of the Labor Code, Plaintiffs and other Aggrieved Employees were not
25 provided complete and accurate wage statements.

26 40. Plaintiffs are informed and believe, and thereon allege, that Defendants
27 knew or should have known that they had a duty to maintain accurate and complete
28

1 payroll records in accordance with the Labor Code and applicable IWC Wage Orders,
2 but willfully, knowingly, and intentionally failed to do so.

3 41. Plaintiffs are informed and believe, and thereon allege, that Defendants
4 knew or should have known that Plaintiffs and other Aggrieved Employees were
5 entitled to timely payment of wages during their employment. In violation of the
6 California Labor Code, Plaintiffs and other Aggrieved Employees did not receive
7 payment of all wages, including but not limited to, minimum wages, compensation for
8 rest periods and other nonproductive time, and/or meal and rest period premiums,
9 within permissible time periods.

10 42. Plaintiffs are informed and believe, and thereon allege, that Defendants
11 knew or should have known that Plaintiffs and other Aggrieved Employees were
12 entitled to payment of wages as designated by statute. In violation of the California
13 Labor Code, Defendants secretly paid Plaintiffs and other Aggrieved Employees lower
14 wages than required by statute while purporting to pay them proper wages.

15 43. Plaintiffs are informed and believe, and thereon allege, that Defendants
16 knew or should have known that Plaintiffs and other Aggrieved Employees were
17 entitled to receive full reimbursement for all business-related expenses and costs they
18 incurred during the course and scope of their employment and that they did not receive
19 full reimbursement of applicable business-related expenses and costs incurred.

20 44. Plaintiffs are informed and believe, and thereon allege, that at mentioned,
21 Defendants knew or should have known that they had a duty to compensate Plaintiffs
22 and other Aggrieved Employees for all hours worked, and that Defendants had the
23 financial ability to pay such compensation, but willfully, knowingly, and intentionally
24 failed to do so, and falsely order to increase Defendants' profits.

25 45. Defendants' conduct, as alleged herein, has caused Plaintiffs and other
26 Aggrieved Employees damages including, but not limited to, loss of wages and
27 compensation. Defendants are liable to Plaintiffs and other Aggrieved Employees for
28 failing to pay wages and expense reimbursement, as well as failing to pay all wages

1 owed on each pay period, failure to pay all wages owed upon termination, and unfair
2 competition.

3 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

4 46. As to penalty claims under the Private Attorney General Act, on October
5 2, 2020, Plaintiffs, via counsel, sent the statutorily required correspondence to the
6 LWDA via electronic submission, indicating that Plaintiffs intend to pursue the claims
7 alleged in this Complaint.

8 47. Plaintiffs also delivered copies to Defendants via certified U.S. Mail,
9 return receipt requested, at their address listed on the Secretary of State website for
10 service of process.

11 48. Certified mail return receipt shows that these copies were delivered to
12 Defendants on October 7, 2020.

13 49. A period of at least sixty-five days has expired since Plaintiffs sent the
14 above referenced correspondence to LWDA and LWDA did not serve Plaintiffs with a
15 notice of its intent to assume jurisdiction over the applicable penalty claims and did
16 not provide notice as set forth in Labor Code § 2699.3 (a)(2)(A) within the statutory
17 period.

18 50. Therefore, Plaintiffs have exhausted administrative remedies as required
19 under the PAGA (Labor Code § 2698, et seq.).

20 51. The Causes of Action alleged in this Complaint are appropriately suited
21 for a Represented Action under the PAGA (Labor Code § 2698, et seq.) because:

- 22 a. They involve allegations of violations of provisions of the
23 California Labor Code that provide for a civil penalty to be
24 assessed and collected by the LWDA or any departments,
25 divisions, commissions, boards, agencies or employees;
- 26 b. Plaintiffs are “aggrieved employees” because they were
27 was employed by the alleged violator and had one or more of the
28 alleged violations committed against them; and

1 c. Plaintiffs have satisfied the procedural requirements of
2 Labor Code § 2699.3, as set forth above.

3 **FIRST CAUSE OF ACTION**

4 **Recovery of Penalties Pursuant to the Private Attorneys General Act**

5 Cal. Labor Code § 2699, *et seq.*

6 **(Against all DEFENDANTS)**

7 52. Plaintiffs repeat, re-allege, and incorporate by reference all other
8 paragraphs, as if fully set forth herein. Plaintiffs bring this cause of action on behalf of
9 themselves and all other Aggrieved Employees.

10 53. Pursuant to California Labor Code § 2698 *et seq.*, Plaintiffs are entitled to
11 act as private attorneys general to assess and recover civil penalties against Defendants
12 on behalf of Plaintiffs and any other current or former employees of Defendants for
13 violations of the California Labor Code.

14 54. In this case, Plaintiffs, on behalf of themselves and all other Aggrieved
15 Employees, seek relief for Defendants' unlawful employment policies, practices and
16 procedures, which have resulted in the failure of Defendants to pay Plaintiffs and
17 Aggrieved Employees all wages and finances due to them. The relevant and applicable
18 Labor Code violations include: Labor Code §§ 201, 202, 203, 204, 210, 221, 225.5, 226,
19 226, 226.3, 226.7, 223, 246, 247.5, 510, 512, 11040, 1182.12, 1194, 1194.2, 1197, 2802,
20 and IWC Order 4.

21 55. Plaintiffs assert claims on behalf of "Aggrieved Employees," defined as
22 "All persons who are or were employed, in non-exempt positions by Defendants who,
23 at any time from one year prior to the filing of this Complaint to present, worked at all
24 during one or more pay periods and who suffered one or more violations of the Labor
25 Code Sections asserted herein."

26 56. Plaintiffs have complied with the procedures for bringing suit specified in
27 California Labor Code Section 2699.3. Within the statutory time frame, Plaintiffs, on
28

1 behalf of themselves and the other Aggrieved Employees, gave the required notice to
2 the Labor and Workforce Development Agency (“LWDA”) and Defendants of the
3 specific provisions of the California Labor Code alleged to have been violated,
4 including the facts and theories to support the alleged violations. Plaintiffs also paid the
5 \$75.00 fee to the LWDA pursuant to SB 836. More than sixty-five (65) days have
6 passed and the LWDA has not responded to Plaintiffs’ letter. Furthermore, a copy of the
7 original complaint of this action was provided to the LWDA.

8 57. Defendants violated Labor Code §§ 201, 202, 203, 204, 210, 221, 225.5,
9 226, 226.3, 226.7, 223, 246, 247.5, 510, 512, 11040, 1182.12, 1194, 1194.2, 1197,
10 2802, and IWC Order 4 by the conduct described above as a matter of policy and/or
11 practice.

12 58. Accordingly, Plaintiffs seek to recover any and all civil penalties otherwise
13 capable of being collected under the law, including any statutes applicable under
14 section 2699.5, and any penalty provisions provided for by §§ 201, 202, 203, 204, 210,
15 221, 225.5, 226, 226.3, 226.7, 223, 246, 247.5, 510, 512, 11040, 1182.12, 1194,
16 1194.2, 1197, 2802, and IWC Order 4.

17 59. Labor Code section 2699(g) also provides for the payment of reasonable
18 attorneys’ fees and costs to a prevailing party seeking recovery under the Private
19 Attorney General Act. Accordingly, Plaintiffs seek to recover civil penalties, attorneys’
20 fees, and costs in an amount to be proven at trial pursuant to any applicable provisions
21 of the law.

22 PRAYER FOR RELIEF

23 WHEREFORE, Plaintiffs, on behalf of themselves and other Aggrieved
24 Employees, pray for judgment against Defendants as follows:

- 25 A. For payment of all statutory obligations and penalties as required by law;
- 26 B. For civil penalties to the extent permitted by law and Labor Code §§ 2698 and
27 2699 et seq;
- 28 C. Reasonable attorneys’ fees;

1 D. Accounting of Defendants' records for the liability period;

2 E. Costs of suit; and

3 F. Such other relief as the Court may deem just and proper.

4 **TRIAL BY JURY**

5 Pursuant to the Seventh Amendment to the Constitution of the United States of
6 America, Plaintiffs are entitled to, and demand, a trial by jury.

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8 DATED:

Jared M. Hartman
SEMNR & HARTMAN, LLP
Babak Semnar (SBN 224890)
bob@sandiegoconsumerattorneys.com
Jared M. Hartman (SBN 254860)
jared@sandiegoconsumerattorneys.com
41707 Winchester Road, Suite 201
Temecula, CA 92590
Telephone: (951) 293-4187
Fax: (888) 819-8230

14 MEYER WILSON CO., LPA
15 Matthew R. Wilson
16 Michael J. Boyle, Jr.
17 305 W Nationwide Blvd.
18 Columbus, OH 43215
19 Telephone: (614) 224-6000
20 Facsimile: (614) 224-6066
21 Email: mwilson@meyerwilson.com
22 mboyle@meyerwilson.com