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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

AARON LUANGPHONH, individually
and on behalf of all others similarly situated

Plaintiff,

vs.

BETTER MORTGAGE CORPORATION;
and DOES 1 through 20, inclusive,

Defendants.

Case No.: 30-2021-01190771-CU-OE-CXC

Assigned for All Purposes to:

Hon. Kirk Nakamura

Dept.: CX-103

**SECOND AMENDED COMPLAINT FOR
VIOLATION OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (CAL. LAB. CODE
§§ 2698, ET SEQ.)**

1 Plaintiff Aaron Luangphonh, individually, and on behalf of other aggrieved employees,
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Aaron Luangphonh (“Plaintiff”) brings this representative action
5 pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698 *et seq.*, against
6 defendants Better Mortgage Corporation, and DOES 1 through 20, inclusive (collectively,
7 “Defendants”), on behalf of himself individually and on behalf of other aggrieved employees
8 who are and were employed by Defendants as non-exempt employees throughout California.

9 2. Defendants are in the business of providing online mortgage lending.

10 3. Through this action, Plaintiff alleges that Defendants have engaged in a
11 systematic pattern of wage and hour violations under the California Labor Code and Industrial
12 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
13 unfair competition.

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) failing to pay all wages (including minimum wages and overtime wages);
- 17 (b) failing to provide lawful meal periods or compensation in lieu thereof;
- 18 (c) failing to authorize or permit lawful rest breaks or provide compensation
19 in lieu thereof;
- 20 (d) failing to provide accurate itemized wage statements;
- 21 (e) failing to pay all wages due upon separation of employment.

22 5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
23 others aggrieved employees in California to recover, among other things, civil penalties
24 pursuant to Labor Code §§ 2698 *et seq.*, interest, attorneys’ fees, costs and expenses.

25 **JURISDICTION AND VENUE**

26 6. This is a representative action pursuant to Private Attorneys General Act of 2004
27 (Cal. Lab. Code §§ 2698, *et seq.*)(“PAGA”). The civil penalties sought by Plaintiff exceeds the
28

1 minimal jurisdictional limits of the Superior Court and will be established according to proof at
2 trial.

3 7. This Court has jurisdiction over this action pursuant to the California
4 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes,
5 except those given by statutes to other courts. The statutes under which this action is brought do
6 not specify any other basis for jurisdiction.

7 8. This Court has jurisdiction over all Defendants because, upon information and
8 belief, they are citizens of California, have sufficient minimum contacts in California, or
9 otherwise intentionally avail themselves of the California market so as to render the exercise of
10 jurisdiction over them by the California courts consistent with traditional notions of fair play and
11 substantial justice.

12 9. Venue is proper in this Court because, upon information and belief, Defendants
13 reside, transact business, or have offices in this county, and the acts and omissions alleged herein
14 took place in this county.

15 **THE PARTIES**

16 10. Plaintiff is a resident of California and worked for Defendants in California
17 during the relevant time periods as alleged herein.

18 11. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter
19 mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as
20 employers, whose employees were and are engaged throughout this county and the State of
21 California.

22 12. Plaintiff is unaware of the true names or capacities of the defendants sued herein
23 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
24 Complaint and serve such fictitiously named defendants once their names and capacities become
25 known.

26 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20
27 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at
28 all relevant times.

14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the employer and/or joint employer of Plaintiff and other aggrieved employees.

15. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

16. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

17. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

18. At all relevant times mentioned herein, Defendants employed Plaintiff and other California residents as non-exempt employees at Defendants' California business location(s).

19. Defendant employed Plaintiff as a non-exempt employee at Defendants' California business location.

20. Defendants continue to employ non-exempt employees within California.

21. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who were knowledgeable about California's wage and hour laws, employment and personnel practices, and the requirements of California law.

1 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other aggrieved employees were entitled to receive wages
3 for all time worked (including minimum wages and overtime wages) and that they were not
4 receiving all wages earned for work that was required to be performed. In violation of the Labor
5 Code and IWC Wage Orders, Plaintiff and other aggrieved employees were not paid all wages
6 (including minimum wages and overtime wages) for all hours worked at the correct rate due to
7 requirements to work off-the-clock and Defendants' failure to correctly include other incentive
8 pay in the overtime rate, among other issues.

9 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and other aggrieved employees were entitled to receive all
11 required meal periods or payment of one (1) additional hour of pay at Plaintiff's and other
12 aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted meal
13 period. In violation of the Labor Code and IWC Wage Orders, Plaintiff and other aggrieved
14 employees did not receive all meal periods or payment of one (1) additional hour of pay at
15 Plaintiff's and other aggrieved employees' regular rate of pay when they did not receive a timely,
16 uninterrupted meal period.

17 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff other aggrieved employees were entitled to receive all rest
19 breaks or payment of one (1) additional hour of pay at Plaintiff's and other aggrieved employees'
20 regular rate of pay when a rest break was missed. In violation of the Labor Code and IWC Wage
21 Orders, Plaintiff and other aggrieved employees did not receive all rest breaks or payment of one
22 (1) additional hour of pay at Plaintiff's and other aggrieved employees' regular rate of pay when
23 a rest break was missed.

24 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other aggrieved employees were entitled to reimbursement
26 and/or indemnification for all necessary business expenditures or losses as a direct consequence
27 of the discharge of their duties, or of their obedience to the directions of Defendants. In violation
28 of the Labor Code and IWC Wage Orders, Plaintiff and other aggrieved employees incurred

1 necessary business expenses or losses, such as personal cell phone use required to use
2 Defendants' Mobile App, but were not reimbursed nor indemnified of such expenses or losses
3 that were incurred as a direct consequence of the discharge of their duties, or of their obedience
4 to the directions of Defendants

5 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and other aggrieved employees were entitled to receive
7 itemized wage statements that accurately showed the following information pursuant to the
8 Labor Code: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of
9 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
10 (4) all deductions, provided that all deductions made on written orders of the employee may be
11 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for
12 which the employee is paid; (7) the name of the employee and only the last four digits of his or
13 her social security number or an employee identification number other than a social security
14 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
15 hourly rates in effect during the pay period and the corresponding number of hours worked at
16 each hourly rate by the employee. In violation of the Labor Code, Plaintiff and other aggrieved
17 employees were not provided with accurate itemized wage statements.

18 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that the aggrieved employees were entitled to timely payment of wages due
20 upon separation of employment. In violation of the Labor Code, the aggrieved employees did not
21 receive payment of all wages within permissible time periods.

22 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known they had a duty to compensate Plaintiff and other aggrieved employees, and
24 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
25 intentionally failed to do so in order to increase Defendants' profits.

26 29. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
27 against Defendants on behalf of himself and other aggrieved employees to recover, among other
28 things, unpaid wages (including minimum wages and overtime wages), unpaid meal period

1 premium payments, unpaid rest period premium payments, interest, attorneys' fees, penalties,
2 costs, and expenses.

3 **FIRST CAUSE OF ACTION**

4 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

5 30. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs
6 as though fully set forth herein.

7 31. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
8 for a civil penalty to be assessed and collected by the Labor and Workforce Development
9 Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or
10 employees for violation of the Labor Code may, as an alternative, be recovered through a civil
11 action brought by an aggrieved employee on behalf of himself or herself and other current or
12 former employees pursuant to the procedures specified in Labor Code § 2699.3.

13 32. For all provisions of the Labor Code except those for which a civil penalty is
14 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
15 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
16 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
17 period in which Defendants violated these provisions of the Labor Code.

18 33. Defendants' conduct violates numerous Wage Order and Labor Code sections,
19 including, but not limited to, the following:

20 (a) violation of Labor Code §§ 201-203, 204, 210, 510, 558, 1182.12, 1194,
21 1197, and 1198 for failure to timely pay all earned wages (including
22 minimum wage and overtime wages) owed to Plaintiff and other aggrieved
23 employees during employment and upon separation of employment as
24 herein alleged;

25 (b) violation of Labor Code §§ 226.7 and 512 for failure to provide meal
26 periods to Plaintiff and other aggrieved employees and failure to pay
27 premium wages for missed meal periods as herein alleged;
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- 1 (c) violation of Labor Code § 226.7 for failure to permit rest breaks to
2 Plaintiff and other aggrieved employees and failure to pay premium wages
3 for missed rest periods as herein alleged;
- 4 (d) violation of Labor Code §§ 226 and 226.3 for failure to provide accurate
5 itemized wage statements to Plaintiff and other aggrieved employees as
6 herein alleged; and
- 7 (e) violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
8 accurate and complete records showing, among other things, the hours
9 worked daily by and the wages paid to aggrieved employees; and
- 10 (f) violation of Labor Code §§ 2800 and 2802 for failure to reimburse
11 Plaintiff and other aggrieved employees for necessary business expenses
12 as herein alleged.

13 34. Plaintiff is an “aggrieved employee” because he was employed by the alleged
14 violator and had one or more of the violations committed against him, and therefore is properly
15 suited to represent the interests of all other aggrieved employees.

16 35. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as
17 to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all
18 other aggrieved employees under PAGA.

19 36. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
20 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
21 cited above.

22 37. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
23 herein.

24 **PRAYER FOR RELIEF**

25 On Plaintiff’s own behalf and on behalf of all others similarly situated, Plaintiff prays for
26 relief and judgment against Defendants, jointly and severally, as follows:

- 27 1. For civil penalties against Defendants on behalf of all aggrieved employees and
28 the LWDA pursuant to Labor Code § 2698, *et seq.*;

1 2. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
2 law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code § 2698 *et*
3 *seq.*; and;

4 3. For such other relief as the Court deems just and proper.
5

6 Dated: August 12, 2021

AEGIS LAW FIRM, PC

7
8 By: 
9 Jordan Wysocki
10 Attorneys for Plaintiff Aaron Luangphonh
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1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
4 my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

5 On August 12, 2021, I served the foregoing document entitled:

6 • **SECOND AMENDED COMPLAINT FOR VIOLATION OF THE
7 CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT
8 OF 2004 (CAL. LAB. CODE §§ 2698, ET SEQ.)**

9 on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true
10 copy thereof on the party(ies) addressed below as follows:

11 Susannah K. Howard
12 O'MELVENY & MYERS, LLP
13 2 Embarcadero Center
14 San Francisco, CA 94111-3823
15 Phone: 415-984-8976
16 Facsimile: 415-984-8701
17 showard@omm.com

18 *Attorneys for Defendant:*

19 BETTER MORTGAGE CORPORATION

20 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
21 correspondence for mailing. Under that practice it would be deposited with the U.S.
22 Postal Service on that same day with postage thereon fully prepaid at Irvine, California
23 in the ordinary course of business. I am aware that on motion of the party served, service
24 is presumed invalid if postage cancellation date or postage meter date is more than one
25 day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed.*
26 *R. Civ. Proc.* 5(a); *Fed. R. Civ. Proc.* 5(c).)

27 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
28 practice of Aegis Law Firm PC for collection and processing correspondence for
overnight delivery, and I caused such document(s) described herein to be deposited for
delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
electronic transmission via the above listed email addresses on the date below. (*Cal.*
Code Civ. Proc. § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.*
5(b)(2)(A).)

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

Executed on August 12, 2021, at Irvine, California.


Andrea Drocco