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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

ANH DUONG and CHAU NGOC BAO
PHAN, as individuals and on behalf of all
others similarly situated,

Plaintiffs,

v.

LOAN FACTORY, INC., a California
corporation; THUAN NGUYEN, an
individual; and DOES 1-50, inclusive,

Defendants.

Case No.: **21CV382467**

CLASS ACTION COMPLAINT FOR:

1. **Recovery of Unpaid Minimum Wages and Liquidated Damages**
2. **Recovery of Unpaid Overtime**
3. **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
5. **Failure to Compensate for Nonproductive Time in Violation of Labor Code Section 226.2**
6. **Failure to Furnish Accurate Itemized Wage Statements**
7. **Failure to Pay All Wages Due and Owing Upon Separation of Employment**
8. **Failure to Provide Paid Sick Time**
9. **Failure to Reimburse Business Expenses and**
10. **Unfair Competition**

DEMAND FOR JURY TRIAL

1 Plaintiffs, ANH DUONG and CHAU NGOC BAO PHAN ("Plaintiffs"), as individuals and
2 on behalf of all others similarly situated, hereby file this Complaint against Defendants LOAN
3 FACTORY, INC., THUAN NGUYEN, and DOES 1-50, inclusive (referred to collectively
4 hereinafter as "Defendants"). Plaintiffs are informed and believe and thereon allege as follows:

5 **JURISDICTION AND VENUE**

6 1. This court possesses original subject matter jurisdiction over this matter. Venue is
7 proper in Santa Clara County, California, because Defendant LOAN FACTORY, INC. maintains
8 its principal place of business in Santa Clara County and some of the complained of conduct
9 occurred in this judicial district.

10 **THE PARTIES**

11 2. Plaintiff ANH DUONG ("DUONG") resides in the State of California. DUONG
12 worked for Defendants in the State of California during the relevant time period. DUONG was paid
13 primarily on a salary and or commission and or piece-rate basis and misclassified as exempt by
14 Defendants.

15 3. Plaintiff CHAU NGOC BAO PHAN ("PHAN") resides in the State of California.
16 PHAN worked for Defendants in the State of California during the relevant time period. PHAN was
17 paid primarily on a salary and or commission and or piece-rate basis and misclassified as exempt
18 by Defendants.

19 4. Defendant LOAN FACTORY, INC. is a California corporation that, at all relevant
20 times, was authorized to do business within the State of California and is doing business in the State
21 of California.

22 5. Based on information and belief, THUAN NGUYEN is an individual residing in the
23 State of California and is, and at all relevant times has been, the Chief Executive Officer of LOAN
24 FACTORY, INC. On information and belief, THUAN NGUYEN devised and implemented the
25 policies at issue in this complaint and "caused" these violations as that term is used in Labor Code
26 §§ 558 and 1197.1. Pursuant to Labor Code §§558 and 1197.1, THUAN NGUYEN is liable as a
27 person who "caused" the violations to occur.

28 6. The true names and capacities of the DOE Defendants sued herein as DOES 1

1 through 50, inclusive, are currently unknown to Plaintiffs, who therefore sue each such Defendant
2 by said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible
3 for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend this Complaint to
4 reflect the true names and capacities of the Doe Defendants when such identities become known.

5 7. Plaintiffs are further informed and believes that, at all relevant times, each Defendant
6 was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling
7 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
8 interest of some or all of the other Defendants, and was engaged with some or all of the other
9 defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
10 other Defendants so as to be liable for their conduct with respect to the matters alleged in this
11 complaint. Plaintiffs are further informed and believes and thereon alleges that each Defendant acted
12 pursuant to and within the scope of the relationships alleged above, and that at all relevant times,
13 each Defendant knew or should have known about, authorized, ratified, adopted, approved,
14 controlled, aided and abetted the conduct of all other Defendants.

15 8. Whenever and wherever reference is made in this complaint to any act or failure to
16 act by a Defendants or co-Defendant, such allegations and references shall also be deemed to mean
17 the acts and/or failures to act by each Defendants acting individually, jointly and severally.

18 **CLASS ALLEGATIONS**

19 9. Plaintiffs bring this action on behalf of themselves and all others similarly situated
20 as a class action pursuant to Code of Civil Procedure section 382. **The class Plaintiffs seek to**
21 **represent is defined into two subclasses as follows:** (1) All employees compensated on a salary
22 basis and misclassified as exempt who were employed or jointly employed by Defendants in
23 California at any time within the four years prior to the filing of the initial complaint; and (2) All
24 non-exempt, hourly and or commission and or piece-rate compensated employees who were
25 employed or jointly employed by Defendants in California at any time within the four years prior to
26 the filing of the initial complaint. (collectively referred to as “the Class Members”).

- 27 a. Numerosity: While the exact number of Class Members is unknown to Plaintiffs at this
28 time, the class is so numerous that the individual joinder of all members is impractical

1 under the circumstances of this case.

2 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment because
3 common questions of law and fact predominate over individual issues. Common questions
4 include, but are not limited to, the following: (1) whether Defendants understated hours
5 worked and failed to pay all amounts due to Plaintiffs and the Class Members for wages
6 earned, including minimum and overtime wages, under California law; (2) whether
7 Defendants provided Plaintiffs and the Class Members with all meal periods or premium
8 payments in lieu thereof in compliance with California law; (3) whether Defendants
9 provided Plaintiffs and the Class members with all rest periods or premium payments in lieu
10 thereof, in compliance with California law; (4) whether Defendants paid separately for
11 nonproductive time during pay periods Plaintiffs and the Class Members were compensated
12 on a commission and or piece-rate basis as required under California law; (5) whether
13 Defendants failed to reimburse Plaintiffs and the Class Members for all business expenses;
14 (6) whether Defendants failed to pay Plaintiff and the Class Members all sick leave pay in
15 compliance with California law; (7) whether Defendants provided Plaintiffs and the Class
16 Members with complete, accurate, itemized wage statements in compliance with California
17 law by displaying, inter-alia, actual hours worked, gross and net wages for the pay period,
18 all hours worked at each applicable rate of pay, the number of piece-rate units earned and
19 any applicable piece rate, and per Labor Code section 226.2, during pay periods when paid
20 on a piece-rate basis, the total hours of compensable rest time, the total hours for other non-
21 productive time, the rates of compensation for these hours and the gross wages paid for these
22 hours; (8) whether Defendants timely paid Plaintiffs and the Class Members all wages due
23 upon separation of employment; and (9) whether Defendants violated California Business
24 and Professions Code sections 17200, et seq.

25 c. Ascertainable Class. The proposed class is ascertainable as its members can be identified
26 and located using information in Defendants' business, payroll and personnel records.

27 d. Numerosity. The plaintiff class is so numerous that the individual joinder of all members
28 is impractical under the circumstances of this case. While the exact number of Class

1 Members is unknown to Plaintiffs, Plaintiffs are informed and believe the class consists
2 of at least 100 individuals.

3 e. Typicality. Plaintiffs' claims are typical of the claims of the Class Members. Plaintiffs
4 suffered a similar injury as the other Class Members as a result of Defendants' common
5 practices regarding, *inter-alia*, failure to calculate and pay all owed minimum and
6 overtime wages, failure to provide proper meal and rest periods or premium
7 compensation in lieu thereof, failure to pay proper sick leave pay, failure to reimburse
8 for incurred business-related expenses, failure to provide accurate and complete wage
9 statements that complied with Labor Code sections 226 and failure to timely pay all
10 wages due upon separation of employment. In addition, Plaintiffs will fairly and
11 adequately protect the interests of the Class Members. Plaintiffs have no interests
12 adverse to the interests of the other class members.

13 f. Superiority. A class action is superior to other available means for the fair and efficient
14 adjudication of this controversy since individual joinder of all members of the class is
15 impractical. Class action treatment will permit a large number of similarly situated
16 persons to prosecute their common claims in a single forum simultaneously, efficiently,
17 and without the unnecessary duplication of effort and expense that numerous individual
18 actions would engender. Furthermore, as the damages suffered by each individual
19 member of the class may be relatively small, the expenses and burden of individual
20 litigation would make it difficult or impossible for individual members of the class to
21 redress the wrongs done to them, while an important public interest will be served by
22 addressing the matter as a class action. The cost to the court system of adjudication of
23 such individualized litigation would be substantial. Individualized litigation would also
24 present the potential for inconsistent or contradictory judgments. Finally, the alternative
25 of filing a claim with the California Labor Commissioner is not superior, given the lack
26 of discovery in such proceedings, the fact that there are fewer available remedies, and
27 the losing party has the right to a trial de novo in the Superior Court.
28

FACTUAL ALLEGATIONS

10. During the four-year period preceding filing of this complaint, Plaintiffs, and each of the Class Members, were employed by Defendants in the State of California. Plaintiffs were employed by Defendants as loan officer assistants during the relevant time period. Plaintiffs typically worked at least ten hours per day. Plaintiffs were paid primarily on a salary and or commission and or piece-rate basis and misclassified as exempt by Employer. Notably, Plaintiffs did not meet the inside sales test because they were not paid 1.5 times the minimum wage and did not spend more than 50% of their time performing sales activities/did not receive more than 50% of their pay on a commission basis. Moreover, Plaintiffs worked out of Defendants' facility precluding the application of the outside sales exemption, and Plaintiffs did not meet the managerial/administrative exemption. At all times referenced herein, Defendants exercised control over Plaintiffs and each of the Class Members and suffered and/or permitted them to work.

11. Plaintiffs were unable to take timely, duty-free, thirty-minute uninterrupted meal periods, often being forced to take late meal periods or work through part or all of their meal periods due to the nature and constraints of their jobs and or commentary from management pressuring them to take non-compliant meal periods or skip meal periods completely. Notably, Plaintiffs were required to monitor their cell phones/other communication devices at all times during their workdays, including during any purported meal periods, rendering said meal periods on duty. Defendants failed to record meal periods at all, and Plaintiffs were never once paid a meal period premium for these missed/improper meal periods.

12. Plaintiffs did not receive timely, duty-free, ten- minute rest periods every four (4) hours worked or major fraction thereof. Plaintiffs were often required to take late rest periods or work through part or all of their rest periods due to the nature and constraints of the job and or commentary from management to take late/shorter rest periods than they were entitled to or skip rest periods. Notably, Plaintiffs were required to monitor their cell phones/other communication devices at all times during their workdays, including during any purported rest periods, rendering said rest periods on duty. Based on information and belief, Plaintiffs were required to remain on the job site premises during any rest periods, thus remaining under employer control and rendering

1 any said rest periods improper. Plaintiffs were never once paid a rest period premium for these
2 missed/improper rest periods.

3 13. Defendants failed to compensate Plaintiffs for all time worked, including but not
4 limited to, time spent working through uncompensated meal periods. Defendants implemented a
5 policy and practice of automatically deducting/requiring Plaintiffs to deduct/clock out for at least
6 thirty minutes per shift for purported meal periods despite Defendants having actual or constructive
7 knowledge that Plaintiffs were often working through all or part of these meal periods. Moreover,
8 Defendants had a policy and practice of requiring Plaintiffs to perform regular off-the-clock work,
9 including time spent taking calls when out of the office, including in the evenings and on the
10 weekends. This off-the-clock work resulted in violations of California minimum wage laws.
11 Additionally, based on information and belief, the commission/piece-rate-based compensation
12 scheme instituted by Defendants resulted in pay periods during which Plaintiffs were denied the
13 minimum wage for all hours worked. Defendants paid Plaintiffs on a commission and/or piece-rate
14 basis, at least during some pay periods, during the relevant time period. However, Defendants failed
15 to separately compensate for all non-commission/non-piece rate related activities/all nonproductive
16 time, including but not limited to, all rest periods. Defendants' failure to separately so compensate
17 resulted in Plaintiffs not being paid for all hours worked in violation of California minimum wage
18 laws and Labor Code section 226.2. Given that Plaintiffs typically worked over ten (10) hours in a
19 day and more than forty hours in a week, this off-the-clock work also resulted in the underpayment
20 of owed overtime (and "double time") wages.

21 14. Based on information and belief, Defendants did not provide Plaintiffs with any sick
22 leave pay, or Defendants improperly accrued the amount of sick leave pay owed for failure to base
23 the owed sick leave pay on the correct number of hours worked due to requiring Plaintiffs to perform
24 off-the-clock work as described above. On further information and belief, Defendants failed to
25 provide notice of the correct sick leave amount balance available to Plaintiffs.

26 15. Defendants failed to furnish Plaintiffs with complete and accurate wage statements
27 in compliance with Labor Code section 226. The wage statements do not accurately reflect the total
28 gross and net wages earned, including, all earned minimum and overtime wages, do not accurately

1 reflect all applicable hourly rates in effect during the pay period and the corresponding number of
2 hours worked at each hourly rate, and for pay periods during which Plaintiffs were compensated on
3 a piece-rate basis, do not display the number of piece-rate units earned and any applicable piece
4 rate. Additionally, Defendants failed to include on the wage statements for pay periods during which
5 Plaintiffs were compensated on a commission/piece-rate basis, the total hours of compensable rest
6 time, the total hours for other non-productive time, the rates of compensation for those hours, and
7 the gross wages paid for those hours. Furthermore, due to Defendants' practice of requiring
8 Plaintiffs to work through uncompensated meal periods and other off-the-clock practices described
9 herein, Defendants' wage statements do not display the actual hours Plaintiffs worked, a requirement
10 of Labor Code section 226. Accordingly, Defendants have violated Labor Code sections 226 and
11 226.2 as to Plaintiffs.

12 16. Defendants failed to reimburse Plaintiffs for all necessary business-related
13 expenditures incurred by Plaintiffs in direct discharge of their duties, including but not limited to,
14 charges incurred in connection with cell phone/data plan usage. For example, Defendants instructed
15 and required Plaintiffs to use their personal cell phones/other communication devices for various
16 work-related activities, such as, but not limited to, responding to customer inquiries and
17 coordinating with management, yet did not reimburse Plaintiffs for any cell phone/data plan charges
18 incurred in connection therewith. Accordingly, Employer violated Labor Code section 2802 as to
19 Plaintiffs.

20 17. Upon separation of employment, Defendants failed to furnish Plaintiffs with a final
21 paycheck containing all earned and unpaid wages, including, all earned and unpaid minimum and
22 overtime wages.

23 18. Plaintiffs are informed and believe and allege thereon that Defendants engaged in
24 these same herein described unlawful practices with regard to all of the Class Members, and that
25 Defendants applied these same herein described unlawful practices to all employees who were
26 compensated on a salary basis and misclassified as exempt and all non-exempt, hourly and or
27 commission and or piece-rate compensation-based employees that it applied to Plaintiffs.
28

1 **FIRST CAUSE OF ACTION**

2 **Recovery of Unpaid Minimum Wages and Liquidated Damages**
3 **(Against All Defendants)**

4 19. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

5 20. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
6 Commission ("IWC") Wage Orders, an employer must pay its employees for all hours worked, up
7 to 40 per week or eight (8) per day, at a regular time rate no less than the mandated minimum wage.
8 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
9 period is unlawful.

10 21. Defendants violated California's minimum wage laws by failing to compensate
11 Plaintiffs and the Class Members for all time worked, including but not limited to, time spent
12 working through uncompensated meal periods. Defendants implemented a policy and practice of
13 automatically deducting/requiring Plaintiffs and the Class Members to deduct/clock out for at least
14 thirty minutes per shift for purported meal periods despite Defendants having actual or constructive
15 knowledge that Plaintiffs and the Class Members were often working through all or part of these
16 meal periods. Moreover, Defendants had a policy and practice of requiring Plaintiffs and the Class
17 Members to perform regular off-the-clock work, including time spent taking calls when out of the
18 office, including in the evenings and on the weekends. This off-the-clock work resulted in violations
19 of California minimum wage laws. Additionally, based on information and belief, the
20 commission/piece-rate-based compensation scheme instituted by Defendants resulted in pay periods
21 during which Plaintiffs and the Class Members were denied the minimum wage for all hours
22 worked. Defendants paid Plaintiffs and the Class Members on a commission and/or piece-rate basis,
23 at least during some pay periods, during the relevant time period. However, Defendants failed to
24 separately compensate for all non-commission/non-piece rate related activities/all nonproductive
25 time, including but not limited to, all rest periods. Defendants' failure to separately so compensate
26 resulted in Plaintiffs and the Class Members not being paid for all hours worked in violation of
27 California minimum wage laws and Labor Code section 226.2.

28 22. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiffs and the Class Members

1 are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus attorney's
2 fees and costs, in an amount to be proved at trial.

3 **SECOND CAUSE OF ACTION**

4 **Recovery of Unpaid Overtime**

5 **(Against Defendants LOAN FACTORY, INC., and DOES 1-50, inclusive)**

6 23. Plaintiffs incorporate by reference all preceding paragraphs as if fully alleged herein.

7 24. California law provides employees in California must be paid overtime, equal to 1.5
8 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or (8) eight
9 per day and must be paid double wages for all hours worked in excess of 12 per day, unless they are
10 exempt. Defendants violated California's overtime laws by failing to correctly calculate the total
11 number of hours worked by Plaintiffs and the Class Members by virtue of, among other things,
12 requiring Plaintiffs and the Class Members to work through uncompensated meal periods and by
13 requiring Plaintiffs and the Class Members to perform additional off-the-clock work, including,
14 uncompensated hours regularly worked in the evenings and on weekends. Given that Plaintiffs and
15 the Class Members typically worked at least ten hours per day and more than forty hours per week,
16 this off-the-clock work resulted in the miscalculation and underpayment of owed overtime (and
17 "double time") wages.

18 25. Defendants' conduct described above is in violation of California Labor Code
19 sections 510, 511 and 1194, and all applicable IWC Wage Orders.

20 26. Plaintiffs and the Class Members are entitled to recover all unpaid overtime wages,
21 plus attorney's fees and costs, in an amount to be proved at trial.

22 **THIRD CAUSE OF ACTION**

23 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

24 **(Against Defendants LOAN FACTORY, INC. and DOES 1-50, inclusive)**

25 27. Plaintiffs incorporate by reference all preceding paragraphs as if fully alleged
26 herein.

27 28. Pursuant to Labor Code section 512 and the IWC Wage Orders, Defendants were
28 required to provide Plaintiffs and the Class Members with one 30-minute meal break free from all
duties for all shifts longer than five (5) hours, and a second 30-minute meal break free from all
duties for all shifts longer than 10 hours. Meal periods can be waived, but only under the following

1 circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more
2 than six (6) hours, the required meal period may be waived by mutual consent of the employer and
3 employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more
4 than twelve (12) hours, the required second meal period may be waived by mutual consent of the
5 employer and employee, but only if the first meal period was not waived. Employers covered by the
6 Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for
7 shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly
8 record a valid meal period, it is presumed no meal period was provided.

9 29. Plaintiffs were unable to take timely, duty-free, thirty-minute uninterrupted meal
10 periods, often being forced to take late meal periods or work through part or all of their meal periods
11 due to the nature and constraints of their jobs and or commentary from management pressuring them
12 to take non-compliant meal periods or skip meal periods completely. Notably, Plaintiffs were
13 required to monitor their cell phones/other communication devices at all times during their
14 workdays, including during any purported meal periods, rendering said meal periods on duty.
15 Defendants failed to record meal periods at all. Defendants also failed to pay Plaintiffs and the Class
16 Members an additional hour of wages at their regular rate(s) of pay for each workday a proper meal
17 period was not provided. Based on information and belief, Defendants pay records do not reflect
18 the payment of a single meal period premium during the relevant time period. While missed meal
19 breaks are one of those things that will, on occasion, happen, a systemic absence of records showing
20 the provision of meal periods more than likely shows systemic violations; indeed, in such a situation,
21 an employer has and must always carry the burden of proof in establishing the affirmative defense
22 of waiver. *Safeway, Inc. v. Superior Court* (2015) 238 Cal. App. 4th 1138, 1159. Employers are
23 required to pay premiums for missed meal breaks, regardless of the reasons why an employee misses
24 their break.

25 30. Defendants failed to provide Plaintiffs and the Class Members with all required meal
26 periods, or with proper compensation in lieu thereof. As a result, under Labor Code section 226.7,
27 Plaintiffs and the Class Members are entitled to one additional hour's pay at the proper premium
28

1 pay rate for each day a meal period was missed, late or interrupted, all in an amount to be proved at
2 trial.

3 **FOURTH CAUSE OF ACTION**

4 **Failure to Provide Rest Periods or Compensation in Lieu Thereof** 5 **(Against Defendants LOAN FACTORY, INC. and DOES 1-50, inclusive)**

6 31. Plaintiffs incorporate by reference all preceding paragraphs as if fully alleged herein.

7 32. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
8 to authorize or permit an employee to take a rest period of ten net minutes for every four hours
9 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
10 “insofar as practicable.” The rest period requirement obligates employers to permit and authorize
11 employees to take off-duty rest periods, meaning employers must relieve employees of all duties
12 and relinquish control over how employees spend their time. *Augustus v. ABM Security Services,*
13 *Inc.*, (2016) 5 Cal.5th 257. Accordingly, an employer cannot require employees to stay on the work
14 premises during their rest periods as “one cannot square the practice of compelling employees to
15 remain at the ready, tethered by time and policy to *particular locations* or *communications devices*,
16 with the requirement to relieve employees of all work duties and employer control during 10-minute
17 rest periods. [emphasis added].” *Id.* at 269. If the employer fails to provide any required rest period,
18 the employer must pay the employee one hour of pay at the employee’s regular rate of compensation
19 for each workday the employer did not provide at least one legally required rest period, pursuant to
20 Labor Code section 226.7.

21 33. Plaintiffs and the Class Members did not receive duty-free, timely, ten-minute
22 rest periods every four (4) hours worked or major fraction thereof. There was no policy/practice
23 implemented to ensure Plaintiffs and the Class Members were able to take timely compliant rest
24 periods; rather, any purported rest periods were taken as time permitted and were improper
25 irrespective of the fact that they were not always timely, uninterrupted or a full ten-minutes in length,
26 *to wit*: Based on information and belief, Plaintiffs and the Class Members were required to monitor
27 their cell phones/other communication devices for work communications and remain on the job site
28 premises during their rest periods and thus remained under employer control rendering any said rest
periods on-duty and thereby improper. Defendants further employed policies and procedures which

1 ensured Plaintiffs and the Class Members did not receive any premium wages to compensate them
2 for workdays that they did not receive all legally required rest periods.

3 34. Defendants are therefore liable to Plaintiffs and the Class Members for one hour of
4 additional pay at the regular rate of compensation for each workday that a require rest periods was
5 not provided, pursuant to California Labor Code section 226.7 and the applicable Wage Order, plus
6 pre-judgment interest.

7 **FIFTH CAUSE OF ACTION**

8 **Failure to Compensate for Nonproductive Time in Violation of Labor Code Section 226.2**
9 **(Against Defendants LOAN FACTORY, INC. and DOES 1-50, inclusive)**

10 35. Plaintiffs incorporate by reference all preceding paragraphs as if fully alleged herein.

11 36. Labor Code section 226.2 requires an employer to pay employees compensated on a
12 piece-rate basis separately for rest and recovery periods and other nonproductive time, apart from
13 any piece-rate pay. This statute further requires an employer to include on the wage statements for
14 these employees the total hours of compensable rest and recovery period, the total hours for other
15 non-productive time, the rates of compensation for these hours, and the gross wages paid for these
16 hours. In addition, the statute requires that employees shall be compensated for rest and recovery
17 periods at a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined
18 by dividing the total compensation for the workweek, exclusive of compensation for rest and
19 recovery periods and any premium compensation for overtime, by the total hours worked during the
20 workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage.
21 California courts have held that this statute also applies to employees paid on a commissioned basis.

22 37. During the Class Period, Employer failed to comply with Labor Code section 226.2.
23 Specifically, Employer failed to pay Plaintiffs and the Class Members who were paid on a
24 commission and or piece-rate basis separately for their rest periods and other nonproductive time
25 and/or failed to pay them for this time at the correct rates. Defendants further failed to include the
26 information on Plaintiffs and the Class Members' wage statements required by this statute.

27 38. As a direct and proximate result of Defendants' violation of Labor Code Section
28

226.2 as alleged herein, Plaintiffs and the Class Members have sustained damages, including but not limited to, loss of earnings for hours worked, prejudgment interest, and costs and attorneys' fees, pursuant to the statute and other applicable law. The violations described herein also subject Defendants to penalties under Labor Code section 226.3.

SIXTH CAUSE OF ACTION

Failure to Furnish Accurate Itemized Wage Statements (Against Defendants LOAN FACTORY, INC. and DOES 1-50, inclusive)

39. Plaintiffs incorporate by reference all preceding paragraphs as if fully alleged herein.

40. Pursuant to California Labor Code § 226, subdivision (a), Plaintiffs and the Class Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized wage statement accurately stating the following:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

41. During the Class Period, Defendants intentionally failed to furnish Plaintiffs and the Class Members with complete and accurate wage statements that complied with Labor Code section 226. The wage statements do not accurately reflect the total gross and net wages earned, including, all earned minimum and overtime wages, do not accurately reflect all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, and for pay periods during which Plaintiffs and the Class Members were compensated on a piece-rate basis, do not display the number of piece-rate units earned and any applicable piece rate. Additionally, Defendants failed to include on the wage statements for pay periods during which

1 Plaintiffs and the Class Members were compensated on a commission and or piece-rate basis, the
2 total hours of compensable rest time, the total hours for other non-productive time, the rates of
3 compensation for those hours, and the gross wages paid for those hours. Furthermore, due to
4 Defendants' meal period auto-deduction and other off-the-clock practices described herein,
5 Defendants' wage statements do not display the actual hours Plaintiffs and the Class Members
6 worked, a requirement of Labor Code section 226. Accordingly, Defendants have violated Labor
7 Code sections 226 and 226.2 as to Plaintiffs and the Class Members.

8 42. As a result of Defendants' unlawful conduct, Plaintiffs and the Class Members have
9 suffered injury. The absence of accurate information on their wage statements has prevented earlier
10 challenges to Defendants' unlawful pay practices, will require discovery and mathematical
11 computations to determine the amount of wages owed, and will cause difficulty and expense in
12 attempting to reconstruct time and pay records. Defendants' conduct led to the submission of
13 inaccurate information about wages and amounts deducted from wages to state and federal
14 government agencies. As a result, Plaintiffs and the Class Members are required to participate in
15 this lawsuit and create more difficulty and expense for Plaintiffs and the Class Members from having
16 to reconstruct time and pay records than if Defendants had complied with their legal obligations.

17 43. Pursuant to California Labor Code section 226(e), Plaintiffs and the Class Members
18 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
19 violation occurred and one hundred dollars per employee per violation for each subsequent pay
20 period, not to exceed an aggregate penalty of four thousand dollars per employee.

21 44. Pursuant to California Labor Code § 226(h), Plaintiffs and the Class Members are
22 entitled to bring an action for injunctive relief to ensure Defendants' compliance with California
23 Labor Code § 226(a). Injunctive relief is warranted because Defendants continue to provide
24 currently employed Class Members with inaccurate wage statements in violation of California Labor
25 Code § 226(a) and currently employed Class Members have no adequate legal remedy for the
26 continuing injuries that will be suffered as a result of Defendants' ongoing unlawful conduct.
27 Injunctive relief is the only remedy available for ensuring Defendants' compliance with California
28 Labor Code § 226(a).

45. Pursuant to California Labor Code §§ 226(e) and 226(h), Plaintiffs and the Class Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable attorneys' fees, and costs of suit.

SEVENTH CAUSE OF ACTION

**Failure to Pay All Wages Due and Owing Upon Separation of Employment
(Against Defendants LOAN FACTORY, INC. and DOES 1-50, inclusive)**

46. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

47. Pursuant to California Labor Code sections 201 and 202, Plaintiffs and the Class Members were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged employees were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Employees who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid prior to resignation at the time of resignation.

48. Defendants failed to timely pay Plaintiffs and the Class Members all wages earned and unpaid upon separation of employment, including all earned and unpaid minimum and overtime wages, in accordance with California Labor Code sections 201, 202, and 203.

49. Defendants' failure to pay Plaintiffs and the Class Members all wages earned prior to separation of employment timely in accordance with California Labor Code sections 201, 202, and 203 was willful. Defendants had the ability to pay all wages earned by its employees prior to separation of employment in accordance with California Labor Code sections 201, 202, 203, but intentionally adopted policies or practices incompatible with the requirements of California Labor Code sections 201, 202, and 203. As a result of Defendants' conduct, Plaintiffs and the Class Members have suffered injuries.

50. Pursuant to California Labor Code section 203, Plaintiffs and the Class Members are entitled to continuation of their wages, from the day their earned and unpaid wages were due upon separation until paid, up to a maximum of 30 days.

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2 **EIGHTH CAUSE OF ACTION**

3 **Failure to Provide Paid Sick Time**

4 **(Against Defendants LOAN FACTORY, INC. and DOES 1-50, inclusive)**

5 51. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

6 52. California Labor Code section 246(1)(1) provides that paid sick time for non-exempt
7 employees be “calculated in the same manner as the regular rate of pay for the workweek in which
8 the employee uses paid sick time, whether or not the employee actually works overtime in the
9 workweek.”

10 53. California Labor Code section 246(1)(2) further provides that paid sick time for non-
11 exempt employees be “calculated by dividing the employee’s total hours worked in the full pay
12 periods of the prior 90 days of employment.”

13 54. Defendants violated Labor Code section 246 by failing to pay all owed sick leave
14 time. Defendants intentionally misclassified Plaintiffs and the Class Members as exempt to avoid
15 paying sick leave. Based on information and belief, Defendants either did not provide sick leave
16 pay at all or improperly accrued the amount of sick leave pay owed for failure to base the owed sick
17 leave pay on the correct number of hours worked as a result of requiring its employees to perform
18 the off-the-clock work described herein. On further information and belief, Defendants failed to
19 provide notice of the correct sick leave amount balance left for Plaintiffs and the Class Members.

20 **NINTH CAUSE OF ACTION**

21 **Failure to Reimburse Business Expenses**

22 **(Against All Defendants)**

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

24 56. Pursuant to California Labor Code section 2802, Plaintiffs and the Class Members
25 were entitled to be reimbursed for all necessary expenses associated with carrying out orders by
26 their employer and/or carrying out the duties assigned by their employers.

27 57. Defendants failed to reimburse Plaintiffs and the Class Members for all necessary
28 business-related expenditures incurred in direct discharge of their duties, including but not limited
to, charges incurred in connection with cell phone/data plan usage. For example, Defendants
instructed and required Plaintiffs and the Class Members to use their personal cell phones/other

1 communication devices for work-related purposes yet did not reimburse Plaintiffs and the Class
2 Members for the expenses incurred in connection therewith. Accordingly, Defendants violated
3 Labor Code section 2802 as to Plaintiffs and the Class Members. Defendants' failure to provide
4 Plaintiffs and the Class Members with full reimbursement for all reasonable expenses associated
5 with carrying out their duties required that Plaintiffs and the Class Members subsidize and/or carry
6 the burden of business expenses in violation of Labor Code section 2802.

7 58. As a result of Defendants' unlawful conduct, Plaintiffs and the Class Members have
8 suffered injury in that they were not completely reimbursed as mandated by California law.

9 59. Pursuant to California Labor Code section 2802, Plaintiffs and the Class Members
10 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
11 attorneys' fees, and costs of suit.

12 **TENTH CAUSE OF ACTION**

13 **Unfair Competition**

14 **(Against Defendants LOAN FACTORY, INC. and DOES 1-50, inclusive)**

15 60. Plaintiffs incorporate by reference all preceding paragraphs as if fully alleged herein.

16 61. The unlawful conduct of Defendants alleged herein constitutes unfair competition
17 within the meaning of California Business and Professions Code section 17200. This unfair conduct
18 includes inter-alia, Defendants' misclassification of non-exempt employees as exempt, Defendants'
19 failure to pay minimum and overtime wages by virtue of requiring regular off-the-clock work,
20 failure to authorize or permit, or provide, all required meal and rest periods or pay proper premiums
21 in lieu thereof, failure to provide proper notice and pay of sick time benefits, failure to furnish
22 complete and accurate itemized wage statements; failure to reimburse business expenses, and failure
23 to timely pay all wages due during and upon separation of employment. Due to its unfair and
24 unlawful business practices in violation of the California Labor Code, Defendants have gained a
25 competitive advantage over other comparable companies doing business in the State of California
26 that comply with their obligations to authorize or permit rest and meal periods or pay proper meal
27 and rest period premiums in lieu thereof, to provide proper notice and properly accrue and pay sick
28 time benefits, to provide complete and accurate itemized wage statements, to pay all owed minimum

and overtime wages, to reimburse for business expenses, and to pay all wages timely upon separation of employment of their employees.

62. As a result of Defendants' unfair competition as alleged herein, Plaintiffs and the Class Members have suffered injury in fact and lost money or property, as described in more detail above. Pursuant to California Business and Professions Code section 17200, et seq., Plaintiffs and Class Members are entitled to restitution of all wages and other monies rightfully belonging to them that Defendants failed to pay and wrongfully retained by means of its unlawful and unfair business practices. Plaintiffs also seek an injunction against Defendants on behalf of the Class Members enjoining Defendants, and any and all persons acting in concert with it, from engaging in each of the unlawful practices, policies and patterns set forth herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment, on behalf of themselves and the Class Members:

1. For an order that the action be certified as a class action;
2. For an order that Plaintiffs be appointed class representative;
3. For an order that counsel for Plaintiffs be appointed class counsel;
4. For compensatory damages according to proof;
5. For an order requiring Defendants to make restitution of all amounts wrongfully withheld from Plaintiffs and the Class Members;
6. For pre-judgment interest as permitted by law;
7. For attorney's fees and costs reasonably incurred; and
8. For such other and further relief that the Court deems just and proper.

Dated: May 26, 2021

CROSNER LEGAL, PC

By: 
Michael R. Crosner, Esq.

1 Zachary M. Crosner, Esq.
2 Blake R. Jones, Esq.
3 Attorneys for Plaintiffs,
4 ANH DUONG and CHAU NGOC BAO
5 PHAN

6 **DEMAND FOR JURY TRIAL**

7 Plaintiffs demand a trial by jury on all claims so triable.

8 Dated: May 26, 2021

CROSNER LEGAL, PC

9
10 By: 

11 Michael R. Crosner, Esq.
12 Zachary M. Crosner, Esq.
13 Blake R. Jones, Esq.
14 Attorneys for Plaintiffs,
15 ANH DUONG and CHAU NGOC BAO
16 PHAN
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