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Assigned for all Purposes

Judge William Claster

cx-104

Attorneys for Plaintiffs and putative Class/Subclasses

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

MOHAMMAD EKHMIES, an individual;
SALVADOR OCHOA, an individual; each as an
individual and on behalf of all others similarly
situated,

Plaintiffs,

v.

LOANDEPOT.COM, LLC, a Delaware
corporation, and DOES 1-50, inclusive,

Defendant.

Case No.: 30-2022-01244317-CU-OE-CXC

CLASS ACTION COMPLAINT FOR:

- 1) FAILURE TO PROVIDE MEAL PERIODS (Labor Code §§ 226.7, 512, and 1198);**
- 2) FAILURE TO PROVIDE REST PERIODS (Labor Code §§ 226.7, 1198, and IWC NO. 4-2001);**
- 3) FAILURE TO PAY OVERTIME (Labor Code § 510);**
- 4) FAILURE TO MAINTAIN ACCURATE RECORDS (Labor Code §1174(d));**
- 5) FAILURE TO PAY ALL WAGES WHEN DUE (Labor Code § 204);**
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Labor Code § 226 (a), 226.3);**
- 7) FAILURE TO REIMBURSE WORK EXPENSES (Labor Code § 2802);**
- 8) FAILURE TO TIMELY PAY WAGES UPON TERMINATION (Labor Code §§ 201-203);**
- 9) FAILURE TO PRODUCE EMPLOYEE RECORDS UPON REQUEST (Labor Code § 1198.5(k);**

**10) UNFAIR BUSINESS PRACTICES (In
Violation of Bus. & Prof. Code § 17200)**

{JURY TRIAL DEMANDED}

Plaintiffs Mohammad Ekhmies and Salvador Ochoa, each as an individual, on behalf of themselves, and on behalf of all others similarly situated (collectively “Plaintiffs”), hereby brings this Complaint (“Complaint”) against Defendant LOANDEPOT.COM, LLC (“Defendant”), and DOES 1-50, inclusive, (collectively, “Defendants”). Plaintiffs hereby state and allege as follows:

INTRODUCTION

1. This is a Class Action, pursuant to California Code of Civil Procedure section 382, against LOANDEPOT.COM, LLC, (“Defendant”) a Delaware limited liability company, and DOES 1 through 50, inclusive, (collectively, “Defendants”) for, among other things: failure to provide rest and meal breaks; failure to pay overtime wages; failure to provide accurate wage statements; failure to reimburse work-related expenses incurred in the discharge of job duties; failure to pay all wages due upon termination; failure to maintain accurate records of hours worked and wages earned; failure to produce employee records upon request. By failing to lawfully pay the Plaintiffs alleges they are/were owed, Defendants also engaged in unfair, fraudulent, and deceptive business practices within the meaning of Business and Professions Code 17200 et seq.

2. Plaintiffs thus bring this action on behalf of themselves, and other individuals similarly situated pursuant to Labor Code §§ 201- 203, 204, 226,(a) 226.7, 510, 512, 1174 (d), 1194, 1198, 2802, and Industrial Wage Commission (“IWC”) Wage Order No. 4-2001 for unpaid wages, unpaid overtime compensation, unpaid premiums for rest and meal break violations, failure to reimburse work expenses; applicable penalties, injunctive and other relief and reasonable attorneys’ fees and costs. Pursuant to the Business & Professions Code §§ 17200, et seq, Plaintiffs on behalf of themselves and putative classes also seek injunctive relief and restitution from Defendants for unlawful withholding of wages, and meal and rest period premiums that lawfully belong to the Plaintiffs and the putative

1 Class/Subclasses.

2 **THE PARTIES**

3 **Plaintiff MOHAMMAD EKHMIES**

4 3. Plaintiff Mohammad “Moe” Ekhmies is and was, at all times relevant to this
5 Complaint, an adult individual who lived in Irvine, California and worked for Defendant in the City
6 of Foothill Ranch in the County of Orange, California. Defendant employed Plaintiff as a Lending
7 Officer from approximately April 2019, until on or about November 23, 2020.

8 **Plaintiff SALVADOR OCHOA**

9 4. Plaintiff Salvador Ochoa is and was, at all times relevant to this Complaint, an adult
10 individual who lived in Placentia, California and worked for Defendant in the City of Irvine in the
11 County of Orange, California. Defendant employed Plaintiff as a Loan Officer from in or about April
12 12, 2021, until on or about November 1, 2021.

13 **Defendant LOANDEPOT.COM, LLC**

14 5. At all times relevant to this Complaint, Defendant was a Delaware corporation, duly
15 registered to conduct business and employ persons throughout California, where it employed
16 Plaintiffs.

17 6. Defendant is a residential and consumer lending company. Defendant maintains over
18 70 locations throughout the State of California.

19 7. At all relevant times to this Complaint, Defendant employed Plaintiffs at their
20 respective Loan Depot locations in the State of California.

21 8. At all times mentioned in this Complaint, Defendant was Plaintiffs “employer,” and
22 Plaintiffs were its “employee” as defined by California law.

23 9. Plaintiffs are unaware of the true names or capacities of Defendants sued herein under
24 the fictitious names DOES 1–50, inclusive, but prays for leave to amend and serve such fictitiously-
25 named Defendants pursuant to California Code of Civil Procedure § 474 once their names and
26 capacities become known.

27 10. Plaintiffs are informed and believes, and thereon alleges, that DOES 1–50, inclusive,
28 are the partners, agents, owners, shareholders, managers, principals or employees of Defendant and/or

1 and were acting on behalf of Defendant.

2 11. Plaintiffs are informed and believes, and thereon alleges, that each and all of the acts
3 and omissions alleged herein was performed by or is attributable to Defendant, each acting as the
4 agent for the other, with legal authority to act on the other's behalf. The acts of any and all Defendant
5 was in accordance with, and represent the policy of, Defendant.

6 12. At all times herein mentioned, Defendant, ratified each and every act or omission
7 complained of herein. At all times herein mentioned, Defendant, aided and abetted the acts and
8 omissions of each and all of the other Defendant in proximately causing the damages herein alleged.

9 13. Plaintiffs are informed and believes, and thereon alleges, that Defendant is in some
10 manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences and
11 transactions alleged herein.

12 **JURISDICTION AND VENUE**

13 14. The civil penalties sought by Plaintiffs exceed the minimum jurisdiction limits of the
14 Orange County Superior Court and will be established according to proof at trial.

15 15. This Court has jurisdiction of this action pursuant to the California Constitution, Article
16 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given
17 by statute to other courts. The statutes under which this action of brought do not specify any other basis
18 for jurisdiction.

19 16. This Court has jurisdiction over the violations alleged herein and over Defendant and
20 Does 1 – 50, inclusive, because upon information and belief, each party has sufficient minimum
21 contacts in California or otherwise intentionally avails itself of California law so as to render the
22 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play
23 and substantial justice. Defendant at all times relevant employed certain Plaintiffs while theses
24 Plaintiffs were domiciled in and performing their work duties in the State of California, in the County
25 of Orange.

26 17. Venue is proper in this Court because, upon information and belief, the named
27 Defendant employed Plaintiffs, who are residents of this county and the acts and omissions alleged
28 herein took place in this county.

1 **GENERAL ALLEGATIONS AND SUMMARY OF CLAIMS**

2 18. Plaintiffs allege that they and the Class/Subclass Members are individuals who
3 currently work or formerly worked for Defendant in the State of California as non-exempt, hourly
4 compensated and/or commission-compensated, full time and part time employees, at any given time
5 during the four years prior to the filing of this complaint (the “Class Period”) who are/were entitled to
6 labor code compliant rest and meal breaks, overtime compensation, accurate wage statements, timely
7 payment of wages when due, and reimbursement of work related expenses incurred in the discharge
8 of their job duties.

9 19. Plaintiffs and such Class/Subclass Members work/worked in non-exempt, hourly-paid
10 lending officers, loan officers, and other similar positions for Defendant, which is a residential and
11 consumer lending company. Plaintiffs and those who were employed by Defendant in California
12 during the Class Period’s primary job duties were including, but not limited to, lending officers and
13 loan officers.

14 20. The duties of lending officers and loan officers are virtually identical. Any differences
15 in the job activities between the different individuals in these positions were and are legally
16 insignificant to the issues presented by this action. The same policies, procedures, employee
17 handbooks, manuals, compensation plans, and training modules were uniformly applied to the
18 nonexempt Plaintiffs and Class/Subclass Members, which means individual issues will not
19 predominate, and in fact, all issues are systematically linked, related and common, both in terms of
20 facts and law for Plaintiffs and each of the members of the Class/Subclasses during the Class Period.

21 21. Labor Code § 1194 provides that employees must be separately paid an hourly wage
22 for each and every hour worked.

23 22. Plaintiffs and the Class/Subclass Members are/were at all times subject to California’s
24 laws and regulations protecting the employees’ entitlement to be paid and presumption to be paid all
25 wages earned for labor performed, including an hourly wage for each and every hour worked.

26 23. Labor Code §§ 218, 1194(a) and 1194.2(a) provide that an employee who has not been
27 paid the legal wage may recover the unpaid balance and together with attorney’s fees and costs of suit,
28 as well as liquidated damages in an amount equal to the wages unpaid and interest thereon.

1 24. Labor Code § 1198 states: “The maximum hours of work and the standard conditions
2 of labor fixed by the commission shall be the maximum hours of work and the standard conditions of
3 labor for employees. The employment of any employee for longer hours than those fixed by the order
4 or under conditions of labor prohibited by the order is unlawful.”

5 25. Labor Code § 510 states in pertinent part, “Any work in excess of eight hours in one
6 workday or in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less
7 than one and one-half times the regular rate of pay for any employee.” In addition, “any work in excess
8 of 12 hours in one day shall be compensated at a rate of no less than twice the regular rate of pay for
9 an employee.” As a matter of course during all or a substantial portion of the Class Period, Plaintiffs
10 and certain member of the Class were regularly, uniformly, and systematically required by Defendant
11 to work in excess of eight hours per day, and/or required to work in excess of 40 hours per week
12 without being paid the requisite overtime wages required by Labor Code §§ 510, 1194 and Wage
13 Order No. 4.

14 26. Due to Plaintiffs and certain Class Members/Subclass Members working off the clock
15 during lunch breaks, in many instances because of the unrecorded hours worked, their shifts exceeded
16 eight hours a day or over 40 hours in a week.

17 27. Labor Code § 512 provides in relevant part: “An employer shall not employ an
18 employee for a work period of more than five hours per day without providing the employee with a
19 meal period of not less than 30 minutes An employer shall not employ an employee for a work
20 period of more than 10 hours per day without providing the employee with a second meal period of
21 not less than 30 minutes”

22 28. IWC Order No. 4-2001, which applies to Defendant’s industry, likewise requires
23 employers to provide meal periods to employees. Section 11(C) of IWC Order No 4-2001 provides in
24 relevant part: “Unless the employee is relieved of all duty during a 30-minute meal period, the meal
25 period shall be considered an “on duty” meal period and counted as time worked.”

26 29. Due to Defendant’s unreasonable performance demand, Plaintiffs and Class
27 Members/Subclass Members oftentimes worked shifts that exceeded ten hours per workday.

28 30. Defendant routinely prohibited certain Plaintiffs and Class Members/Subclass

Members from receiving properly and timely second meal breaks by requiring Plaintiffs and Class

31. Members/Subclass Members to meet Defendant's expected monthly and quarterly performance standard for completed and funded loans.

32. Throughout the Class Period, Defendant fails/failed to provide first and/or second meal periods and rest periods to certain Plaintiffs. The nature of Plaintiffs' and Class Members/Subclass Members work, providing loan services to clients, was time sensitive, rigorous, and nonstop. Plaintiffs and certain Class Members/Subclass Members are/were frequently prevented from timely taking meal breaks and rest breaks due to constant work demands and staffing shortages, they were not timely relieved of all duties to take such breaks. Defendant required for Plaintiffs and certain of Class Members/Subclass Members to take care of the clients and assist other employees during their meal break and rest breaks. Thus, as a matter of course during all or a substantial portion of the Class Period, Plaintiffs and each member of the Class were regularly, uniformly and systematically prohibited by Defendant from taking timely, compliant, uninterrupted, unpaid 30-minute meal periods for every five hours worked as required by *Labor Code* § 512 and Wage Order no. 4, nor were Plaintiffs or members of the Class paid a one hour premium wage at their regular rate of pay for each missed, short, late or interrupted meal period.

33. Section 12(A) of IWC Order No. 4-2001 provides in relevant part: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

34. The nature of Plaintiffs' and Class Members/Subclass Members work, providing loan service to clients, was time-sensitive, rigorous, and nonstop. Plaintiffs and certain Class Members/Subclass Members were frequently prevented from timely taking rest breaks because, due to their constant work demands and staffing shortages. As such, Plaintiffs, were not timely relieved of all duties to take such breaks. Defendant mandated Plaintiffs and certain Class Members/Subclass Members to take care of customer's inquiries and needs as they come, leaving them no time for rest

1 breaks or shortening the time of their rest breaks. Thus, as a matter of course, during all or a substantial
2 portion of the Class Period, Plaintiffs and certain Class Members/Subclass Members were regularly,
3 uniformly, and systematically prohibited by Defendant from taking, timely, compliant, uninterrupted
4 paid 10-minute rest periods for every four hours worked (or major fraction thereof) as required by
5 Labor Code §§ 226.7, 512 and Wage Order 4, nor were Plaintiffs or members of the Class paid a one-
6 hour premium wage at their regular rate of pay for each missed, short, late or interrupted rest period.

7 35. *Labor Code* § 226.7(c) provides in relevant part: “If an employer fails to provide an
8 employee a meal or rest or recovery period in accordance with a state law, including, but not limited
9 to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare
10 Commission, . . . the employer shall pay the employee one additional hour of pay at the employee’s
11 regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

12 36. Defendant knew or reasonably should have known that Plaintiffs and certain Class
13 Members/Subclass Members were not timely relieved of all duties and were impeded or prevented
14 from taking timely all meal periods and rest breaks.

15 37. Plaintiffs and Class Members/Subclass Members were not paid “premium pay
16 penalties” pursuant to *Labor Code* § 226.7(c) for any of the workdays that Defendant failed to provide
17 them timely, uninterrupted meal and rest breaks.

18 38. *Labor Code* § 226(a) requires employers to provide employees itemized wage
19 statements that accurately report, among other things, the total hours worked, and total wages earned
20 in each pay period.

21 39. Pursuant to Section 11(C) of IWC Order No. 4-2001, Defendant should have correctly
22 counted all purported “meal periods” for which Defendant failed to relieve Plaintiffs and Class
23 Members/Subclass Members of all duty as “on duty” meal periods, and Defendant should have
24 counted those purported “meal periods” as time worked. Defendant should have reported that
25 additional time worked on the itemized wage statements that Defendant provided to Plaintiffs and
26 Class Members/Subclass Members, but Defendant failed to do so, in violation of *Labor Code* § 226(a).

27 40. From the outset and throughout the Class Period, Defendant has failed to comply with
28 *Labor Code* § 226(a). As a matter of common policy and practice, Defendant did not include Plaintiffs

1 and certain Class Members' proper and correct number of hours worked at each correct hourly rate of
2 pay. The wage statements that were distributed by Defendant to Plaintiffs and the certain Class
3 Members did not contain all wages earned. Defendant's policies and practices and the omissions on
4 the wage statements were intention and knowing, causing Plaintiffs and certain members of the Class
5 to suffer "injury" by, among other things, impeding them from knowing the amount of wages to which
6 they are and were entitled.

7 41. Defendant's failure to accurately record and maintain records of all hours worked and
8 wages earned further constitutes a violation of *Labor Code* §1174(d), which requires employers to
9 maintain accurate payroll records of hours worked and wages earned for a period of three years.

10 42. Defendant willfully refused to pay Plaintiffs and members of the Class/Subclasses the
11 required compensation for all hours worked and failed to keep time records as required by law.

12 43. *Labor Code* § 201(a) provides in relevant part: "If an employer discharges an
13 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

14 44. *Labor Code* § 202(a) provides in relevant part: "If an employee not having a written
15 contract for a definite period quits his or her employment, his or her wages shall become due and
16 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of
17 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
18 quitting."

19 45. Plaintiffs and certain Class Members also did not receive payments for commissions
20 completed prior to their separation or termination that were still pending funds at the time of
21 separation. Plaintiffs and certain Class Members have/had large commissions pending, with no
22 additional major actions required to be taken by them.

23 46. At least fifty percent of Plaintiffs' and certain Class Members/Subclass Members'
24 pending loans would have funded two weeks after their separation. Their separation or termination of
25 employment relationship with Defendant did not impede their right to receive commissions on their
26 loans that were completed and pending funding. Defendant has not paid them for all commissions that
27 were completed and pending funding at the time of their separation or termination.

28 47. As a further result of Defendant's manipulation of Plaintiffs' and certain Class

Members/Subclass Members' time records, Defendant violated Labor Code §§ 201 and 202 by failing to timely pay all wages due upon Plaintiffs' and such Class Members who separated from Defendant's employment during the Class Period, at their time of discharge or quitting.

48. *Labor Code* § 203(a) provides in relevant part: "If an employer willfully fails to pay, without abatement or reduction, in accordance with §§ 201 . . . 202 . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

49. Despite Defendant's violations of *Labor Code* §§ 201 and 202 by failing to timely pay all wages due upon such Plaintiffs' and certain Class Members who separated from Defendant's employment during the Class Period, discharge or quitting, Defendant has failed to pay such individuals "waiting time" penalties pursuant to *Labor Code* § 203(a).

50. *Labor Code* § 2802(a) requires employers to reimburse employees for all expenses they incur in direct consequence of the discharge of their duties or obedience to their employers' instructions.

51. During the Class Period, Defendant required Plaintiffs and certain Class Members to use their personal cell phones to perform their job duties each workday throughout their employment. Defendant required them to contact supervisors, to communicate with other employees, to contact clients.

52. Additionally, Defendant required Plaintiffs and certain Class Members to purchase headsets that they use/used to contact clients.

53. During the Class Period, Defendant required Plaintiffs and certain Class Members to use their personal or home internet for work related duties and functions, particularly when Defendant requested Plaintiffs and certain Class Members to work remotely due to the Covid-19 pandemic. Defendants required them to use their own internet to access their work emails, to contact co-workers, clients, and supervisors in connection with performance of their daily job requirements, to attend their daily meetings via the video conferencing software, "ZOOM".

54. Despite Defendant's requirement that Plaintiffs and certain Class Members/Subclass

1 Members incur expenses using their personal cell phones, personal cell phone plans, and personal
2 Internet access as well as purchasing equipment like headsets to perform their job duties, Defendant
3 did not reimburse them. Defendant's failure to reimburse Plaintiffs and Class Members constitutes a
4 violation of *Labor Code* §2802(a).

5 55. On or around November 29, 2021, Plaintiff Salvador Ochoa, by and through his
6 counsel of record, sent Defendant's counsel of records, Ms. Jacqueline M. Beaumont, Esq. a letter of
7 representation, requesting copies of Plaintiff Salvador Ochoa's payroll and personnel records pursuant
8 to Labor Code Sections 432 and 1198.5.

9 56. Plaintiff's counsel provided Defendant an extended period of time to produce the
10 requested payroll and personnel records in good faith.

11 57. It has been over two (2) months since the original written request for records was sent
12 to Defendant's counsel, yet Defendant has still failed and refused to produce Plaintiff Salvador
13 Ochoa's payroll and personnel records. As of the date of filing this Complaint, Plaintiff Salvador
14 Ochoa's counsel has still not received any response from Defendant or Defendant's counsel and has
15 not received any of the requested pay roll and personnel records.

16 58. Defendant's company-wide policies and practices violate California law as pled herein.
17 Plaintiffs seek declaratory relief, reporting time pay, regular and overtime compensation, premium
18 pay for rest and meal break violations, reimbursement of business expenses, liquidated damages and
19 other damages and penalties as permitted by California Law, interest and attorneys' fees and costs.

20 **CLASS ACTION ALLEGATIONS**

21 59. Plaintiffs bring causes of action for violation of California's wage-and-hour laws as a
22 class action on behalf of all members of the Class and Subclasses which are defined and composed as
23 follows:

24 **THE CLASS:**

25 60. All individuals (a) who are currently or formerly employed by Defendant and
26 performed work in California as lending officers, loan officers, and other similar job positions, job
27 titles, job codes, job classifications, job duties or job descriptions, and (b) who were subject to
28 Defendant's illegal policies and practices as alleged herein during the Class Period.

1 61. In the alternative, and for the convenience of the Court and the parties, Plaintiffs may
2 seek to certify the following Subclasses at the time the motion for class certification is filed:

3 **UNTIMELY PAYMENT OF WAGES SUBCLASS:**

4 62. All members of the Class who Defendant failed to timely pay all wages earned when
5 due, as defined by Labor Code § 204 for all hours worked during the Class Period.

6 **OVERTIME SUBCLASS:**

7 63. All members of the Class who (a) worked in excess of 8 hours per day and/or 40 hours
8 per week; and (2) who Defendant failed to pay wages at the requisite overtime rates of pay for overtime
9 hours worked during the Class Period.

10 **MEAL PERIOD SUBCLASS:**

11 64. All members of the Class that Defendant did not provide 30-minute, uninterrupted and
12 duty-free meal periods for shifts over 5 and 10 hours of work, and who were not paid an additional
13 hour of pay in lieu thereof during the Class Period.

14 **REST PERIOD SUBCLASS:**

15 65. All members of the Class that Defendant did not authorize or permit uninterrupted and
16 duty-free 10-minute paid rest periods for every four hours worked, or major fraction thereof, and who
17 were not paid an additional hour of pay in lieu thereof during the Class Period.

18 **WAGE STATEMENT SUBCLASS:**

19 66. All members of the Class that Defendant did not provide accurate, itemized wage
20 statements showing all hours actually worked, all wages earned, and the applicable rates of pay for
21 each hour worked during the Class Period.

22 **WAITING TIME SUBCLASS:**

23 67. All members of the Class who (a) from three years prior to the filing of this complaint
24 separated from Defendant's employment, and (2) who Defendant knowingly and willfully failed to
25 pay all wages due within 72 hours of the time such employees voluntarily or involuntarily ended their
26 employment with Defendant during the Class Period.

27 **REIMBURSEMENT OF BUSINESS EXPENSES SUBCLASS:**

28 68. All members of the Class that Defendant did not reimburse expenses necessarily

1 incurred in the discharge of performing their work-related duties during the Class Period.

2 69. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or
3 necessary to amend the definition of the Subclasses. In any event, Plaintiffs will formally define and
4 designate a class definition at such time when Plaintiffs seek to certify the Class or Subclasses defined
5 herein.

6 **CLASS ALLEGATIONS**

7 70. **Numerosity**: The potential quantity of members of the Class and Subclasses as defined
8 are so numerous that joinder of all members would be unfeasible and impractical. Plaintiffs are
9 informed and believe that the total number of current and formerly employed members of the Class
10 exceeds 100. The quantity and identity of such membership is readily ascertainable via inspection of
11 Defendant's records.

12 71. **Superiority**: The nature of this action and the nature of the laws available to Plaintiffs
13 make the use of the class action format particularly efficient and the appropriate procedure to afford
14 relief to Plaintiffs and the members of the Class and Subclasses for the wrongs alleged herein, for the
15 following reasons:

- 16 a) The State of California, for which there is a named representative, has a public policy
17 which encourages the use of the class action device.
- 18 b) By establishing a technique whereby, the claims of many individuals can be resolved
19 at the same time, the class suit both eliminates the possibility of repetitious litigation
20 and provides small claimants with a method of obtaining redress for claims which
21 would otherwise be too small to warrant individual litigation.
- 22 c) This case involves large corporate Defendant and a large number of individual class
23 members with many relatively small claims and common issues of law and fact.
- 24 d) If each individual member of the Class was required to file an individual lawsuit, the
25 large corporate Defendant would necessarily gain an unconscionable advantage
26 because Defendant would be able to exploit and overwhelm the limited resources of
27 each individual member of the Class with Defendant's vastly superior financial and
28 legal resources.

- 1 e) Requiring each individual member of the Class to pursue an individual remedy would
2 also discourage the assertion of lawful claims by the members of the Class who would
3 be disinclined to pursue action against Defendant because of an appreciable and
4 justifiable fear of retaliation and permanent damage to their lives, careers and well-
5 being.
- 6 f) Proof of a common policy and practice or factual pattern, of which the members of
7 the Class experienced, is representative of the Class herein and will establish the right
8 of each of the members of the Class to recover on the causes of action alleged herein.
- 9 g) Absent class treatment, the prosecution of separate actions by the individual members
10 of the Class, even if possible, would likely create:
- 11 i. a substantial risk of each individual plaintiff presenting in separate,
12 duplicative proceedings the same or essentially similar arguments and
13 evidence, including expert testimony;
 - 14 ii. a multiplicity of trials conducted at enormous expense to both the judicial
15 system and the litigants;
 - 16 iii. inconsistent or varying verdicts or adjudications with respect to the individual
17 members of the Class against Defendant;
 - 18 iv. potentially incompatible standards of conduct for Defendant; and
 - 19 v. potentially incompatible legal determinations with respect to individual
20 members of the Class which would, as a practical matter, be dispositive of the
21 interests of the other members of the Class who are not parties to the
22 adjudications or which would substantially impair or impede the ability of the
23 members of the Class to protect their interests.
- 24 h) The claims of the individual members of the Class are not sufficiently large to warrant
25 vigorous individual prosecution, considering all of the concomitant costs and
26 expenses attendant thereto.
- 27 i) Courts seeking to preserve efficiency and other benefits of class actions routinely
28 fashion methods to manage any individual questions.

- 1 j) Judicial precedent urges trial courts, which have an obligation to consider the use of
2 innovative procedural tools to certify a manageable class, to be procedurally
3 innovative
4 in managing class actions.

5 72. **Well-defined Community of Interest**: Plaintiffs also meet the established standards
6 for class certification as follows:

- 7 a) **Typicality**: The claims of Plaintiffs are typical of the claims of all members of the
8 Class and Subclasses they seek to represent because all members of the Class
9 sustained injuries and damages arising out of Defendant's common course of conduct
10 in violation of California law, and the injuries and damages of all members of the
11 Class were caused by Defendant's wrongful conduct in violation of California law,
12 as alleged herein.
- 13 b) **Adequacy**: Plaintiffs are adequate representatives of the Class and/or Subclasses
14 they seek to represent, will fairly protect the interests of the members of the Class,
15 have no interests antagonistic to the members of the Class, and will vigorously pursue
16 this suit via attorneys who are competent, skilled and experienced in litigating matters
17 of this type.
- 18 c) **Predominant Common Questions of Law or Fact**: There are common questions of
19 law and/or fact as to the members of the Class which predominate over questions
20 affecting only individual members of the Class, including, without limitation:
- 21 i. Whether Defendant failed and continues to fail to have a policy to provide
22 members of the Class timely, duty-free, uninterrupted meal periods of at least
23 30-minutes for shifts over 5 and 10 hours of work;
- 24 ii. Whether Defendant failed and continues to fail to have a policy to provide
25 members of the Class timely, duty-free, uninterrupted rest periods of at least
26 10-minutes for every four hours worked or major fraction thereof;
- 27 iii. Whether Defendant unlawfully failed to pay Plaintiffs and the members of
28 the Class overtime compensation in violation of Labor Code §§ 218, 510,

1194, and Wage Order 4;

- iv. Whether Defendant unlawfully failed to maintain accurate records in violation of Labor Code § 1174(d);
- v. Whether Defendant unlawfully failed to pay all wages to Plaintiffs and members of the Class when due in violation of Labor Code § 204;
- vi. Whether Defendant unlawfully failed to furnish accurate itemized statements to members of the Class in violation of Labor Code §§ 226, 226.3;
- vii. Whether Defendant failed to reimburse Plaintiffs and members of the Class for all expenses incurred in discharge of their duties in violation of Labor Code § 2802;
- viii. Whether Defendant's policies and practices of failing to pay their employees all wages due within the time required by California law after their employment ended with Defendant violate Labor Code §§ 201-203;
- ix. Whether the members of the Class are entitled to compensatory damages, and if so, the means of measuring such damages;
- x. Whether the members of the Class are entitled to injunctive relief;
- xi. Whether the members of the Class are entitled to restitution; and
- xii. Whether Defendant is liable for attorneys' fees and costs to the extent permitted by California law.

d) **Manageability of Class and Common Proof**: The nature of this action and the nature of laws available to Plaintiffs make use of the class action format and procedure a particularly efficient and appropriate procedure to afford relief to Plaintiffs and members of the Class for the wrongs alleged herein. Specifically, liability will turn on Defendant's own uniform, systematic practices of failing to pay their employees for all wages they earned in violation of California law during the Class Period. Therefore, the wage violations are predominant questions of fact that are easily capable of being determined through manageable devices of common proof, such as statistical random sampling, survey evidence based on scientific

principles, representative testimony, documentary evidence and common practices/procedures of Defendant in treating each of the members of the Class as a homogeneous group. Once the predominant issues of wage compliance are determined, then each of the derivative subclass claims and damages suffered by each member of the Class will be capable of being shown by several means of common proof, and limited by individual showings of entitlement to recovery that can be professionally administered and tailored to the facts and circumstances of the case.

73. Class certification of the First through the Eighth causes of action is appropriate under *Cal. Code Civ. Proc.* § 382 because questions of law and fact common to the Class and Subclasses predominate over any questions affecting only individual members of the Class and Subclasses of this litigation. Defendant's policies and practices unlawfully treated members of the Class and Subclasses in a uniform fashion. The damages suffered by individual members of the Class and Subclasses are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant's practices.

74. Class certification of the First through Eighth causes of action is also appropriate pursuant to *Cal. Code Civ. Proc.* § 382 because Defendant has acted or refused to act on grounds generally applicable to the Class, making appropriate declaratory relief with respect to and the Class and Subclasses as a whole.

75. Plaintiffs intend to send notice to all members of the Class and Subclasses to the extent required by law and each will be given an opportunity to opt out of the proceedings.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

In Violation of Labor Code §§ 226.7(c), 512(a), 1198 and IWC Order No. 4-2001 (Against Defendant and Does 1 – 50, inclusive)

76. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

77. *Labor Code* § 512 provides in relevant part: "An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a

1 meal period of not less than 30 minutes An employer shall not employ an employee for a work
2 period of more than 10 hours per day without providing the employee with a second meal period of
3 not less than 30 minutes”

4 78. IWC Order No. 4-2001, which applies to Defendant’s industry, likewise requires
5 employers to provide meal periods to employees. Section 11(C) of IWC Order No 4-2001 provides in
6 relevant part: “Unless the employee is relieved of all duty during a 30-minute meal period, the meal
7 period shall be considered an “on duty” meal period and counted as time worked.” An ‘on duty’ meal
8 period shall be permitted only when the nature of the work prevents an employee from being relieved
9 of all duty and when by written agreement between the parties, an on-the-job paid meal period is
10 agreed to. The written agreement shall state that the employee may in writing, revoke the agreement
11 at any time.

12 79. *Labor Code* §1198 states: “The maximum hours of work and the standard conditions
13 of labor fixed by the commission shall be the maximum hours of work and the standard conditions of
14 labor for employees. The employment of any employee for longer hours than those fixed by the order
15 or under conditions of labor prohibited by the order is unlawful.”

16 80. Labor Code § 226.7(c) provides in relevant part: “If an employer fails to provide an
17 employee a meal or rest or recovery period in accordance with a state law, including, but not limited
18 to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare
19 Commission, . . . the employer shall pay the employee one additional hour of pay at the employee’s
20 regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

21 81. Due to Defendant’s unreasonable performance demand, Plaintiffs and Class
22 Members/Subclass Members oftentimes worked shifts that exceeded ten hours per workday.

23 82. Defendant routinely prohibited certain Plaintiffs and Class Members/Subclass
24 Members from receiving properly and timely second meal breaks by requiring Plaintiffs and Class
25 Members/Subclass Members to meet Defendant’s expected monthly and quarterly performance
26 standard for completed and funded loans.

27 83. Throughout the Class Period, Defendant fails/failed to provide first and/or second meal
28 periods and rest periods to certain Plaintiffs. The nature of Plaintiffs’ and Class Members/Subclass

Members work, providing loan services to clients, was time-sensitive, rigorous, and nonstop. Plaintiffs and certain Class Members/Subclass Members are/were frequently prevented from timely taking meal breaks and rest breaks due to constant work demands and staffing shortages, they were not timely relieved of all duties to take such breaks. Defendant required for Plaintiffs and certain of Class Members/Subclass Members to take care of the clients and assist other employees during their meal break and rest breaks. Thus, as a matter of course during all or a substantial portion of the Class Period, Plaintiffs and each member of the Class were regularly, uniformly and systematically prohibited by Defendant from taking timely, compliant, uninterrupted, unpaid 30-minute meal periods for every five hours worked as required by *Labor Code* § 512 and Wage Order no. 4, nor were Plaintiffs or members of the Class paid a one hour premium wage at their regular rate of pay for each missed, short, late or interrupted meal period.

84. Plaintiffs and the Class Members did not consent to missing their meal and rest breaks, nor did they waive their right to timely, uninterrupted meal and rest breaks.

85. Defendant discouraged Plaintiffs and members of the Class from taking compliant 30-minute meal periods, nor did Defendant pay Plaintiffs or Members of the Class with an additional hour of pay for these meal period violations, nor did Defendant pay Plaintiffs and Class Members a premium pay penalty for missed, short, late or interrupted meal breaks pursuant to *Labor Code* § 226.7(c).

86. As a result of Defendant's violations of *Labor Code* §§ 226.7(c), 512(a), 1198, and IWC Order No. 4-2001, Plaintiffs seek recovery of "premium pay" pursuant to the DLSE's Policy Manual Guidelines and *Labor Code* § 226.7.

87. Further, pursuant to *Labor Code* §218.6 and Civil Code §3287, the members of the Rest Period Subclass seek recovery of prejudgment interest on all amounts recovered herein.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

In Violation of Labor Code §§ 226.7(c), 1198 and IWC Order No. 9-2001

(Against Defendant and Does 1 – 50, inclusive)

88. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

1 89. Section 12(A) of IWC Order No. 4-2001 provides in relevant part: “Every employer
2 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in
3 the middle of each work period. The authorized rest period time shall be based on the total hours
4 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
5 Authorized rest period time shall be counted as hours worked for which there shall be no deduction
6 from wages.”

7 90. *Labor Code* §1198 states: “The maximum hours of work and the standard conditions
8 of labor fixed by the commission shall be the maximum hours of work and the standard conditions of
9 labor for employees. The employment of any employee for longer hours than those fixed by the order
10 or under conditions of labor prohibited by the order is unlawful.”

11 91. *Labor Code* § 226.7(c) provides in relevant part: “If an employer fails to provide an
12 employee a meal or rest or recovery period in accordance with a state law, including, but not limited
13 to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare
14 Commission, . . . the employer shall pay the employee one additional hour of pay at the employee’s
15 regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

16 92. The nature of Plaintiffs’ and Class Members/Subclass Members work, providing loan
17 service to clients, was time-sensitive, rigorous, and nonstop. Plaintiffs and certain Class
18 Members/Subclass Members were frequently prevented from timely taking rest breaks because, due
19 to their constant work demands and staffing shortages. As such, Plaintiffs, were not timely relieved of
20 all duties to take such breaks. Defendant mandated Plaintiffs and certain Class Members/Subclass
21 Members to take care of customer’s inquiries and needs as they come, leaving them no time for rest
22 breaks or shortening the time of their rest breaks. Thus, as a matter of course, during all or a substantial
23 portion of the Class Period, Plaintiffs and certain Class Members/Subclass Members were regularly,
24 uniformly, and systematically prohibited by Defendant from taking, timely, compliant, uninterrupted
25 paid 10-minute rest periods for every four hours worked (or major fraction thereof) as required by
26 Labor Code §§ 226.7, 512 and Wage Order 4, nor were Plaintiffs or members of the Class paid a one-
27 hour premium wage at their regular rate of pay for each missed, short, late or interrupted rest period.

28 93. Defendant knew or reasonably should have known that Plaintiffs and the certain Class

Members were not timely relieved of all duties and were impeded or prevented from timely taking timely all rest breaks after every fourth hour of work (or major fraction thereof).

94. Plaintiffs and the Class Members were not paid premium pay penalties pursuant to *Labor Code* § 226.7(c) for any of the workdays that Defendant failed to provide them timely, uninterrupted rest breaks.

95. As a result of Defendant's violations of *Labor Code* §§ 226.7(c), 1198, and IWC Order No. 9-2001, Plaintiffs on their own behalf and on behalf of the Class Members they seek to represent, seek "premium pay penalties" pursuant to *Labor Code* § 226.7.

96. Further, pursuant to *Labor Code* §218.6 and Civil Code §3287, the members of the Rest Period Subclass seek recovery of prejudgment interest on all amounts recovered herein.

THIRD CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
In Violation of Labor Code §§ 510, 1194
(Against Defendant and Does 1 – 50, inclusive)

97. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

98. Plaintiffs seek to represent the proposed Class or in the alternative the proposed Overtime Subclass as a basis to enforce equal or greater protections for wages owed that are offered by California law. Because the practices alleged herein are uniform, systematic and continuous and affect each proposed member of the Class in a legally identical way, Plaintiffs, at the appropriate time will move to certify the Class or Overtime Subclass to the extent permitted by *Cal. Code Civ. Proc.* § 382.

99. Plaintiffs and the Class were at all times subject to California's laws and regulations protecting the employees' entitlement to be paid and presumption to be paid overtime wages for requisite hours worked beyond a normal work day or a normal work week, as specified, without limitation, by *Labor Code* §§ 510, 1194 and Wage Order No. 4.

100. California law requires employers, such as Defendant to pay overtime compensation to all nonexempt employees for all hours worked over 40 hours per week, or over 8 hours per day. *Labor Code* § 204 establishes the fundamental right of all employees in the State of California to be

1 paid wages, including straight time and overtime, in a timely fashion for their work.

2 101. Labor Code § 510(a) states in pertinent part: “Any work in excess of eight hours in one
3 workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate
4 of no less than one and one-half times the regular rate of pay for any employee.” In addition, *Labor*
5 *Code* § 510(a) provides that “[a]ny work in excess of 12 hours in one day shall be compensated at the
6 rate of no less than twice the regular rate of pay for an employee.”

7 102. Pursuant to *Labor Code* § 1198 it is unlawful to employ persons for longer than the
8 hours set by the IWC.

9 103. Pursuant to *Labor Code* § 1194, “...any employee receiving less than the legal
10 minimum wage or the legal overtime compensation applicable to the employee is entitled to recover
11 in a civil action the unpaid balance of the full amount of this minimum wage or overtime
12 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

13 104. As set forth above, Plaintiffs and the members of the Class were entitled to be paid
14 overtime compensation for all overtime hours worked. Plaintiffs, and certain members of the Class,
15 were regularly and consistently required to work overtime during the Class Period but were not paid
16 for all overtime hours worked and were not paid at the correct overtime rate of pay.

17 105. Throughout the Class Period, Plaintiffs and certain members of the Class worked in
18 excess of 8 hours in a workday and/or 40 hours in a workweek. Whenever Plaintiffs and Class
19 Members exceeded eight hours per day or forty hours per week, Defendant’s managers would often
20 pressure them to clock out while they are/were still required to complete tasks assigned by Defendant.

21 106. Plaintiffs and the certain Class Members would also routinely work off the clock during
22 their meal breaks, as was required by Defendant. Due to this time worked off the clock, Plaintiffs and
23 the certain Class Members would routinely exceed eight-hour shifts and forty-hour workweeks and
24 would not be paid the required overtime pay.

25 107. During the Class Period, Defendant did not pay Plaintiffs and members of the Class
26 overtime pay for all of the overtime hours worked, included hours worked while off the clock and
27 Defendant did not pay Plaintiffs and members of the Class at the correct overtime rate of pay.

28 108. As a direct and proximate result of Defendant’s unlawful conduct as set forth herein,

1 Plaintiffs and members of the Class have sustained damages, including loss of earnings for hours of
2 overtime worked on behalf of Defendant in an amount to be established according to proof at trial,
3 prejudgment interest, and costs and attorneys' fees, pursuant to *Labor Code* § 1194.2 and applicable
4 California law.

5 **FOURTH CAUSE OF ACTION**
6 **FAILURE TO MAINTAIN ACCURATE RECORDS**
7 **In Violation of Labor Code § 1174(d)**
8 **(Against Defendant and Does 1 – 50, inclusive)**

9 109. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though
10 fully set forth herein.

11 110. *California Labor Code* § 1174(d), which was in force and effect at all relevant times,
12 herein, provides in pertinent part, that "Every person employing labor in this state shall keep... at a
13 central location in the state or at the plants or establishments at which employees are employed, payroll
14 records showing the hours worked daily by and the wages paid to, and the number of piece-rate units
15 earned by and any applicable piece rate paid to, employees employed at the respective plants or
16 establishments. These records shall be kept in accordance with rules established for this purpose by
17 the commission, but in any case, shall be kept on file for not less than three years. An employer shall
18 not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-
19 rate basis, piece-rate units earned."

20 111. During the Class Period, Defendant knowingly and intentionally failed to accurately
21 record, track, maintain and keep accurate records of each and every hour worked, and wages earned
22 for Plaintiffs and the Class Members.

23 112. Upon information and belief and thereon, Plaintiffs have alleged herein that in an effort
24 to fabricate the appearance of compliance with the provisions of the Labor Code, (simultaneously
25 motivated by Defendant's effort to unlawfully avoid payment of premium pay penalties owed for
26 missed or non-compliant rest and meal breaks, and overtime pay) Defendant's routinely prohibited
27 Plaintiffs and members of the Class from receiving proper, timely, and compliant meal and rest breaks
28 and altered timesheets to get rid of any owed overtime pay.

113. Thus, at all times relevant, Defendant failed to maintain accurate records of all hours

1 Plaintiffs and Class Members worked, including hours they were working during rest and meal break
2 period, and for the days they worked in excess of eight hours, or workweeks in excess of forty hours.
3 As a result of Defendant's failure to maintain proper accurate records, premium penalties to which
4 Plaintiffs and Class Members were entitled for rest and meal break violations was not properly
5 recorded either.

6 114. Accordingly, Plaintiffs as a direct and proximate result of Defendant's unlawful
7 conduct as set forth herein, Plaintiffs and members of the Class have sustained damages, for
8 Defendant's violation of *Labor Code* § 1174(d), including loss of earnings for all hours worked, and
9 loss of receipt of premium pay penalties, in amounts to be established at time.

10 115. Plaintiffs and Class members are therefore entitled to and do seek to recover penalties,
11 pursuant to § 1174.5, which provides that an employer who fails to properly maintain records pursuant
12 to 1174(d) shall be subject to a civil penalty of five hundred dollars (\$500).

13 **FIFTH CAUSE OF ACTION**
14 **FAILURE TO PAY ALL WAGES EARNED WHEN DUE**
15 **In Violation of Labor Code § 204**
16 **(Against Defendant and Does 1 – 50, inclusive)**

17 116. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though
18 fully set forth herein.

19 117. The California Labor Code requires employers to pay all wages due within the time
20 specified by law. *California Labor Code* § 204 was in full force and effect at all relevant times herein.

21 118. Pursuant to § 204, for employees entitled to pay twice per month, two periods of pay
22 are required. Labor performed between the 1st and 15th of the month must be paid between the 16th
23 and 26th of the same month and labor performed on the 16th and the end of the month must be paid
24 on pay days between the 1st and 10th of the following month. *Labor Code* § 210 provides that " ...
25 (a) In addition to, and entirely independent and apart from, any other penalty provided in this article,
26 every person who fails to pay the wages of each employee as provided in §§ 201.3, 204, 204b, 204.1,
204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows:

27 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
28 employee.

1 (2) For each subsequent violation, or any willful or intentional violation, two hundred
2 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
3 unlawfully withheld.

4 119. Plaintiffs and the Class Members were entitled to be paid twice monthly for all labor
5 performed. Although Plaintiffs and the class members are and/or were paid twice monthly, Defendant
6 failed and intentionally refused to pay Plaintiffs and the Class Members all wages they were entitled
7 to, twice monthly, including overtime pay during each and every pay period of their employment.

8 120. As alleged herein, Plaintiffs and the Class Members were not paid for all of their wages,
9 for each and every hour worked, including inter alia time worked during rest and meal breaks, time
10 worked off the clock and overtime hours, as alleged herein, during every single pay period during the
11 term(s) of their employment.

12 121. Accordingly, as a result of the unlawful acts of Defendant, Plaintiffs and the Class
13 Members have been deprived of wages in amounts to be determined according to proof at trial, and
14 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs
15 of suit, pursuant to *Labor Code* § s 210, 218 and 1194.

16 **SIXTH CAUSE OF ACTION**
17 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
18 **In Violation of Labor Code § 226(a)**
19 **(Against Defendant and Does 1 – 50, inclusive)**

20 122. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though
21 fully set forth herein.

22 123. *Labor Code* § 226(a) requires employers to provide employees itemized wage
23 statements that accurately report, among other things, the total hours worked, and total wages earned
24 in each pay period. Section 226(a) states in pertinent part, that “[e]very employer shall, semimonthly
25 or at the time of each payment of wages, furnish each of his or her employees, either as a detachable
26 part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid
27 by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned,
28 (2) total hours worked by the employee ..., (5) net wages earned, (6) the inclusive dates of the period

1 for which the employee is paid ..., and (9) all applicable hourly rates in effect during the pay period
2 and the corresponding number of hours worked at each hourly rate by the employee ...”

3 124. *Labor Code* § 226 (e)(1) states that “[a]n employee suffering injury as a result of a
4 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover
5 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
6 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
7 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
8 costs and reasonable attorney’s fees.”

9 125. *Labor Code* § 226(e)(1) provides: “An employee suffering injury as a result of a
10 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover
11 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
12 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
13 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
14 costs and reasonable attorney’s fees.”

15 126. *Labor Code* § 226(e)(2)(C) defines “promptly and easily determine” to mean “a
16 reasonable person would be able to readily ascertain the information without reference to other
17 documents or information.”

18 127. *Labor Code* § 226(e)(3) states that the phrase “knowing and intentional failure” “does
19 not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake.”

20 128. *Labor Code* § 226(h) provides: “An employee may also bring an action for injunctive
21 relief to ensure compliance with this section and is entitled to an award of costs and reasonable
22 attorney’s fees.”

23 129. As alleged supra, during the Class Period, Defendant failed to maintain accurate
24 records, including records of time worked through rest and meal break periods, resulting in failure pay
25 them overtime wages they were owed when they worked shifts in excess of eight hours or in excess
26 of forty hours per week.

27 130. In addition, because of Defendant’s intentional and knowing failure to maintain proper
28 and accurate records, overtime hours and wages earned were also not recorded, and did not appear on

1 the Plaintiffs' and Class Members' wage statements.

2 131. During the Class Period Defendant knowingly and willingly failed to comply with
3 *Labor Code* § 226. As a common policy and practice Defendant did not include all hours worked,
4 including hours worked during on-duty rest and meal breaks, overtime hours worked and wage
5 statements failed to include premium pay penalties for Plaintiffs and Class Members' regularly missed
6 or otherwise, non-compliant, rest and meal breaks. The wage statements issues to the Plaintiffs and
7 Class Members were not accurate, did not reflect or include all wages earned during each and every
8 pay period of the Class Period. Defendant's knowing, and intentional omissions caused the Plaintiffs
9 and Class Members to suffer "injury" by, among other things, impeding them from knowing the
10 amount of wages to which they are/were lawfully entitled.

11 132. As a result of Defendant's violations of *Labor Code* § 226(a), Plaintiffs seek an award
12 of penalties pursuant to *Labor Code* § 226(e)(1), and injunctive relief, attorneys' fees, and costs
13 pursuant to *Labor Code* § 226(h).

14 **SEVENTH CAUSE OF ACTION**
15 **FAILURE TO REIMBURSE WORK EXPENSES**
16 **In Violation of Labor Code § 2802**
(Against Defendant and Does 1 – 50, inclusive)

17 133. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though
18 fully set forth herein.

19 134. *Labor Code* § 2802(a) requires employers to reimburse employees for all expenses they
20 incur in direct consequence of the discharge of their duties or obedience to their employers'
21 instructions.

22 135. As alleged, during the Class Period, Defendant required Plaintiffs and certain Class
23 Members to use their personal cell phones to perform their job duties each workday throughout their
24 employment. Defendant required them to contact supervisors, to communicate with other employees
25 and to contact clients. Additionally, Defendant required Plaintiffs and certain Class Members to
26 purchase headsets that they used while communicating with clients.

27 136. During the Class Period, Defendant required Plaintiffs and certain Class Members to
28

1 use their personal or home internet for work related duties and functions, particularly when Defendant
2 requested Plaintiffs and certain Class Members to work remotely due to the Covid-19 pandemic.
3 Defendants required them to use their own internet to access their work emails, to contact co-workers,
4 clients, and supervisors in connection with performance of their daily job requirements, to attend their
5 daily meetings via the video conferencing software, “ZOOM”.

6 137. Despite Defendant’s requirement that Plaintiffs and certain Class Members/Subclass
7 Members incur expenses using their personal cell phones, personal cell phone plans, and personal
8 Internet access as well as purchasing equipment like headsets to perform their job duties, Defendant
9 did not reimburse them. Defendant’s failure to reimburse Plaintiffs and Class Members constitutes a
10 violation of *Labor Code* §2802(a).

11 138. “An employer shall indemnify his or her employee for all necessary expenditures or
12 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his
13 or her obedience to the directions of the employer, even though unlawful, unless the employee, at the
14 time of obeying the directions, believed them to be unlawful.” (Cal. Labor Code § 2802(a).)

15 139. “All awards made by a court or by the Division of Labor Standards Enforcement for
16 reimbursement of necessary expenditures under this section shall carry interest at the same rate as
17 judgments in civil actions. Interest shall accrue from the date on which the employee incurred the
18 necessary expenditure or loss.” (Cal. Labor Code § 2802(b).)

19 140. California Labor Code section 2802(c) provides: “For purposes of this section, the term
20 “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to,
21 attorney’s fees incurred by the employee enforcing the rights granted by this section.”

22 141. Defendants owe a duty to Plaintiffs and members of Plaintiff Classes to indemnify them
23 for all necessary expenditures, losses, and damages suffered and incurred in direct consequence of the
24 discharge of their duties, or of their obedience to the directions of Defendants.

25 142. Defendants continue to refuse to reimburse and indemnify Plaintiffs and members of
26 Plaintiff Classes for all necessary expenditures and losses incurred by them, including but not limited
27 to, desk, chair, and other items related to the specific work space, which are subject to Defendant
28 requirements and approval; the proportionate share of each of their mortgage or rent; property taxes;

1 homeowner insurance premiums; utilities such as electricity, gas, and water; and trash collection
2 services.

3 143. Plaintiffs and Plaintiff Classes have incurred, and are continuing to incur, necessary
4 expenditures and losses in direct consequence of the discharge of duties, or of obedience to Defendant
5 directions as an employer, which at the time of obeying the directions, Plaintiffs and members of
6 Plaintiff Class believed to be lawful.

7 144. As a result of Defendant's failure to indemnify and reimburse Plaintiffs and Class
8 Members for the expenses they necessarily incurred in the performance and discharge of their work-
9 related duties, Plaintiffs and the Class Members have sustained economic damages in amount to be
10 proven at trial.

11 145. As a result of Defendant's violation of *Labor Code* § 2802, Plaintiffs seek
12 reimbursement for all business-related expenses they have incurred working for Defendant, in
13 amounts to be determined at trial, with interest thereon as well as attorney's fees and costs of suit
14 pursuant to *Labor Code* § 2802(c).

15 **EIGHTH CAUSE OF ACTION**
16 **FAILURE TO TIMELY PAY WAGES UPON TERMINATION**
17 **In Violation of Labor Code §§ 201-203**
18 **(Against Defendant and Does 1 – 50, inclusive)**

19 146. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though
20 fully set forth herein.

21 147. *Labor Code* § 201(a) provides in relevant part: "If an employer discharges an
22 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

23 148. *Labor Code* § 202(a) provides in relevant part: "If an employee not having a written
24 contract for a definite period quits his or her employment, his or her wages shall become due and
25 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of
26 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
27 quitting."

28 149. As a further result of Defendant's unlawful practices, Defendant violated Labor Codes
§ 201 and 202 by failing to timely pay all wages due for each and every hour worked, including

overtime wages, upon Plaintiffs' and such Class Members who separated from Defendant's employment during the Class Period, at the time of discharge or quitting.

150. Plaintiffs and certain Class Members also did not receive payments for commissions completed prior to their separation or termination that were still pending funds at the time of separation. Plaintiffs and certain Class Members have/had large commissions pending, with no additional major actions required to be taken by them.

151. At least fifty percent of Plaintiffs' and certain Class Members/Subclass Members' pending loans would have funded two weeks after their separation. Their separation or termination of employment relationship with Defendant did not impede their right to receive commissions on their loans that were completed and pending funding. Defendant has not paid them for all commissions that were completed and pending funding at the time of their separation or termination.

152. Labor Code § 203(a) provides in relevant part: "If an employer willfully fails to pay, without abatement or reduction, in accordance with § § 201 . . . 202 . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

153. Despite Defendant's willful violations of Labor Code §§ 201 and 202 by failing to timely pay all wages due upon Plaintiffs' and such Class Members who separated from Defendant's employment during the Class Period upon their discharge or quitting, Defendant failed to pay Plaintiffs and such Class Members "waiting time" penalties pursuant to Labor Code § 203(a).

154. As alleged supra, Defendant failed to lawfully compensate Plaintiffs and the Class Members as required by law. Therefore, Defendant has willfully failed to make timely payment of the full wages due to Plaintiffs and such Class Member employees who have resigned or been discharged during the Class Period.

155. Labor Code § 218.5(a) states in relevant part: "In any action brought for the nonpayment of wages . . . the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action."

156. As a result of Defendant's violations of Labor Code §§ 201 and 202, Plaintiffs seek an

award of “waiting time penalties” pursuant to Labor Code § 203, and attorney’s fees and costs pursuant to *Labor Code* § 218.5.

NINETH CAUSE OF ACTION
FAILURE TO PRODUCE EMPLOYEE RECORDS
In Violation of Labor Code Section 1198.5
(Against Defendant and Does 1 – 50, inclusive)

157. Plaintiff hereby realleges each and every allegation contained in this Complaint and incorporates the same as though set forth in full herein.

158. Labor Code Section 1198.5 was in full force and effect at all relevant times herein and provides in pertinent part, “Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee. (b) (1) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel records, at a charge not to exceed the actual cost of reproduction, not later than 30 calendar days from the date the employer receives the request...”

159. On or around November 29, 2021, Plaintiff Salvador Ochoa, by and through his counsel of record, sent Defendant’s counsel of record, Ms. Jacqueline M. Beaumont, Esq. a letter of representation, requesting copies of Plaintiff Salvador Ochoa’s payroll and personnel records pursuant to Labor Code Sections 432 and 1198.5.

160. Plaintiff Salvador Ochoa’s counsel provided Defendant an extended period of time to produce the requested payroll and personnel records in good faith.

161. It has been over two (2) months since the original written request for records was sent to Defendant’s counsel, yet Defendant has still failed and refused to produce Plaintiff Salvador Ochoa’s payroll and personnel records. As of the date of filing this Complaint, Plaintiff Salvador Ochoa’s counsel has still not received any response from Defendant or Defendant’s counsel and has not received any of the requested pay roll and personnel records.

162. Accordingly, Defendants have violated Labor Code Section 1198.5. Pursuant to 1198.5(k) Plaintiff Salvador Ochoa is entitled to and does seek to recover penalties in the amount of \$750.00 from each of the Defendants, plus his reasonable attorney's fees and costs incurred in bringing this action.

TENTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
In Violation of Bus. & Prof. Code § 17200 et seq.
(Against Defendant and Does 1 – 50, inclusive)

163. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

164. California Business and Professions Code § 17200, et seq. prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice.

165. California Business and Professions Code § 17202 provides: “Notwithstanding § 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture, or penal law in case of unfair competition.”

166. California Business and Professions Code § 17203 provides in relevant part that the court may “restore to any person in interest any money or property, real or person, which may have been acquired by means of such unfair competition.”

167. California Business and Professions Code § 17203 also provides that any person who meets the standing requirements of § 17204 and complies with *California Code of Civil Procedure* § 382 may pursue representative claims for relief on behalf of others.

168. California Business and Professions Code § 17204 allows any “person who has suffered injury in fact and has lost money or property as a result of such unfair competition” to prosecute a civil action for violation of the Unfair Business Practices Act.

169. Pursuant to § 17204, Plaintiffs and all similarly situated employees are entitled to enforce all applicable provisions of the Labor Code.

170. Beginning at an exact date unknown, but at least since the date four years prior to the filing of this Complaint, Defendant has committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent practices and acts described

1 in the Complaint, including, but not limited to violations of Labor Codes §§ 201-203, 204, 226 (a),
2 226.7, 510, 512, 1194, 1198, 2802 and the provisions of IWC No. 4-2001.

3 171. The violations of these laws and regulations, as well as of fundamental California
4 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of
5 Business and Professions Code § 17200 et seq.

6 172. The acts and practices described above constitute unfair, unlawful, and fraudulent
7 business practices, and unfair competition, within the meaning of Business and Professions Code §
8 17200, et seq. Among other things, Defendant's acts and practices have forced Plaintiffs and Class
9 Members to labor without receiving appropriate wages and/or to incur personal cell phone expenses
10 in the discharge of their duties.

11 173. The acts and practices described above have allowed Defendant to gain an unfair
12 competitive advantage over law-abiding employers and competitors.

13 174. As a result of the acts and practices described herein, Plaintiffs and Class Members
14 have been denied compensation in an amount to be proven at trial.

15 175. Plaintiffs and Class Members are therefore, entitled to restitution pursuant to Business
16 and Professions Code § 17203 and 17208 for all wages and other compensation unlawfully withheld
17 from them during the Class Period.

18 176. As a result of the aforementioned acts and practices, Defendant has received and
19 continues to receive ill-gotten gains belonging to Plaintiffs and Class Members.

20 177. Injunctive relief is necessary and appropriate to prevent Defendant from repeating and
21 continuing their unlawful, unfair, and fraudulent business acts and practices described herein.

22 178. Pursuant to § 17203 and/or any other applicable law, Plaintiffs seek an order preventing
23 Defendant from engaging in unlawful, unfair and fraudulent conduct and preventing Defendant from
24 profiting and benefiting from their illegal and wrongful acts.

25 179. Plaintiffs' success in this action will enforce important rights affecting the public
26 interest.

27 180. An award of attorneys' fees is appropriate pursuant to California Civil Code § 1021.5
28 because 1) this action will confer a significant benefit upon a large class of persons; and 2) there is a

1 financial burden involved in pursuing this action; and 3) it would be against the interest of justice to
2 force Plaintiffs to pay attorneys' fees from any amount recovered in this action.

3 **PRAYER FOR RELIEF**

4 Plaintiffs pray for relief and judgment against Defendants, jointly and severally as follows:

5 **ON THE FIRST THROUGH TENTH CAUSES OF ACTION**

- 6 1. For an order certifying the First through Ninth causes of action and maintaining said
7 causes of action as a class action pursuant to Cal. Code Civ. Proc. § 382 on behalf of the
8 members of the Class and/or Subclasses who were either employed or who performed work
9 here in the State of California within the Class Period and that notice of the pendency of
10 this action be provided to members of the Class;
- 11 2. Designation of Plaintiffs as the Class Representatives for the Class and/or Subclasses and
12 Plaintiffs' attorneys as Class Counsel for the Class and/or Subclasses;
- 13 3. A declaratory judgment that the practices complained of herein are unlawful under
14 California law;
- 15 4. Appropriate equitable relief to remedy Defendant's violations of California law including,
16 but not necessarily limited to, an order enjoining Defendant from continuing their unlawful
17 practices;
- 18 5. For an award of unpaid wages for all labor performed and liquidated damages in an amount
19 equal to the amount unlawfully unpaid pursuant to Labor Code §§ 200, 218, 1194 and
20 1194.2;
- 21 6. For an award of unpaid overtime wages pursuant to Labor Code §§ 510 and 1194;
- 22 7. All appropriate California statutory penalties;
- 23 8. An award of unpaid reporting time pay pursuant to IWC No. 4;
- 24 9. Compensation at the rate of one hour of regular pay for each instance in which a member
25 of the Class was not provided a first or second meal period;
- 26 10. Compensation at the rate of one hour of regular pay for each instance in which a member
27 of the Class worked through a rest break or was not provided a proper rest break for every
28 four hours worked or major fraction thereof;

- 1 11. Labor Code § 203 penalties;
- 2 12. Damages and penalties pursuant to Labor Code §§ 226(a) and 226.3 and 210;
- 3 13. Reimbursement of the necessary expenses incurred by the Class in the discharge of their
- 4 duties;
- 5 14. Pre-judgment and post-judgment interest, as provided by law;
- 6 15. Such other equitable relief as the Court may deem just and proper;
- 7 16. Attorneys' fees and costs of suit, including expert fees and fees pursuant to California
- 8 Labor Code §§ 218.5, 226, 1194, Code of Civil Procedure § 1021.5, and other applicable
- 9 California laws; and

10 **DEMAND FOR JURY TRIAL**

11 PLAINTIFF hereby demands trial of all issues by jury.

12

13

14 DATED: February 4, 2022

SW EMPLOYMENT LAW GROUP, APC

15 BY: 

16 Jacob N. Whitehead, Esq.

17 Shawn Sasooness, Esq.

18 Maria Burciaga, Esq.

19 Attorneys for Plaintiffs and putative

20 Class/Subclasses

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