

FILED

AUG 27 2021

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

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Attorneys for Plaintiffs and others similarly situated

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY

MELODY ROSE, WILLIAM HOOPES,
GHOLAMALI FARZIN KHALIFEH,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

NEAT CAPITAL, INC., NEAT LOANS, LLC,
and DOES 1 through 10, inclusive,

Defendants.

Case No. CIV2102451

**FIRST AMENDED COMPLAINT FOR
VIOLATIONS OF:**

1. California Labor Code § 2802
2. California Labor Code §§ 1194, 1194.2, 1197, 1197.1
3. California Labor Code §§ 510, 558 and 1194
4. California Bus. & Prof. Code § 17203
5. California Labor Code §§ 226, 226.3, 1174, and 1174.5
6. California Labor Code §§ 201, 202, 203
7. Labor Code Private Attorney General Act (Cal. Lab. Code § 2698, et seq.)

CLASS ACTION

JURY TRIAL DEMANDED

1 Plaintiffs Melody Rose, William Hoopes, Gholamali Farzin Khalifeh, on behalf of
2 themselves and on behalf of all others similarly situated, complain and allege as follows:

3 INTRODUCTION

4 1. This is a class action under California Code of Civil Procedure § 382 seeking
5 damages, restitution, penalties, attorneys' fees and costs on behalf of Plaintiffs and all other
6 individuals who are or have been employed as Loan Officers, Sr. Loan Officers, Mortgage Loan
7 Officers, Sr. Mortgage Loan Officers, (collectively, "Loan Officers") by Defendants Neat Capital,
8 Inc. and Neat Loans, LLC (hereafter "Neat" or "Defendants"), in California during the relevant time
9 period. Melody Rose, William Hoopes, and Gholamali Farzin Khalifeh bring this complaint for
10 themselves on behalf of similarly situated Loan Officers who (1) have not been reimbursed and/or
11 had their wages deducted for reasonable and necessary business expenses in violation of Labor Code
12 § 2802; (2) have not been paid for all hours worked, and therefore not paid overtime wages or the
13 minimum wage, in violation of Labor Code §§ 510, 1194, 1197, 1197.1; (3) have not been paid the
14 correct premium wage for overtime hours worked in violation of Labor Code §§ 510 and 1194; and
15 (4) have not been provided compliant wage statements or time wages at time of termination in
16 violation of Labor Code §§ 201, 202, 203, 226, 1174, and 1174.5.

17 JURISDICTION AND VENUE

18 2. This Court has jurisdiction over claims brought under the California Labor Code and
19 the Business & Professions Code.

20 3. Venue is proper in this Court pursuant to Code of Civil Procedure § 395.5. Defendant
21 does business in this jurisdiction, one of the Plaintiffs resides and performed work for Defendant in
22 this jurisdiction, and the liability for some of the claims alleged herein arose in this jurisdiction.

23 PARTIES

24 4. During the relevant time period, Plaintiff Melody Rose was employed by Neat
25 Capital, Inc. as a Sr. Loan Officer in San Francisco, California.

26 5. During the relevant time period, William Hoopes was employed by Neat Capital, Inc.
27 as a Sr. Loan Officer in Novato, Marin County, California.

28 6. During the relevant time period, Gholamali Farzin Khalifeh was employed by Neat

1 Capital, Inc. as a Sr. Loan Officer in San Rafael, Marin County, California.

2 7. During the relevant time period, Defendant Neat Capital, Inc. is a Delaware
3 corporation with its principal place of business located at 2580 55th Street, Ste. 101 in Boulder,
4 Colorado. During the relevant time period, Defendant Neat Loans, LLC is a Massachusetts limited
5 liability corporation with its principal place of business located at 2560 55th Street, Ste. 101 in
6 Boulder, Colorado. Both Neat Capital, Inc. and Neat Loans, LLC are in the business of residential
7 mortgage origination. Plaintiffs are informed and believe and thereon allege that Neat Capital, Inc.
8 has or is in the process of changing its name to Neat Loans, LLC.

9 8. The true names and capacities of persons or entities, whether individual, corporate,
10 associate, or otherwise, sued herein as DOES 1 through 10, inclusive, are currently unknown to
11 Plaintiffs, who therefore sues Defendant by such fictitious names under Code of Civil Procedure §
12 474. Plaintiffs are informed and believe, and based thereon alleges, that each of the Defendants
13 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
14 herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
15 capacities of the Defendants designated hereinafter as DOES when such identities become known.

16 9. All of Plaintiffs' claims stated herein are asserted against Defendant and any of its
17 owners, predecessors, successors, subsidiaries, and/or assigns.

18 **FACTUAL BACKGROUND**

19 10. Defendants are fintech companies employing less than 100 individuals as Loan
20 Officers in California to sell mortgage products to customers within this state.

21 11. Defendants' policies, practices, and procedures with respect to the lack of
22 reimbursement of business expenses, commission plans and payroll policies and procedures existed
23 at all times relevant to this Complaint. On information and belief, these policies, practices, and
24 procedures are ongoing.

25 12. Defendants' policies, practices, and procedures with respect to lack of reimbursement
26 of business expenses for personal automobile use have existed since approximately March 14, 2020.
27 On information and belief, these policies, practices, and procedures are ongoing.

28 13. Plaintiffs and similarly situated Loan Officers are or were engaged in the sales of

1 residential mortgage products on behalf of Neat in California. Neat's California-based Loan Officers
2 were domiciled in their individual residences and were expected from time to time to visit clients
3 outside of their residences. Neat would set up conference rooms at local hotels for this purpose. As
4 such, Loan Officers incurred reasonable and necessary business expenses such as mileage, parking,
5 tolls, phone, and home internet service. Plaintiffs allege that they and similarly situated Loan Officers
6 have been expected by Neat to pay, and have personally paid, these reasonable and necessary
7 business expenses incurred in carrying out their duties and responsibilities for Neat. Neat has
8 willfully failed and refused to timely and fully reimburse Plaintiffs and other present and former
9 Loan Officers for these business expenses that were included in the regular course of their duties as
10 required by Labor Code § 2802.

11 14. Plaintiffs and similarly situated Loan Officers earned "Total Origination Incentives"
12 as a result of selling residential mortgages that the Loan Officer originated and closed and funded.
13 Neat also employed other employees entitled Loan Officer Assistants or Loan Officer Concierge
14 (collectively, "Loan Assistants") whose duties and responsibilities consisted of providing
15 transactional support to Loan Officers by performing such duties as assisting the borrower with
16 applications and documentation, providing pricing support for the Loan Officers, providing scenario
17 and structure support, as well as following up on conditions to facilitate the closing of the loan. These
18 are the primary duties and responsibilities of the Loan Assistants. When Loan Officers received
19 transactional support from the Loan Assistants for closed loans, \$500 was deducted from the earned
20 compensation of the Loan Officers. By requiring its Loan Officers to pay the Loan Assistants \$500
21 for each closed loan the Loan Assistants worked on, Neat deducts from the earned wages of its Loan
22 Officers to pay its overhead expenses in the form of compensation to other employees in violation
23 of Labor Code § 2802.

24 15. Plaintiffs and similarly situated Loan Officers were classified as nonexempt by Neat.
25 Plaintiffs and similarly situated Loan Officers customarily and regularly worked overtime hours. The
26 duties and responsibilities of the Loan Officer position are such that more than 40 hours of work per
27 week and or more than 8 hours of work per day are customarily and regularly required. Neat;
28 however, assumed that its Loan Officers only worked 30 hours in a week. Neat knew or had reason

1 to know that its Loan Officers were working more than 30 hours in a week and, indeed, more than
2 40 hours in a week as a result of communications, documents and log-on activity generated by the
3 Loan Officers. As such, Loan Officers worked off-the-clock and were not paid the required minimum
4 wage, straight time wage and premium wage in violation of Labor Code §§ 510, 1194, 1197, 1197.1.

5 16. Plaintiffs and similarly situated Loan Officers earned various incentive pay including
6 a base monthly commission, a quarterly commission incentive, and a quarterly bonus incentive. All
7 of these commissions and bonuses were based on the Loan Officers' production. Neat did not
8 properly take into consideration these payments when it paid Loan Officers their premium rate in
9 violation of Labor Code §§ 510 and 515.

10 17. As a result of the foregoing, Plaintiffs and other similarly situated Loan Officers were
11 not provided compliant wage statements in violation of Labor Code §§ 226, 1174, 1174.5 and were
12 not paid all of their wages at time of termination in violation of Labor Code §§ 201, 202, and 203.

13 **CLASS ACTION ALLEGATIONS**

14 18. Plaintiffs bring this action, on behalf of themselves and all others similarly situated,
15 as a class action pursuant to California Code of Civil Procedure § 382. The class that Plaintiffs seek
16 to represent is composed of and defined as follows:

17 All persons who are or have been employed, at any time from four years prior to
18 the filing of the original complaint in this action through the date of the Court's
19 granting of class certification in this matter, by Neat Capital, Inc. and/or Neat
20 Loans, LLC in California under the job title Loan Officer, Sr. Loan Officer,
21 Mortgage Loan Officer, Sr. Mortgage Loan Officer, or the functional equivalent
22 however titled.

23 19. This action has been brought and may properly be maintained as a class action under
24 California Code of Civil Procedure § 382 because there is a well-defined community of interest in
25 the litigation, the proposed class is easily ascertainable, Plaintiffs are proper representatives of the
26 class, and Defendants have acted or refused to act on grounds that apply generally to the class, so
27 that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as
28 a whole:

1 a. Numerosity: Plaintiffs are informed and believe and based thereon allege
2 that there are more than 40 but less than 100 citizens of California who held the title Loan Officer,
3 Sr. Loan Officer, Mortgage Loan Officer, Sr. Mortgage Loan Officer (collectively, “Loan Officers”)
4 for Defendants during the statutory time period covered by this action. The potential members of
5 the class as defined are numerous and therefore joinder of all the members of the Class is
6 impracticable.

7 b. Commonality: There are questions of law and fact common to Plaintiffs and
8 the class that predominate over any questions affecting only individual members of the class. These
9 predominant common questions of law and fact include, but are not limited to, the following:

10 (i) Whether Defendants’ policy and practice of not reimbursing Loan
11 Officers for all reasonable and necessary business expenses is legal under California law;

12 (ii) Whether Defendants’ policy and practice of deducting from the
13 earned wages of Loan Officers is legal under California law;

14 (iii) Whether Defendants’ policy and practice of not paying for all hours
15 worked is legal under California law; and,

16 (iv) Whether Defendants’ policy and practice of failing to properly
17 calculate the regular rate and premium rate for Loan Officers is legal under California law.

18 c. Typicality: Plaintiffs’ claims are typical of the claims of the class. Plaintiffs
19 and other Loan Officers sustained injuries and damages, and were subject the same policies and
20 procedures that resulted in Plaintiffs and the class being subject to unlawful failure reimburse,
21 unlawful deductions from wages, and unlawful wage polies as other class members.

22 d. Adequacy of Representation: Plaintiffs are members of the class and will
23 fairly and adequately represent and protect the interests of the class. Plaintiffs’ interests do not
24 conflict with those of other class members. Counsel who represents Plaintiffs is competent and
25 experienced in litigating large wage and hour class actions and will devote sufficient time and
26 resources to the case and otherwise adequately represent the class.

27 e. Superiority of Class Action: A class action is superior to other available
28 means for the fair and efficient adjudication of this controversy. Individual joinder of all Loan

1 Officers is not practicable, and questions of law and fact common to the class predominate over any
2 questions affecting only individual members of the class. Each class member has been damaged or
3 may be damaged in the future by reason of Defendants' unlawful policies and/or practices as alleged
4 herein. Certification of this case as a class action will allow those similarly situated persons to
5 litigate their claims in the manner that is most efficient and economical for the parties and the
6 judicial system. Certifying this case as a class action is superior because Plaintiffs seek relief that
7 will affect all Loan Officers in a common way, and will also allow for efficient and full
8 disgorgement of the ill-gotten gains Defendants have enjoyed by maintaining its unlawful business
9 policies and practices, and will thereby effectuate California's strong public policy of protecting
10 employees from deprivation or offsetting of compensation earned in their employment. If this action
11 is not certified as a class action, it will be impossible as a practical matter for many or most Loan
12 Officers to bring individual actions to recover monies unlawfully withheld from their lawful
13 compensation due from Defendants due to the relatively small amounts of such individual
14 recoveries relative to the costs, burdens, and risks of litigation.

15 f. Risk of Inconsistent Judgements: Class certification is warranted here
16 because separate lawsuits by each class member would create a risk of incompatible standards of
17 conduct on Defendants because Plaintiffs are seeking injunctive and declaratory relief regarding
18 Defendants' classwide pay policies.

19 g. Injunctive and Declaratory Relief: Class certification is appropriate here
20 because Defendants have acted on grounds that are generally applicable to the entire class of Loan
21 Officers because they have failed to reimburse them for reasonable and necessary business
22 expenses, taken deductions from their earned wages, failed to pay for all hours worked, and failed
23 to properly calculate the regular rate and premium rate. Certification is appropriate here because
24 Plaintiffs seek final injunctive and declaratory relief with respect to the class as a whole that
25 Defendants' illegal policies and practices as identified herein are illegal under California law. The
26 class is cohesive because all current and future Loan Officers are subject to Defendants' uniform
27 policies and procedures.
28

1 **FIRST CAUSE OF ACTION**

2 **Failure to Reimburse Business Expenses and Unlawful Deduction of Wages**

3 **(Cal. Labor Code § 2802)**

4 20. Plaintiffs incorporate by reference the preceding paragraphs as fully set forth herein.

5 21. Labor Code § 2802(a) provides: “An employer shall indemnify his or her employee
6 for all necessary expenditures or losses incurred by the employee in direct consequence of the
7 discharge of his or her duties.”

8 22. While discharging their duties for Defendants, Plaintiffs and similarly situated
9 employees have incurred reasonable and necessary work-related expenses. Such expenses include,
10 but are not limited to, work-from-home expenses such as internet service charges, telephone service
11 and equipment, cellphone service, data and equipment, home office equipment, office supplies,
12 mileage, tolls, and parking for work related travel, increased electric or other utility bills, as well as
13 other reasonable and necessary business expenses.

14 23. Defendants knew or reasonably should have known that Plaintiffs and the Class were
15 incurring such expenses but have failed to indemnify or reimburse Plaintiffs and similarly situated
16 employees for these expenditures. By requiring those employees to pay expenses they incurred in
17 direct consequence of the discharge of their duties, Defendants have violated and continue to violate
18 Labor Code § 2802.

19 24. Defendants caused the earned wages of Plaintiffs and the Class to be subject to
20 unlawful deductions to their wages. Specifically, Defendants charged Loan Officers \$500 for each
21 closed loan to be paid to other employees of Defendants who were carrying out their normal duties
22 and responsibilities. By requiring Plaintiffs and the Class to indemnify Defendants for their overhead
23 expenses in the form of supplementing the wages of Defendants’ employees, Defendants have
24 violated and continue to violate Labor Code § 2802.

25 25. By unlawfully failing to indemnify Plaintiffs and similarly situated employees and by
26 unlawfully deducting from the earned wages of Plaintiffs and similarly situated employees,
27 Defendants are liable for reasonable attorneys’ fees and costs under Labor Code § 2802(c).
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1 Labor Code § 510.

2 33. Defendants' failure to pay the statutory overtime wage permits Plaintiffs to bring this
3 action pursuant to Labor Code § 1194. Defendants' failure to pay compensation for the overtime
4 hours and failure to properly calculate the regular rate and premium rate entitled Plaintiffs and the
5 Class to civil penalties pursuant to Labor Code §558. Plaintiffs and the Class seek the unpaid balance
6 of the overtime wage, including interest thereon, attorneys' fees and costs.

7 **FOURTH CAUSE OF ACTION**

8 **Unlawful Wage Practices**

9 **(Cal. Bus. & Prof. Code § 17203)**

10 33. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
11 complaint as if fully set forth herein.

12 34. Defendants have committed acts of unfair competition by: (1) not reimbursing their
13 Loan Officers for all reasonable and necessary business expenses in violation of Labor Code § 2802;
14 (2) taking deductions from the earned wages of the Loan Officers in violation of Labor Code §
15 2802; (3) not paying for all hours worked in violation of Labor Code §§ 1194, 1194.2, 1197, 1197.1;
16 (4) paid overtime wages for overtime hours worked in violation of Labor Code §§ 510 and 1194;
17 and (5) failing to properly calculate the regular rate and premium rate in violation of Labor Code §
18 510.

19 35. Pursuant to California Business & Professions Code § 17203, Plaintiffs request an
20 order requiring Defendants to make restitution of all minimum wages, overtime wages, and interest
21 due to them and the members of the class in an amount to be proved at hearing, an injunction and
22 declaratory relief to enjoin Defendants from such conduct in the future, and reasonable attorneys'
23 fees and costs per C.C.P. § 1021.5.

24 **FIFTH CAUSE OF ACTION**

25 **Unlawful Wage Statements**

26 **(Cal. Labor Code §§ 226, 226.3, 1174, and 1174.5)**

27 36. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
28 Complaint as if fully set forth herein.

1 37. Defendants, as a matter of corporate policy, did not maintain or provide accurate
2 itemized wage statements in violation of Labor Code §§ 226 and 1174.

3 38. Defendants did not state or did not accurately state, *inter alia*, the wages earned in
4 the pay period or the actual hourly rate of Plaintiffs and other Loan Officers. Defendants' failure to
5 maintain accurate itemized wage statements was willful, knowing, intentional, and the result of
6 Defendants' custom, habit, pattern and practice. Defendants' failure to maintain accurate itemized
7 wage statements was not the result of isolated, sporadic or unintentional behavior. Due to
8 Defendants' failure to comply with the requirements of Labor Code §§ 226 and 1174, Plaintiffs and
9 other Loan Officers were injured thereby.

10 39. Such a pattern and practice as alleged herein is unlawful and creates an entitlement
11 to recovery by Plaintiffs and other Loan Officers to all damages and penalties pursuant to Labor
12 Code §§ 226, 226.3, and 1174.5, including interest thereon, penalties, attorneys' fees and costs.

13 **SIXTH CAUSE OF ACTION**

14 **Failure To Pay Wages At Termination**

15 **(Cal. Labor Code §§ 201-203)**

16 40. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
17 Complaint as if fully set forth herein.

18 41. Labor Code § 201 provides: "If an employer discharges an employee, the wages
19 earned and unpaid at the time of discharge are due and payable immediately."

20 42. Labor Code § 202 provides: "If an employee not having a written contract for a
21 definite period quits his or her employment, his or her wages shall become due and payable not later
22 than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her
23 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

24 43. Labor Code § 203 provides: "If an employer willfully fails to pay, without abatement
25 or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an
26 employee who is discharged or who quits, the wages of the employee shall continue as a penalty
27 from the due date thereof at the same rate until paid or until an action therefor is commenced; but
28 the wages shall not continue for more than 30 days."

44. Plaintiffs and other formerly employed Loan Officers were discharged by Defendants or voluntarily quit. Defendants, in violation of California Labor Code §§ 201 and 202, has a consistent and uniform policy, practice and procedure of willfully failing to timely pay the wages to its former employees. Plaintiffs and other formerly employed Loan Officers did not secret or absent themselves from Defendants nor refuse to accept the earned and unpaid wages from Defendants.

45. As a result of Defendants' violations of Labor Code §§ 201-202, Defendants are liable for waiting time penalties to Plaintiffs and other formerly employed class members pursuant to Labor Code § 203.

SEVENTH CAUSE OF ACTION
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT
(Cal. Labor Code § 2698, et seq.)

46. Plaintiffs incorporate by reference the preceding paragraphs as fully set forth herein.

47. As alleged above, Defendants failed to comply with the California Labor Code. As such, Plaintiffs are “aggrieved employees” as defined in Labor Code §2699(a). Pursuant to Labor Code §2699, the Labor Code Private Attorneys General Act of 2004, Plaintiffs bring this action on behalf of themselves and other current and former employees of Neat Capital, Inc. and Neat Loans, LLC in California holding the titles of Loan Officer, Sr. Loan Officer, Mortgage Loan Officer, Sr. Mortgage Loan Officer, or the functional equivalent however titled, and seek recovery of applicable civil penalties as follows:

a. where civil penalties are specifically provided in the Labor Code for each of the violations alleged herein, Plaintiffs seek recovery of such penalties;

b. where civil penalties are not established in the Labor Code for each of the violations alleged herein, Plaintiffs seek recovery of the penalties established in § 2699€ of the Labor Code Private Attorneys General Act of 2004, and in accordance with § 200.5 of the Labor Code.

48. On June 15, 2021, Plaintiffs served written notice via electronic submission to the Labor and Workforce Development Agency (LWDA) and via certified mail to Defendants Neat

Capital, Inc. and Neat Loans, LLC of their intent to amend their complaint to add a cause of action pursuant to Labor Code § 2699, et seq.

49. The LWDA did not respond to the notice within the time provided by Labor Code § 2699.3.

JURY DEMAND

Plaintiffs hereby request a trial by jury on all legal issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

1. For an order certifying the proposed class and designating this action as a class action pursuant to C.C.P. § 382;
2. For damages according to proof;
3. For declaratory and injunctive relief;
4. For an order appointing Plaintiffs and their counsel to represent the proposed class as defined in this Complaint;
5. For restitution according to proof;
6. For penalties according to proof;
7. For an order requiring Defendants to provide an accounting of all wages and all sums unlawfully withheld from compensation due to Plaintiffs and the other members of the proposed class;
8. For interest according to proof;
9. For reasonable attorneys' fees and costs; and
10. For such other relief the Court deems just and proper.

DATED: August 27, 2021

WYNNE LAW FIRM

By: Edward J. Wynne

Attorneys for Plaintiffs Melody Rose, William Hoopes, Gholamali Farzin Khalifeh, individually and on behalf of all others similarly situated