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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

DIVA ALFARO on behalf of herself and all
aggrieved employees

Plaintiff,

vs.

PARAMOUNT RESIDENTIAL MORTGAGE
GROUP, INC.; and DOES 1 through 25,
inclusive,

Defendants.

Case No.: CVRI2103949

**FIRST AMENDED COMPLAINT FOR
PENALTIES FOR VIOLATION OF
LABOR CODE § 2698 *et seq.* (PRIVATE
ATTORNEYS GENERAL ACT OF 2004)**

1 Plaintiff DIVA ALFARO (“Plaintiff”) hereby submits her complaint (“Complaint”) against
2 Defendants PARAMOUNT RESIDENTIAL MORTGAGE GROUP, INC. (“PRMG”) and DOES 1
3 through 25, inclusive (collectively, “Defendants”), on behalf of herself and other current and former
4 aggrieved employees of Defendants for penalties as follows:

5 **INTRODUCTION**

6 1. This representative action is brought pursuant to Labor Code § 2698 *et seq.* (the Private
7 Attorneys General Act of 2004 (“PAGA”) for Defendants’ violations of Labor Code §§ 201, 202, 203,
8 204, 221, 222, 223, 224, 226(a), 226.2 226.3, 226.7, 510, 512(a), 1174, 1194, 1197, 1197.1, and 1198
9 This is a PAGA action and not a class action.

10 2. This Complaint challenges Defendants’ systemic illegal employment practices resulting
11 in violations of the stated provisions of the Labor Code against the identified group of employees.

12 3. Plaintiff is informed and believes and thereon alleges Defendants jointly and severally
13 acted intentionally and with deliberate indifference and conscious disregard to the rights of all
14 employees in (1) failing to pay all meal period wages and rest break wages, (2) failing to properly
15 calculate and pay all minimum and overtime wages, (3) failing to provide accurate wage statements, (4)
16 failing to pay all wages due and owing upon termination of employment, (5) failing to timely pay wages;
17 (6) failing to maintain accurate employment records; (7) unlawful deductions; and (8) failing to provide
18 written notice pursuant to Labor Code § 2810.5.

19 **JURISDICTION AND VENUE**

20 4. This action is brought pursuant to PAGA. The civil penalties sought by Plaintiff exceed
21 the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

22 5. This Court has jurisdiction over this action pursuant to California Constitution, Article
23 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by
24 statute to other courts. The statutes under which this action is brought do not specify any other basis for
25 jurisdiction.

26 6. This Court has jurisdiction over the violations of PAGA and Labor Code §§ 201, 202,
27 203, 204, 221, 222, 223, 224, 226(a), 226.2 226.3, 226.7, 510, 512(a), 1174, 1194, 1197, 1197.1, and
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conspirators and assigns, and that all acts or omissions alleged herein were duly committed with ratification, knowledge, permission, encouragement, authorization and consent of each Defendant designated herein.

CAUSE OF ACTION

15. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 14 as though fully set forth herein.

17. On September 10, 2021¹, Plaintiff provided written notice to the LWDA and Defendants of the specific provisions of the Labor Code she contends were violated, and the theories supporting her contentions. Plaintiff believes that on or about November 15, 2021, the sixty-five (65) days notice period expired and the LWDA did not take any action to investigate or prosecute this matter. Therefore, Plaintiff has exhausted the statutory time period to bring this action.

¹ Plaintiff served notice on the LWDA and Defendant on August 27, 2021, which was undeliverable on Defendant. Plaintiff served an amended notice on the LWDA and Defendant on September 10, 2021.

1 **Failure to Pay Minimum and Overtime Wages**

2 **19.** At all times relevant herein, Defendants were required to compensate their non-exempt
3 employees minimum wages for all hours worked and overtime wages for all hours worked in excess of
4 eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the mandate of Labor Code §§
5 510, 1194, 1197, and 1198.

6 **20.** As a pattern and practice, Defendants failed to compensate Plaintiff and other aggrieved
7 current and former employees for all hours worked, including for work performed off-the-clock, and
8 improperly excluded bonuses and commissions from its calculation of Plaintiff's and other aggrieved
9 current and former employees' regular rate of pay for overtime compensation purposes, resulting in a
10 failure to pay all minimum wages and overtime wages, where applicable.

11 **Failure to Provide Meal Periods and Authorize and Permit Rest Breaks**

12 **21.** In accordance with the mandates of Labor Code §§ 226.7 and 512, Defendants were
13 required to authorize and permit their non-exempt employees to take a paid off duty 10-minute rest break
14 for every four (4) hours worked or major fraction thereof, and were further required to provide their
15 non-exempt employees with an off duty 30-minute meal period for every five (5) hours worked.

16 **22.** As a pattern and practice, Defendants failed to provide Plaintiff and other aggrieved
17 current and former employees with legally-mandated meal periods and failed to authorize and permit
18 legally-mandated rest breaks, and failed to compensate them premium wages. Defendants required
19 Plaintiff and other aggrieved current and former employees to work through, interrupt, or cut short their
20 meal periods and/or rest breaks to complete their daily workload and satisfy the company's expectations,
21 without compensation. Additionally, Defendants required Plaintiff and other aggrieved current and
22 former employees to record they received meal periods despite the fact Defendants were not providing
23 them with legally mandated meal periods. Further, Defendants failed to provide Plaintiff and other
24 aggrieved current and former employees with the requisite number of meal periods and rest breaks when
25 working shifts exceeding greater than 10 hours in length.

26 **Failure to Timely Pay Wages During Employment**

27 **23.** At all times relevant herein, Defendants were required to pay their employees within a
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1 specified time period pursuant to the mandate of Labor Code § 204.

2 **24.** As a pattern and practice, Defendants regularly failed to timely pay Plaintiff and other
3 aggrieved current and former employees all wages due and owing them within the required time period.

4 **Failure to Timely Pay Wages Upon Separation**

5 **25.** At all times relevant herein, Defendants were required to pay their employees all wages
6 owed in a timely fashion at the end of employment pursuant to California Labor Code §§ 201 to 204.

7 **26.** As a result of Defendants' Labor Code violations alleged above, Defendants failed to pay
8 Plaintiff and the other aggrieved former employees their final wages pursuant to Labor Code §§ 201 to
9 204 and accordingly owe waiting time penalties pursuant to Labor Code § 203.

10 **Failure to Provide Complete and Accurate Wage Statements**

11 **27.** Defendants do not comply with the requirements of Labor Code Section 226 which requires
12 that "every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or
13 her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or
14 separately when wages are paid by personal check or cash, an accurate itemized statement in writing
15 showing:

16 (1) gross wages earned,

17 (2) total hours worked by the employee, except for any employee whose compensation is
18 solely based on a salary and who is exempt from payment of overtime under subdivision (a) of
19 Section 515 or any applicable order of the Industrial Welfare Commission,

20 (3) the number of piece-rate units earned and any applicable piece rate if the employee is
21 paid on a piece-rate basis,

22 (4) all deductions, provided that all deductions made on written orders of the employee
23 may be aggregated and shown as one item,

24 (5) net wages earned,

25 (6) the inclusive dates of the period for which the employee is paid,

1 (7) the name of the employee (and the last four digits of his or her social security number
2 or an employee identification number other than a social security number *may* be shown on the
3 itemized statement),

4 (8) the name and address of the legal entity that is the employer, and

5 (9) all applicable hourly rates in effect during the pay period and the corresponding number
6 of hours worked at each hourly rate by the employee.

7 Defendants fail to provide accurate and complete information, as specified in items above as set forth in
8 section 226(a).

9 **28.** California Labor Code Section 226(e) provides: "An employee suffering injury as a result
10 of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to
11 recover 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, not
13 exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an award of
14 costs and reasonable attorney's fees." Plaintiff and the other aggrieved employees suffered injuries as
15 defined and set forth in California Labor Code Section 226(e) because, in addition to Defendants' failure
16 to provide accurate and complete information, as specified in items above (as set forth in section 226(a)),
17 Plaintiff and the other aggrieved employees could not "promptly and easily determine" from the wage
18 statements alone the correct hourly rate in effect during the pay period (i.e., without reference to other
19 documents or information), nor was the overtime rate or the hours worked provided in the statements
20 accurate.

21 **29.** During the applicable time period, Defendants failed to provide Plaintiff and the other
22 aggrieved employees with timely and accurate wage and hour statements showing gross wages earned,
23 net wages earned, overtime pay, and all applicable hourly rates in effect during each pay period with the
24 corresponding number of hours worked at each hourly rate by that individual.

25 **30.** As alleged herein, Plaintiff and the other aggrieved employees are/were not exempt from
26 the requirements of California's labor laws and regulations. Plaintiff and the California class members
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were and will be injured by Defendants' failure to comply with the aforementioned requirements for time records and wage statements.

31. At all times relevant herein, Defendants were required to both provide and keep *accurate* records regarding their California employees pursuant to the mandate of Labor Code §§ 226 and 1174.

32. As a result of Defendants' various Labor Code violations, Defendants failed to keep accurate records regarding Plaintiff and other aggrieved current and former employees. For example, Defendants failed in their affirmative obligation to keep accurate records regarding Plaintiff and other aggrieved current and former employees' gross wages earned, total hours worked, all deductions, net wages earned, and all applicable hourly rates and the number of hours worked at each hourly rate.

Failure to Maintain Accurate Employment Records

33. Pursuant to Labor Code §§ 1174, 1174.5, and 2810.5, Defendants were required to maintain accurate employment records for Plaintiff and Aggrieved Employees of including but not limited to time records, pay stubs, clock in and clock out, meal break periods, rest break periods, and the employment file itself.

34. As a pattern and practice, Defendants failed to maintain accurate employment records regarding employment for Plaintiff and Aggrieved Employees and as a result, Defendants have violated Labor Code §§ 1174, 1174.5, and 2810.5.

Unlawful Deduction of Wages

35. Labor Code §221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. Defendants unlawfully deducted wages from Plaintiff and Aggrieved Employees. Defendants created a system whereby Plaintiff and Aggrieved Employees would be deducted wages and were in fact deducted wages. Labor Code §223 provides that where a contract requires an employer to maintain the designated scale, it is unlawful to pay a lower wage while purporting to pay the wage designed by the contract. Labor Code §224 prohibits employers from making deductions from an employee's wages not authorized by the employee in writing or permitted by law. Labor Code §2751 provides that: Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and

the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.

36. Under California law, an employer can lawfully withhold amounts from an employee's wages only in the following circumstances:

- a) When required or empowered to do so by state or federal law;
- b) When a deduction is expressly authorized in writing by the employee to cover insurance premiums, benefit plan contributions or other deductions not amounting to a rebate on the employee's wages; and
- c) When a deduction to cover health, welfare or pension contributions is expressly authorized by a wage or collective bargaining agreement (Labor Code Sections 221 and 224).

37. None of the exceptions and outlined by the Labor Code apply to Plaintiff and Aggrieved Employees and therefore the deductions including that of wages and commission by Defendants are deemed illegal. Defendants have maintained a policy of failing to inform Plaintiff and Aggrieved Employees of the illegal deductions and have willfully failed to compensate Plaintiff and Aggrieved Employees for wages earned as a result of the illegal deductions.

38. Plaintiff and Aggrieved Employees are entitled to the wages deducted by Defendants and/or civil penalties pursuant to (including penalties pursuant to Labor Code section 225.5), and waiting time penalties associated with the deductions and according to proof at trial.

Failure to Provide Written Notice Pursuant to California's Wage Theft Prevention Act

39. Defendants did not comply with California's Wage Theft Prevention Act, codified in part in Labor Code § 2810.5, provided in pertinent part: (a) (1) At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information: (A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable. (B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances. (C) The regular payday designated by the employer in accordance with the requirements of this code. (D) The name of the employer, including any

“doing business as” names used by the employer. (E) The physical address of the employer’s main office or principal place of business, and a mailing address, if different. (F) The telephone number of the employer. (G) The name, address, and telephone number of the employer’s workers’ compensation insurance carrier. (H) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates. (I) Any other information the Labor Commissioner deems material and necessary[...](b) An employer shall notify his or her employees in writing of any changes to the information set forth in the notice within seven calendar days after the time of the changes, unless one of the following applies: (1) All changes are reflected on a timely wage statement furnished in accordance with Section 226. (2) Notice of all changes is provided in another writing required by law within seven days of the changes.

40. Defendants failed to provide Plaintiff and aggrieved Employees with the written notice required pursuant to the California’s Wage Theft Prevention Act, codified in part in Labor Code §2810.5.

Penalties

41. Pursuant to California Labor Code § 2699, Plaintiff, individually, and on behalf of other current and former aggrieved employees, requests and is entitled to recover from Defendants, and each of them, civil penalties, interest, attorneys’ fees and costs pursuant, as well as all statutory penalties against Defendants, and each of them, including but not limited to:

42. Penalties under California Labor Code § 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

43. Penalties under California Code of Regulations Title 8 § 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

44. Penalties under California Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars

(\$200) for each aggrieved employee per pay period for each subsequent violation;

45. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

46. Any and all additional penalties as provided by the Labor Code and/or other statutes;
and

47. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and 2699, and any other applicable statute.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on her own behalf and as representative of other aggrieved current and former employees pursuant to PAGA, prays for judgment as follows:

1. Upon the Cause of Action, for civil penalties pursuant to statute as set forth in Labor Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 218.5, 221, 223, 226, 226.3, 226.7, 510, 512(a), 551, 552, 1174, 1194, 1197, 1197.1, and 1198.
2. Upon the Cause of Action, for costs and attorneys' fees pursuant to Labor Code §§ 210, 1194, and 2699, and any other applicable statute; and
3. For such other and further relief the court may deem just and proper.

Dated: November 16, 2021

NATHAN & ASSOCIATES, APC

By: /s/ Reuben D. Nathan
Reuben D. Nathan
Diva Alfaro
Attorneys for Plaintiff