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Assigned For All Purposes

Judge Peter Wilson

CX-102

Attorneys for Plaintiffs and All Others Similarly Situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

MICHAEL GHAZANFARI, an individual;
AMBER NIECE, an individual, an individual;
NICKO CORDOVA, an individual; JARED
ROGERS, an individual; JUSTIN LINARES, an
individual; APIRADA NITITHAM, an
individual; AMBER DUBOIS, an individual;
JORGE VILLALOBOS, an individual; MITZY
BODNER, an individual; VAUGHN
ROBINSON, an individual, SHARON GREEN,
an individual, and TROY SEPPALA, an
individual; each as an individual and on behalf of
all others similarly situated

Plaintiffs,

v.

BETTER MORTGAGE CORPORATION, a
California corporation, and DOES 1-50,
inclusive,

Defendants

Case No.: 30-2022-01248489-CU-OE-CXC

**CLASS AND REPRESENTATIVE
ACTION 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, 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) **VIOLATION OF THE PRIVATE ATTORNEY GENERALS ACT OF 2004, Labor Code §2698 et seq.**

) **10) UNFAIR BUSINESS PRACTICES (In**
) **Violation of Bus. & Prof. Code § 17200);**
)
)
) **{JURY TRIAL DEMANDED}**
)
)

Plaintiffs, Michael Ghazanfari, Amber Niece, Nicko Cordova, Jared Rogers, Justin Linares, Apirada Nititham, Amber DuBois, Jorge Villalobos, Mitzy Bodner, Vaughn Robinson, Sharon Green and Troy Seppala 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 BETTER MORTGAGE CORPORATION (“Defendant”), and DOES 1-50, inclusive, (collectively, “Defendants”). Plaintiffs hereby state and allege as follows:

INTRODUCTION

1. Plaintiffs bring this class action pursuant to California Code of Civil Procedure § 382 against Defendants for, among other things: failure to provide complaint rest and meal breaks; failure to pay overtime wages; failure to maintain accurate records of hours worked and wages earned; failure to pay wages when due; failure to furnish accurate wage statement; failure to reimburse work-related expenses incurred in the discharge of job duties; and failure to pay all wages due upon termination.

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(a), 2802 and Industrial Wage Commission (“IWC”) Wage Order No. 4-2001 (“IWC No. 4”) for unpaid premiums for rest-and-meal break violations, unpaid overtime compensation, applicable penalties, injunctive and other relief and reasonable attorneys’ fees and costs.

THE PARTIES

Plaintiff MICHAEL GHAZANFARI

3. Plaintiff MICHAEL GHAZANFARI is and was, at all times relevant to this Complaint, an adult individual who lived in Redwood City, California and worked for Defendant remotely in the Irvine in the County of Orange, California. Defendant employed Plaintiff as a Loan Consultant Associate from in or about March 2, 2021, to on or about July 9, 2021.

1 **Plaintiff AMBER NIECE**

2 4. Plaintiff AMBER NIECE is and was, at all times relevant to this Complaint, an
3 adult individual who lived in Irvine, California and worked for Defendant in the City of Irvine in the
4 County of Orange, California. Defendant employed Plaintiff as a Closing Expert, from approximately
5 February 4, 2020, through around August 5, 2020.

6 **Plaintiff NICKO CORDOVA**

7 5. Plaintiff NICKO CORDOVA is and was, at all times relevant to this Complaint, an
8 adult individual who lived in Riverside, California and worked for Defendant in the City of Irvine in
9 the County of Orange, California. Defendant employed Plaintiff as a Processing Expert from in or
10 about November 10, 2020, through around December 1, 2021.

11 **Plaintiff JARED ROGERS**

12 6. Plaintiff JARED ROGERS is and was, at all times relevant to this Complaint, an adult
13 individual who lived in Santa Ana, California and worked for Defendant in the City of Costa Mesa in
14 the County of Orange, California. Defendant employed Plaintiff as a Senior Underwriter from in or
15 about January 7, 2020, to on or about September 23, 2020.

16 **Plaintiff JUSTIN LINARES**

17 7. Plaintiff JUSTIN LINARES is and was, at all times relevant to this Complaint, an adult
18 individual who lived in Concord, California and worked for Defendant in the City of Oakland in the
19 County of Alameda, California. Defendant employed Plaintiff as an IT Systems Technician from in or
20 about December 1, 2020, until July 12, 2021.

21 **Plaintiff APIRADA NITITHAM**

22 8. Plaintiff APIRADA NITITHAM is and was, at all times relevant to this Complaint, an
23 adult individual who lives in Napa, California. She has been working for Defendant in the City of
24 Oakland in the County of Alameda, California. Defendant hired Plaintiff as a Sales Associate in or
25 about March 17, 2021, through around September 24, 2021.

26 **Plaintiff AMBER DUBOIS**

27 9. Plaintiff AMBER DUBOIS is and was, at all times relevant to this Complaint, an adult
28

individual who lived in Anaheim, California. She has been working for Defendant in the City of Irvine in the County of Orange, California. Defendant hired Plaintiff as a Loan Consultant Associate and Associate Home Advisor in or about March 2, 2021, through on or about November 12, 2021.

Plaintiff JORGE VILLALOBOS

10. Plaintiff JORGE VILLALOBOS is and was, at all times relevant to this Complaint, an adult individual who lived in El Monte, California and worked for Defendant in the City of Irvine in the County of Orange, California. Defendant employed Plaintiff as a Processing Expert Manager from in or about September 20, 2020, to on or about December 1, 2020.

Plaintiff MITZY BODNER

11. Plaintiff MITZY BODNER is and was, at all times relevant to this Complaint, an adult individual who lived in Windsor, California and worked for Defendant in the City of Oakland in the County of Alameda, California. Defendant employed Plaintiff as a Processing Expert from in or about October 5, 2020, to on or about May 14, 2021.

Plaintiff VAUGHN ROBINSON

12. Plaintiff VAUGHN ROBINSON is and was, at all times relevant to this Complaint, an adult individual who lived in Mountain House, California and worked for Defendant in the in the City of Oakland in the County of Alameda, California Defendant employed Plaintiff as a Senior Closing Expert from in or about March 2, 2020, to on or about December 1, 2021.

Plaintiff SHARON GREEN

13. Plaintiff SHARON GREEN is and was, at all times relevant to this Complaint, an adult individual who lived in San Diego, California and worked for Defendant remotely from home in the City of San Diego in the County of San Diego, California. Defendant employed Plaintiff as a Servicing and Oversight Manager from in or about June 8, 2020, to on or about July 5, 2021.

Plaintiff TROY SEPPALA

14. Plaintiff TROY SEPPALA is and was, at all times relevant to this Complaint, an adult individual who lived in Oakland, California and worked for Defendant in the City of Oakland in the County of Alameda, California. Defendant employed Plaintiff as a Sales Trainer from on or about February 4, 2019, to on or about December 1, 2021.

1 **Defendant BETTER MORTGAGE CORPORATION**

2 15. At all times relevant to this Complaint, Defendant was a California corporation, duly
3 registered to conduct business and employ persons throughout California, where it employed
4 Plaintiffs. Defendant is an online mortgage company providing direct online mortgage financing.

5 16. At all relevant time to this Complaint, Defendant employed Plaintiffs throughout the
6 State of California.

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

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

13 19. Plaintiffs are informed and believes, and thereon alleges, that DOES 1–50, inclusive,
14 are the partners, agents, owners, shareholders, managers, principals or employees of Defendant and/or
15 and were acting on behalf of Defendant.

16 20. Plaintiffs are informed and believes, and thereon alleges, that each and all of the acts
17 and omissions alleged herein was performed by or is attributable to Defendant, each acting as the agent
18 for the other, with legal authority to act on the other’s behalf. The acts of any and all Defendant was
19 in accordance with, and represent the policy of, Defendant.

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

23 22. Plaintiffs are informed and believes, and thereon alleges, that Defendant is in some
24 manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences and
25 transactions alleged herein.

26 **JURISDICTION AND VENUE**

27 23. The civil penalties sought by Plaintiffs exceed the minimum jurisdiction limits of the
28 Los Angeles County Superior Court and will be established according to proof at trial.

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

5 25. This Court has jurisdiction over the violations alleged herein and over Defendant and
6 Does 1 – 50, inclusive, because upon information and belief, each party has sufficient minimum
7 contacts in California or otherwise intentionally avails itself of California law so as to render the
8 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play
9 and substantial justice. Defendant at all times relevant employed certain Plaintiffs while these
10 Plaintiffs were domiciled in and performing their work duties in the State of California, in the County
11 of Los Angeles. Certain Plaintiffs maintained and worked out of the Counties of Orange, County of
12 Alameda, and County of San Diego.

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

16 **GENERAL ALLEGATIONS AND SUMMARY OF CLAIMS**

17 27. Plaintiffs allege that they and the Class/Subclass Members are individuals who
18 currently work or formerly worked for Defendant in the State of California as non-exempt, hourly, full
19 time and part time employees, at any given time during the four years prior to the filing of this
20 complaint (the “Class Period”). Plaintiffs and such Class/Subclass Members work/worked in non-
21 exempt, hourly-paid and salaried senior underwriter, processing expert, processing expert manager,
22 loan consultant associate and associate home advisor, sales associate, loan consultant associate,
23 closing expert, IT systems technician, Sales Trainer, Servicing and Oversight Manager, and other
24 similar positions for Defendant, which is an online mortgage lender. Plaintiffs and those who were
25 employed by Defendant in California during the Class Period’s primary job duties were including, but
26 not limited to, evaluating applicants’ data and accessing risks, verify, analyze and process data,
27 coordinating closing schedule and necessary documents, communicating with potential clients and
28 explaining loan options.

1 28. The duties of senior underwriter, processing expert, processing expert manager, loan
2 consultant associate and associate home advisor, customer experience associate, loan consultant
3 associate, closing expert are very similar. Any differences in the job activities between the different
4 individuals in these positions were and are legally insignificant to the issues presented by this action.
5 The same policies, procedures, employee handbooks, manuals, compensation plans, and training
6 modules were uniformly applied to the nonexempt Plaintiffs and Class/Subclass Members, which
7 means individual issues will not predominate, and in fact, all issues are systematically linked, related
8 and common, both in terms of facts and law for Plaintiffs and each of the members of the
9 Class/Subclasses during the Class Period.

10 29. *Labor Code* § 1194 provides that employees must be separately paid an hourly wage
11 for each and every hour worked.

12 30. Plaintiffs and the Class/Subclass Members are/were at all times subject to California's
13 laws and regulations protecting the employees' entitlement to be paid and presumption to be paid all
14 wages earned for labor performed, including an hourly wage for each and every hour worked.

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

18 32. *Labor Code* § 1198 states: "The maximum hours of work and the standard conditions
19 of labor fixed by the commission shall be the maximum hours of work and the standard conditions of
20 labor for employees. The employment of any employee for longer hours than those fixed by the order
21 or under conditions of labor prohibited by the order is unlawful."

22 33. *Labor Code* § 510 states in pertinent part, "Any work in excess of eight hours in one
23 workday or in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less
24 than one and one-half times the regular rate of pay for any employee." In addition, "any work in excess
25 of 12 hours in one day shall be compensated at a rate of no less than twice the regular rate of pay for
26 an employee." As a matter of course during all or a substantial portion of the Class Period, Plaintiffs
27 and certain member of the Class were regularly, uniformly and systematically required by Defendant
28

1 to work in excess of eight hours per day, and/or required to work in excess of 40 hours per week
2 without being paid the requisite overtime wages required by *Labor Code* §§ 510, 1194 and Wage
3 Order No. 4.

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

7 35. *Labor Code* § 512 provides in relevant part: “An employer shall not employ an
8 employee for a work period of more than five hours per day without providing the employee with a
9 meal period of not less than 30 minutes An employer shall not employ an employee for a work
10 period of more than 10 hours per day without providing the employee with a second meal period of
11 not less than 30 minutes”

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

16 37. Throughout the Class Period, Defendant fails/failed to provide meal periods and rest
17 periods to certain Plaintiffs. The nature of Plaintiffs’ and Class Members/Subclass Members work,
18 providing online customer service was time sensitive, highly competitive, rigorous, and nonstop.
19 Plaintiffs and certain Class Members/Subclass Members are/were frequently prevented from timely
20 taking meal breaks and rest breaks due to constant work demands and time restrains, they were not
21 timely relieved of all duties to take such breaks. Defendant required for Plaintiffs and certain of Class
22 Members/Subclass Members to assist clients and communicate with other employees during their meal
23 break and rest breaks. Thus, as a matter of course during all or a substantial portion of the Class Period,
24 Plaintiffs and each member of the Class were regularly, uniformly and systematically prohibited by
25 Defendant from taking timely, compliant, uninterrupted, unpaid 30-minute meal periods for every five
26 hours worked as required by *Labor Code* § 512 and Wage Order no. 4, nor were Plaintiffs or members
27 of the Class paid a one hour premium wage at their regular rate of pay for each missed, short, late or
28 interrupted meal period.

1 38. 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 39. The nature of Plaintiffs’ and Class Members/Subclass Members work, providing in
8 person customer service, was rigorous and nonstop. Plaintiffs and certain Class Members/Subclass
9 Members were frequently prevented from timely taking rest breaks because, due to their constant work
10 demands and personnel shortages. As such, Plaintiffs, were not timely relieved of all duties to take
11 such breaks. Defendant mandated Plaintiffs and certain Class Members/Subclass Members to take
12 care of customer’s inquiries and needs as they come, leaving them no time for rest breaks or shortening
13 the time of their rest breaks. Thus, as a matter of course, during all or a substantial portion of the Class
14 Period, Plaintiffs and certain Class Members/Subclass Members were regularly, uniformly, and
15 systematically prohibited by Defendant from taking, timely, compliant, uninterrupted paid 10-minute
16 rest periods for every four hours worked (or major fraction thereof) as required by Labor Code §§
17 226.7, 512 and Wage Order 4, nor were Plaintiffs or members of the Class paid a one-hour premium
18 wage at their regular rate of pay for each missed, short, late or interrupted rest period.

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

24 41. Defendant knew or reasonably should have known that Plaintiffs and certain Class
25 Members/Subclass Members were not timely relieved of all duties and were impeded or prevented
26 from taking timely all meal periods and rest breaks.

27 42. Plaintiffs and Class Members/Subclass Members were not paid “premium pay
28 penalties” pursuant to *Labor Code* § 226.7(c) for any of the workdays that Defendant failed to provide

1 them timely, uninterrupted meal and rest breaks.

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

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

11 45. From the outset and throughout the Class Period, Defendant has failed to comply with
12 *Labor Code* § 226(a). As a matter of common policy and practice, Defendant did not include Plaintiffs
13 and certain Class Members’ proper and correct number of hours worked at each correct hourly rate of
14 pay. The wage statements that were distributed by Defendant to Plaintiffs and the certain Class
15 Members did not contain all wages earned. Defendant’s policies and practices and the omissions on
16 the wage statements were intention and knowing, causing Plaintiffs and certain members of the Class
17 to suffer “injury” by, among other things, impeding them from knowing the amount of wages to which
18 they are and were entitled.

19 46. Defendant’s failure to accurately record and maintain records of all hours worked and
20 wages earned further constitutes a violation of *Labor Code* §1174(d), which requires employers to
21 maintain accurate payroll records of hours worked and wages earned for a period of three years.

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

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

1 49. *Labor Code* § 203(a) provides in relevant part: “If an employer willfully fails to pay,
2 without abatement or reduction, in accordance with §§ 201 . . . 202 . . . any wages of an employee who
3 is discharged or who quits, the wages of the employee shall continue as a penalty from the due date
4 thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not
5 continue for more than 30 days.” Defendant has failed to pay such individuals “waiting time” penalties
6 pursuant to *Labor Code* § 203(a).

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

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

14 52. During the Class Period, Defendant required Plaintiffs and certain Class Members to
15 use their personal internet access or their home internet access to perform their job duties each workday
16 and communicate with Defendant.

17 53. Despite Defendant’s requirement that Plaintiffs and certain Class Members/Subclass
18 Members incur expenses using their personal cell phones, personal cell phone data plans, personal
19 internet access and home internet access, Defendant did not reimburse them. Defendant’s failure to
20 reimburse Plaintiffs and Class Members constitutes a violation of *Labor Code* §2802(a).

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

23 55. Defendant’s company-wide policies and practices violate California law as pled herein.
24 Plaintiffs seek declaratory relief, reporting time pay, regular and overtime compensation, premium
25 pay for rest and meal break violations, reimbursement of business expenses, liquidated damages and
26 other damages and penalties as permitted by California Law, interest and attorneys’ fees and costs.

27 **CLASS ACTION ALLEGATIONS**
28

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

4 **THE CLASS:**

5 57. All individuals (a) who are currently or formerly employed by Defendant and
6 performed work in California as senior underwriter, processing expert, processing expert manager,
7 loan consultant associate and associate home advisor, customer experience associate, loan consultant
8 associate, closing expert and similar job positions, job titles, job codes, job classifications, job duties
9 or job descriptions, and (b) who were subject to Defendant's illegal policies and practices as alleged
10 herein during the Class Period.

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

13 **UNTIMELY PAYMENT OF WAGES SUBCLASS:**

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

16 **OVERTIME SUBCLASS:**

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

20 **MEAL PERIOD SUBCLASS:**

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

24 **REST PERIOD SUBCLASS:**

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

28 **WAGE STATEMENT SUBCLASS:**

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

WAITING TIME SUBCLASS:

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

REIMBURSEMENT OF BUSINESS EXPENSES SUBCLASS:

65. All members of the Class that Defendant did not reimburse expenses necessarily incurred in the discharge of performing their work-related duties during the Class Period.

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

**COMMON CLASS ACTION ALLEGATIONS FOR THE PROPOSED CLASS
AND SUBCLASSES**

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

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

- a) The State of California, for which there is a named representative, has a public policy which encourages the use of the class action device.

- 1 b) By establishing a technique whereby, the claims of many individuals can be resolved
2 at the same time, the class suit both eliminates the possibility of repetitious litigation
3 and provides small claimants with a method of obtaining redress for claims which
4 would otherwise be too small to warrant individual litigation.
- 5 c) This case involves large corporate Defendant and a large number of individual class
6 members with many relatively small claims and common issues of law and fact.
- 7 d) If each individual member of the Class was required to file an individual lawsuit, the
8 large corporate Defendant would necessarily gain an unconscionable advantage
9 because Defendant would be able to exploit and overwhelm the limited resources of
10 each individual member of the Class with Defendant's vastly superior financial and
11 legal resources.
- 12 e) Requiring each individual member of the Class to pursue an individual remedy would
13 also discourage the assertion of lawful claims by the members of the Class who would
14 be disinclined to pursue action against Defendant because of an appreciable and
15 justifiable fear of retaliation and permanent damage to their lives, careers and well-
16 being.
- 17 f) Proof of a common policy and practice or factual pattern, of which the members of
18 the Class experienced, is representative of the Class herein and will establish the right
19 of each of the members of the Class to recover on the causes of action alleged herein.
- 20 g) Absent class treatment, the prosecution of separate actions by the individual members
21 of the Class, even if possible, would likely create:
- 22 i. a substantial risk of each individual plaintiff presenting in separate,
23 duplicative proceedings the same or essentially similar arguments and
24 evidence, including expert testimony;
- 25 ii. a multiplicity of trials conducted at enormous expense to both the judicial
26 system and the litigants;
- 27 iii. inconsistent or varying verdicts or adjudications with respect to the individual
28 members of the Class against Defendant;

1 iv. potentially incompatible standards of conduct for Defendant; and
2 v. potentially incompatible legal determinations with respect to individual
3 members of the Class which would, as a practical matter, be dispositive of the
4 interests of the other members of the Class who are not parties to the
5 adjudications or which would substantially impair or impede the ability of the
6 members of the Class to protect their interests.

7 h) The claims of the individual members of the Class are not sufficiently large to warrant
8 vigorous individual prosecution, considering all of the concomitant costs and
9 expenses attendant thereto.

10 i) Courts seeking to preserve efficiency and other benefits of class actions routinely
11 fashion methods to manage any individual questions.

12 j) Judicial precedent urges trial courts, which have an obligation to consider the use of
13 innovative procedural tools to certify a manageable class, to be procedurally
14 innovative
15 in managing class actions.

16 69. **Well-defined Community of Interest:** Plaintiffs also meet the established standards
17 for class certification as follows:

18 a) **Typicality:** The claims of Plaintiffs are typical of the claims of all members of the
19 Class and Subclasses they seek to represent because all members of the Class
20 sustained injuries and damages arising out of Defendant's common course of conduct
21 in violation of California law, and the injuries and damages of all members of the
22 Class were caused by Defendant's wrongful conduct in violation of California law,
23 as alleged herein.

24 b) **Adequacy:** Plaintiffs are adequate representatives of the Class and/or Subclasses they
25 seek to represent, will fairly protect the interests of the members of the Class, have
26 no interests antagonistic to the members of the Class, and will vigorously pursue this
27 suit via attorneys who are competent, skilled and experienced in litigating matters of
28 this type.

1 c) **Predominant Common Questions of Law or Fact:** There are common questions of
2 law and/or fact as to the members of the Class which predominate over questions
3 affecting only individual members of the Class, including, without limitation:

- 4 i. Whether Defendant failed and continues to fail to have a policy to provide
5 members of the Class timely, duty-free, uninterrupted meal periods of at least
6 30-minutes for shifts over 5 and 10 hours of work;
- 7 ii. Whether Defendant failed and continues to fail to have a policy to provide
8 members of the Class timely, duty-free, uninterrupted rest periods of at least
9 10-minutes for every four hours worked or major fraction thereof;
- 10 iii. Whether Defendant unlawfully failed to pay Plaintiffs and the members of the
11 Class overtime compensation in violation of Labor Code §§ 218, 510, 1194,
12 and Wage Order 4;
- 13 iv. Whether Defendant unlawfully failed to maintain accurate records in
14 violation of Labor Code § 1174(d);
- 15 v. Whether Defendant unlawfully failed to pay all wages to Plaintiffs and
16 members of the Class when due in violation of Labor Code § 204;
- 17 vi. Whether Defendant unlawfully failed to furnish accurate itemized statements
18 to members of the Class in violation of Labor Code §§ 226, 226.3;
- 19 vii. Whether Defendant failed to reimburse Plaintiffs and members of the Class
20 for all expenses incurred in discharge of their duties in violation of Labor
21 Code § 2802;
- 22 viii. Whether Defendant's policies and practices of failing to pay their employees
23 all wages due within the time required by California law after their
24 employment ended with Defendant violate Labor Code §§ 201-203;
- 25 ix. Whether the members of the Class are entitled to compensatory damages, and
26 if so, the means of measuring such damages;
- 27 x. Whether the members of the Class are entitled to injunctive relief;
- 28 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.

70. 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.

71. 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.

72. 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)

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

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

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

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

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

6 78. Throughout the Class Period, Plaintiffs and certain members of the Class are/were
7 required to assist customers and other employees during their lunch breaks, which would force them
8 to work during their lunch breaks. This made it impossible for Plaintiffs and certain members of the
9 Class to have a duty-free uninterrupted meal break. Defendant did not pay Plaintiffs and members of
10 the Class for the time they worked during their breaks nor the premium pay to which they are/were
11 entitled for the missed and non-compliant rest and meal breaks.

12 79. Plaintiffs and members of the Class did not waive their right to timely meal periods by
13 mutual consent with Defendant or otherwise.

14 80. The nature of Plaintiffs and Class Members’ work, providing online and remote
15 customer service, was rigorous and nonstop. Plaintiffs and certain Class Members were frequently
16 prevented from timely taking meal breaks because, due to their constant work demands and sensitive
17 timelines.

18 81. Defendant discouraged, impeded and through threats and intimidation prevented and
19 dissuaded Plaintiffs and members of the Class from taking compliant 30-minute meal periods, nor did
20 Defendant pay Plaintiffs or Members of the Class with an additional hour of pay for these meal period
21 violations, nor did Defendant pay Plaintiffs and Class Members a premium pay penalty for missed,
22 short, late or interrupted meal breaks pursuant to *Labor Code* § 226.7(c).

23 82. As a result of Defendant’s violations of *Labor Code* §§ 226.7(c), 512(a), 1198, and
24 IWC Order No. 4-2001, Plaintiffs seek recovery of “premium pay” pursuant to the DLSE’s Policy
25 Manual Guidelines and *Labor Code* § 226.7.

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

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SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

In Violation of Labor Code §§ 226.7(c), 1198 and IWC Order No. 4-2001

(Against Defendant and Does 1 – 50, inclusive)

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

85. 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.”

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

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

88. Throughout the Class Period, Defendant fails/failed to provide rest periods to Plaintiffs and certain of the Class Members. The nature of Plaintiffs and Class Members’ work required them to provide online client services and communications, which is rigorous and nonstop. Plaintiffs and Class

Members are/were frequently prevented from timely taking rest breaks due to constant work demands, competition and sensitive timelines.

89. 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).

90. 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.

91. As a result of Defendant's violations of *Labor Code* §§ 226.7(c), 1198, and IWC Order No. 4-2001, 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.

92. 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)

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

94. 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.

95. 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

1 requisite hours worked beyond a normal workday or a normal work week, as specified, without
2 limitation, by *Labor Code* §§ 510, 1194 and Wage Order No. 4.

3 96. California law requires employers, such as Defendant to pay overtime compensation to
4 all nonexempt employees for all hours worked over 40 hours per week, or over 8 hours per day. *Labor*
5 *Code* § 204 establishes the fundamental right of all employees in the State of California to be paid
6 wages, including straight time and overtime, in a timely fashion for their work.

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

12 98. Pursuant to *Labor Code* § 1198 it is unlawful to employ persons for longer than the
13 hours set by the IWC.

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

18 100. As set forth above, Plaintiffs and the members of the Class were entitled to be paid
19 overtime compensation for all overtime hours worked. Plaintiffs, and certain members of the Class,
20 were regularly and consistently required to work overtime during the Class Period but were not paid
21 for all overtime hours worked and were not paid at the correct overtime rate of pay.

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

26 102. Plaintiffs and the certain Class Members would also routinely work off the clock during
27 their meal breaks, as was required by Defendant. Due to this time worked off the clock, Plaintiffs and
28 the certain Class Members would routinely exceed eight hour shifts and forty-hour workweeks and

1 would not be paid the required overtime pay.

2 103. During the Class Period, Defendant did not pay Plaintiffs and members of the Class
3 overtime pay for all of the overtime hours worked, included hours worked while off the clock and
4 Defendant did not pay Plaintiffs and members of the Class at the correct overtime rate of pay.

5 104. As a direct and proximate result of Defendant's unlawful conduct as set forth herein,
6 Plaintiffs and members of the Class have sustained damages, including loss of earnings for hours of
7 overtime worked on behalf of Defendant in an amount to be established according to proof at trial,
8 prejudgment interest, and costs and attorneys' fees, pursuant to *Labor Code* § 1194.2 and applicable
9 California law.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO MAINTAIN ACCURATE RECORDS**

12 **In Violation of Labor Code § 1174(d)**

13 **(Against Defendant and Does 1 – 50, inclusive)**

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

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

25 107. During the Class Period, Defendant knowingly and intentionally failed to accurately
26 record, track, maintain and keep accurate records of each and every hour worked and wages earned
27 for Plaintiffs and the Class Members.

28 108. Upon information and belief and thereon, Plaintiffs have alleged herein that in an effort

1 to fabricate the appearance of compliance with the provisions of the Labor Code, (simultaneously
2 motivated by Defendant's effort to unlawfully avoid payment of premium pay penalties owed for
3 missed or non-compliant rest and meal breaks, and overtime pay) Defendant's routinely prohibited
4 Plaintiffs and members of the Class from receiving proper, timely, and compliant meal and rest breaks and
5 altered timesheets to get rid of any owed overtime pay.

6 109. Thus, at all times relevant, Defendant failed to maintain accurate records of all hours
7 Plaintiffs and Class Members worked, including hours they were working during rest and meal break
8 period, and for the days they worked in excess of eight hours, or workweeks in excess of forty hours.
9 As a result of Defendant's failure to maintain proper accurate records, premium penalties to which
10 Plaintiffs and Class Members were entitled for rest and meal break violations was not properly
11 recorded either.

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

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

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO PAY ALL WAGES EARNED WHEN DUE**

21 **In Violation of Labor Code § 204**

22 **(Against Defendant and Does 1 – 50, inclusive)**

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

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

27 114. Pursuant to § 204, for employees entitled to pay twice per month, two periods of pay
28 are required. Labor performed between the 1st and 15th of the month must be paid between the 16th

and 26th of the same month and labor performed on the 16th and the end of the month must be paid on pay days between the 1st and 10th of the following month. *Labor Code* § 210 provides that “ ... (a) In addition to, and entirely independent and apart from, any other penalty provided in this article, 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:

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

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

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

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

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

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

In Violation of Labor Code § 226(a)

(Against Defendant and Does 1 – 50, inclusive)

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

1 119. *Labor Code* § 226(a) requires employers to provide employees itemized wage
2 statements that accurately report, among other things, the total hours worked and total wages earned
3 in each pay period. Section 226(a) states in pertinent part, that “[e]very employer shall, semimonthly
4 or at the time of each payment of wages, furnish each of his or her employees, either as a detachable
5 part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid
6 by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned,
7 (2) total hours worked by the employee ..., (5) net wages earned, (6) the inclusive dates of the period
8 for which the employee is paid ..., and (9) all applicable hourly rates in effect during the pay period
9 and the corresponding number of hours worked at each hourly rate by the employee ...”

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

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

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

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

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

28 125. In addition, because of Defendant’s intentional and knowing failure to maintain proper

1 and accurate records, overtime hours and wages earned were also not recorded, and did not appear on
2 the Plaintiffs' and Class Members' wage statements.

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

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

15 **SEVENTH CAUSE OF ACTION**

16 **FAILURE TO REIMBURSE WORK EXPENSES**

17 **In Violation of Labor Code § 2802**

18 **(Against Defendant and Does 1 – 50, inclusive)**

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

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

24 130. As alleged, during the Class Period, Defendant required Plaintiffs and certain Class
25 Members to use their personal cell phones and download applications such as Slack and Authenticator,
26 use personal computers to perform their job duties each workday throughout their employment.
27 Defendant required Plaintiffs to contact clients, prospective clients, managers, and other employees.
28

131. Defendants continued refusal to reimburse and indemnify Plaintiffs and Class Members for all necessary expenditures and losses incurred, including but not limited to, desk, chair, monitors, software and other items related to the specific workspace, which are subject to Defendant requirements and approval; the proportionate share of each of their mortgage or rent; property taxes; homeowner insurance premiums; utilities such as electricity, gas, and water; and trash collection services.

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

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

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

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

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

EIGHTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES UPON TERMINATION

In Violation of Labor Code §§ 201-203

(Against Defendant and Does 1 – 50, inclusive)

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

138. *Labor Code* § 201(a) provides in relevant part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately” further “if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

139. Here, Defendant failed to provide all wages earned throughout Plaintiffs and Class Members employment and further failed to remedy its violations at the time of separation from Defendants. As such Plaintiffs and Class Members did not receive all wages earned.

140. 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.”

141. Further, 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.”

142. 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

VIOLATION OF THE PRIVATE ATTORNEY GENERALS ACT OF 2004

Labor Code §2698 et seq.

(Against Defendant and Does 1-50, Inclusive)

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

1 144. The PAGA expressly establishes that any provision of the California Labor Code which
2 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
3 Agency (the “LWDA”), or any of its departments, divisions, commissions, boards, agencies or
4 employees for a violation of the California Labor Code may be recovered through a civil action
5 brought by an aggrieved employee on behalf of himself or herself, and other current or former
6 employees.

7 145. Plaintiffs, by their employment with Defendants and Defendant’s violations of the
8 Labor Code as alleged herein, is an aggrieved employee with standing to bring an action under the
9 PAGA.

10 146. Plaintiffs, by virtue of **Exhibit A** have satisfied all prerequisites to serve as a
11 representative of the general public to enforce California’s labor laws including, without limitation,
12 the penalty provisions identified in Labor Code § 2699.5. Since the LWDA took no steps within the
13 time period required to intervene and because Defendant took no corrective action to remedy the
14 allegations set forth above, Plaintiffs, as a representative of the people of the State of California, will
15 seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the
16 DLSE. This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

17 “The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation
18 of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3,
19 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206,
20 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5,
21 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1,
22 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232,
23 subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision
24 (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551,
25 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970,
26 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c)
27 and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision
28 (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294,
1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391,
1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections
1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25,
1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of
subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section
1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811,
1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800,

2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7.”

147. Plaintiffs are informed and believes that Defendant has violated and continues to violate the provisions of the Labor Code and applicable Wage Order No. 4-2001.

148. Pursuant to Labor Code section 2699, any provision of the Labor Code that already provides a civil penalty to be assessed and collected by the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code or does not provide a civil penalty may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees pursuant to the procedures set forth in Labor Code, section 2699.3.

149. Plaintiffs, on their own behalf, and on behalf of the other similarly situated Aggrieved Employees is an “aggrieved employees” because they were employed by the violators (the named Defendant herein and its related Doe affiliates and subsidiaries), during the one-year statutory time period and during such time period, was subjected to one or more violations, including Labor Code sections 201-203, 204, 226(a), 226.7, 510, 512, 1174, 1194(a), 2802 and IWC No. 4, and are therefore properly suited to represent the interests of a PAGA person.

150. Plaintiffs are informed and believes that Defendant have violated and continue to violate provisions of the Labor Code and applicable Wage Order No. 4. Despite mailing of **Exhibit A** at least 65-days prior to the filing of the filing of this Complaint, the LWDA has not notified Plaintiffs that it intends to investigate the alleged Labor Code violations identified in **Exhibit A**, such that, by operation of law Plaintiffs are entitled to commence this cause of action as a representative action under the PAGA. *See Lab. Code 2699.3(a)(2)(A)*.

Failure to Provide Meal Periods and Rest Periods

151. In accordance with the mandates of Labor Code §226.7 and 512, Defendant were required to authorize and relinquish control to permit their non-exempt employees to take a ten-minute, uninterrupted, duty-free rest break for every four (4) hours worked or a major fraction thereof and were further required to provide their non-exempt employees with a full, uninterrupted 30-minute meal period for every five (5) hours of labor performed.

1 152. As alleged, as a pattern and practice, Defendant failed to provide Plaintiffs and the
2 Aggrieved Employees with legally mandated rest break period and uninterrupted meal break periods
3 and failed to pay proper premium pay compensation for such failures in violation of Labor Code §§
4 226.7, 512 and IWC No. 4.

5 **Failure to Pay Overtime Wages**

6 153. At all times relevant herein, Defendant were required to compensate their non-exempt
7 employees overtime wages for all hours worked in excess of eight (8) hours in a day or forty (40)
8 hours in a workweek, pursuant to the mandates of Labor Code §§ 510, 1194, and 1198.

9 154. As a pattern and practice, Defendant routinely failed to pay Plaintiffs and the Aggrieved
10 Employees for hours worked off the clock, including the 10-15 minutes of labor performed each
11 workday prior to clocking in and for labor performed during rest and meal break periods. Such off-
12 the-clock work performed caused Plaintiffs and the Aggrieved Employees to work overtime hours for
13 which they were not paid by Defendant.

14 155. Thus, during the relevant statutory period, Defendant failed to compensate Plaintiffs
15 and the Aggrieved Employees for all hours worked, resulting in a failure to pay all overtime wages
16 they were due in amounts to be proven at trial.

17 **Failure to Provide Maintain Accurate Records**

18 156. At all times relevant herein, Defendant were required to keep accurate records showing
19 the names and addresses of all employees employed and showing the hours worked daily and wages
20 earned and paid, pursuant to the mandates of Labor Code §1174.

21 157. As a result of and in addition to Defendant's various Labor Code violations, including
22 Defendant's failure to records all hours worked, including overtime hours worked and time worked
23 during rest and meal break periods, Defendant failed in their affirmative obligation to maintain
24 accurate records regarding Plaintiffs and the Aggrieved Employees including accurate records of all
25 hours actually worked and wages paid at their applicable respective corresponding rates of pay in
26 violation of Labor Code §1174.

27 **Failure to All Wages When Due**
28

1 158. Pursuant to Labor Code §204, all wages earned by Plaintiffs and the Aggrieved
2 Employees were and/or are “due and payable twice during each calendar month, on days designated
3 in advance by the employer as regular paydays.” For [l]abor performed between the 1st and 15th days,
4 inclusive of any calendar month” payment is due no later than the 26th day of the month. “... for labor
5 performed between the 16th and the last day, inclusive, of any calendar month, payment is due no later
6 than the 10th day of the following month...” By failing to pay Plaintiffs and the Aggrieved Employees
7 properly for all hours worked at the proper corresponding rates of pay, including overtime hour and
8 overtime rates of pay, Defendant deprived them of timely payment of all wages earned, when due and
9 owing at these regularly scheduled intervals throughout the relevant time period in violation of Labor
10 Code §204.

11 **Failure to Timely Pay All Wages Earned**

12 159. At all times relevant, Labor Code § 200 was in force and effect. Subdivision (a) of §
13 200 defines “wages” as “all amounts for labor performed by employees of every description, whether
14 the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other
15 method of calculation.” Subdivision (b) of Section 200 defines “labor” as all work or service whether
16 rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the
17 labor to be paid for is performed personally by the person demanding payment.

18 160. At all times relevant, Labor Code § 204 was in force and effect. Subdivision (a) of §
19 204 requires employers to pay employees all wages earned no less than twice monthly. As a result of
20 Defendant’s failure to pay Plaintiffs and the Aggrieved Employees all wages they earned, Defendant
21 likewise violated Labor Code section 204 by failing to pay them all wages earned no less than twice
22 monthly.

23 161. At all times relevant, Labor Code § 210 was in force and effect. Labor Code § 210
24 provides in relevant part that an employer that violates Labor Code § 204 is subject to a penalty of one
25 hundred dollars (\$100.00) for any initial violation for each failure to pay each employee, and two
26 hundred dollars for each subsequent violation or any willful or intentional violation, plus 25 percent
27 of the amount unlawfully withheld.
28

1 162. Due to the aforementioned failure by Defendant to pay all wages owed to Plaintiffs and
2 the Aggrieved Employees, a result of Defendant's willful and intentional violations of Labor Code §
3 204, Defendant is liable to the Plaintiffs and Aggrieved Employees for the penalties described above.

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

5 163. Pursuant to Labor Code §§ 226 "every employer shall, semimonthly or at the time of
6 each payment of wages, furnish each of his or her employees, either as a detachable part of the check,
7 draft, or voucher paying the employees' wages or separately when wages are paid by personal check
8 or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
9 worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the
10 employee is paid..., and (9) all applicable hourly rates in effect during the pay period and the
11 corresponding number of hours worked at each hourly rate by the employee..."

12 164. As a result of the alleged and various Labor Code violations, Defendant failed to keep
13 maintain accurate records of all hours actually worked/wages earned and thus, consequently failed in
14 their affirmative obligation to provide Plaintiffs and the Aggrieved Employees with accurately
15 itemized wage statements regarding the true total number of hours each of them actually worked
16 during each and every pay period, their gross wages earned, all deductions, and net wages earned,
17 along with their applicable corresponding hourly rates, including premium pay for missed rest and/or
18 meal breaks and including overtime rates for each respective hourly rate of overtime worked. The
19 inaccurate wage statements were not caused by inadvertent and occasional clerical mistakes, but rather
20 were the result of a pre-determined, deliberate and uniform deliberate operational policies and
21 practices of Defendant.

22 **Failure to Reimburse Expenses**

23 165. California Labor Code § 2802 provides that an employer shall indemnify his or her
24 employees for all necessary expenditures or losses incurred by the employee in direct consequence of
25 the discharge of his or her duties.

26 166. As alleged supra, Defendant required or requires as a condition of employment that
27 Plaintiffs and the Aggrieved Employees utilize their personal cell phones in the daily and routine
28 discharge of their duties to communicate with Defendant's clients, potential clients, managers,

1 supervisors, and colleagues. Defendant does not and has not reimbursed Plaintiff and the Aggrieved
2 Employees for expenses they incurred in the routine and daily use of their personal cell phone, data,
3 home internet, software and computers for work related duties and communications.

4 167. As a direct result of Defendant's failure to reimburse Plaintiffs and the Aggrieved
5 Employees for the use their personal cell phone, data, home internet, software and computers expenses
6 which they necessarily incurred in the discharge of their work-related duties, Defendant has violated
7 Labor Code Section 2802.

8 //

9 **Damages**

10 168. Defendant's actions constitute continuing and ongoing unlawful activity prohibited by
11 the California Labor Code, as alleged and therefore these acts constitute violations of the PAGA.

12 169. Pursuant to California Labor Code § 2699, Plaintiffs requests and is entitled to recover
13 from Defendant civil penalties in the amount of a hundred dollars (\$100) for each aggrieved employee
14 per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee
15 per pay period for each subsequent violation; and

16 170. Attorneys' fees and costs pursuant to Labor Code § 2699(g) and any other applicable
17 statute.

18 171. As alleged supra, notice of these violations was provided pursuant to Labor Code
19 §2699.3 asking the LWDA if it intends to investigate the alleged violations. More than 65 days have
20 passed since notice was provided and Plaintiffs have not received any notification from the LWDA
21 that it intends to investigate the alleged violations. Therefore, the representative Plaintiffs are entitled
22 to prosecute their PAGA claims under Labor Code §2699, et seq.

23 172. The proper measure of damages and penalties under the PAGA is as to all Aggrieved
24 Employees, whether a part of this action or not. Further this claim needs no certification to proceed
25 with recovery. See *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 970-975.

26 173. Accordingly, Plaintiffs respectfully requests that the Court award judgment and relief
27 in their favor including an award of civil penalties under California Labor Code §2699 in the amount
28 of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation,

1 and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent
2 violation during the relevant period, according to proof.

3 174. Plaintiffs as the personal representatives of the Aggrieved Employees, will and does
4 seek to recover any and all penalties for each and every violation shown to exist or to have occurred
5 during the liability period, in an amount according to proof, as to those penalties that are otherwise
6 only available to public agencies. Said funds recovered will be distributed in accordance with the
7 PAGA, with at least 75% of said PAGA penalty recovery being reimbursed to the State of California
8 and the LWDA.

9 **TENTH CAUSE OF ACTION**

10 **UNFAIR BUSINESS PRACTICES**

11 **In Violation of Bus. & Prof. Code § 17200 et seq.**

12 **(Against Defendant and Does 1 – 50, inclusive)**

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

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

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

20 178. California Business and Professions Code § 17203 provides in relevant part that the
21 court may “restore to any person in interest any money or property, real or person, which may have
22 been acquired by means of such unfair competition” and that any person who meets the standing
23 requirements of § 17204 and complies with *California Code of Civil Procedure* § 382 may pursue
24 representative claims for relief on behalf of others.

25 179. California Business and Professions Code § 17204 allows any “person who has
26 suffered injury in fact and has lost money or property as a result of such unfair competition” to
27 prosecute a civil action for violation of the Unfair Business Practices Act. As such, Plaintiffs and all
28 similarly situated employees are entitled to enforce all applicable provisions of the Labor Code.

1 180. Beginning at an exact date unknown, but at least since the date four years prior to the
2 filing of this Complaint, Defendant has committed acts of unfair competition as defined by the Unfair
3 Business Practices Act, by engaging in the unlawful, unfair and fraudulent practices and acts described
4 in the Complaint, including, but not limited to violations of Labor Codes §§ 201-203, 204, 226 (a),
5 226.7, 510, 512, 1194, 1198, 2802 and the provisions of IWC No. 4-2001.

6 181. The violations of these laws and regulations, as well as of fundamental California
7 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of
8 Business and Professions Code § 17200 et seq.

9 182. The acts and practices described above constitute unfair, unlawful and fraudulent
10 business practices, and unfair competition, within the meaning of Business and Professions Code §
11 17200, et seq. Among other things, Defendant's acts and practices have forced Plaintiffs and Class
12 Members to labor without receiving appropriate wages and/or to incur personal cell phone expenses
13 in the discharge of their duties.

14 183. The acts and practices described above have allowed Defendant to gain an unfair
15 competitive advantage over law-abiding employers and competitors.

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

18 185. Plaintiffs and Class Members are therefore, entitled to restitution pursuant to Business
19 and Professions Code § 17203 and 17208 for all wages and other compensation unlawfully withheld
20 from them during the Class Period.

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

23 187. Injunctive relief is necessary and appropriate to prevent Defendant from repeating and
24 continuing their unlawful, unfair and fraudulent business acts and practices described herein.

25 188. Pursuant to § 17203 and/or any other applicable law, Plaintiffs seek an order preventing
26 Defendant from engaging in unlawful, unfair and fraudulent conduct and preventing Defendant from
27 profiting and benefiting from their illegal and wrongful acts.
28

1 189. Plaintiffs' success in this action will enforce important rights affecting the public
2 interest.

3 190. An award of attorneys' fees is appropriate pursuant to California Civil Code § 1021.5
4 because 1) this action will confer a significant benefit upon a large class of persons; and 2) there is a
5 financial burden involved in pursuing this action; and 3) it would be against the interest of justice to
6 force Plaintiffs to pay attorneys' fees from any amount recovered in this action.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE, PLAINTIFFS ON BEHALF OF THEMSELVES AND ALL**
9 **MEMBERS OF THE CLASS AND/OR SUBCLASSES, PRAY FOR RELIEF AS FOLLOWS:**

10 **ON THE FIRST THROUGH EIGHTH AND TENTH CAUSES OF ACTION**

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

9. Compensation at the rate of one hour of regular pay for each instance in which a member of the Class was not provided a first or second meal period;
10. Compensation at the rate of one hour of regular pay for each instance in which a member of the Class worked through a rest break or was not provided a proper rest break for every four hours worked or major fraction thereof;
11. Labor Code § 203 penalties;
12. Damages and penalties pursuant to Labor Code §§ 226(a) and 226.3 and 210;
13. Reimbursement of the necessary expenses incurred by the Class in the discharge of their duties;
14. Pre-judgment and post-judgment interest, as provided by law;
15. Such other equitable relief as the Court may deem just and proper;
16. Attorneys' fees and costs of suit, including expert fees and fees pursuant to California Labor Code §§ 218.5, 226, 1194, Code of Civil Procedure § 1021.5, and other applicable California laws; and

ON THE NINETH CAUSE OF ACTION

1. Upon the PAGA Cause of Action, for civil penalties pursuant to statute as set forth in Labor Code §2698 et seq., for Defendant' violations of Labor Code §§ 201-203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194(a), 2802 and applicable Wage Order No. 4;
2. Upon the PAGA Cause of Action, for attorneys' fees and costs pursuant to Labor Code §2699 and any other applicable statute; and
3. For such other and further relief the Court may deem just and proper.

DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands trial of all issues by jury.

DATED 2022-03-03

SW EMPLOYMENT LAW GROUP, APC

By: _____

Jacob N. Whitehead, Esq.
Maria Burciaga, Esq.
Attorneys for Plaintiffs and All Others Similarly
Situated

EXHIBIT A

December 23, 2021

Via Online Filing

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

Via Certified Mail

Business Filings Incorporated, dba Delaware
Business Filings Incorporated
Registered Agent for
Better Mortgage Corporation
330 N Brand Blvd, Suite 700,
Glendale California 91203

Via USPS First Class Mail

Vishal Garg, CEO
Better Mortgage Corporation
3 World Trade Center 175 Greenwich Street,
59th floor
New York, New York 10007

Re: Notice Pursuant to the Private Attorneys General Act, California Labor
Code § 2699.3 (the "PAGA")

Dear Sir(s) and/or Madam:

Please be advised that Complainant, Michael Ghazanfari ("Complainant") has retained SW Employment Law Group, APC to represent him and other similarly-situated current and former employees (collectively, the "Aggrieved Employees") of Better Mortgage Corporation, a California Corporation, and Does 1 through 20 (hereinafter "Employer") regarding claims of violations of the California Labor Code.

Employer currently or formerly employed Complainant and the Aggrieved Employees, who work or have worked as an exempt or non-exempt, hourly or salary, full time or part time employees, including but not limited to loan consultant associate, loan processing associate, loan coordinator, staff appraiser, cover insurance agent, escrow officer, closing specialist, closing coordinator, purchase coordinators, escrow assistant, real estate agent, loan advisor, and other similar positions. This notice formally serves to inform Employers of Complainant's intent to file a PAGA complaint against Employers and bring causes of action for violations of the PAGA and for injunctive relief including, but not limited to claims for Employers' failure to: provide compliant rest/meal breaks, pay for every hour worked, pay overtime, maintain accurate records of hours worked, reimburse work-related expenses, furnish accurately itemized wage statements, timely pay all wages due to Aggrieved Employees who ceased employment with Employer during the statutory period upon their separation or termination of employment.

As further detailed below, Employers violated the provisions of California Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 1174 (d), 1194(a), 2802 and Industrial Welfare Commission Wage Order No. 4-2001 (IWC No. 4) as further detailed herein below.

Complainant was hired by Employer on or about March 2, 2021, until on or about July 16, 2021, as a full-time, salary, non-exempt loan consultant associate. Complainant was primarily responsible for assisting clients with loan and mortgage decisions, providing client service, and handling the procedures needed for loan processing.

Complainant and the Aggrieved Employees were routinely prohibited from receiving proper, timely, Labor Code compliant meal and rest breaks. Although they were sometimes

accorded a meal break, such breaks were not always duty free and were often interrupted. Because of the heavy workload mandated by the Employer and the shortage of staff, it is common that rest break periods were simply skipped. Employer has not recorded nor compensated Complainant and certain of the Aggrieved Employees for all of the time they worked during their rest and meal breaks, nor provided the premium pay to which they are/were entitled for all of the missed and non-complaint rest and meal breaks. Further, at no time did Complainant and the said Aggrieved Employees validly waive their meal breaks.

Employer intentionally failed to properly pay Complainant and certain of the Aggrieved Employees all of the overtime wages that they were due for the hours that they were working during purported rest break period, meal break periods, and outside of their regularly scheduled shifts. Complainant worked an excess of overtime hours which he reported to Employer when he made written request to his supervisor. Despite Complainant's request for payment, Employer did not approve those overtime hours automatically and failed to compensate for all hours worked. Employer did not track all the overtime hours worked by Complainant and expected that Complainant work while off the clock. As a consequence, in further violation of the California Labor Code, Complainant and certain of the Aggrieved Employees routinely did not receive accurately itemized pay stubs reflecting all of the actual hours they worked and the proper and accurate corresponding rates of pay for each and every hour worked during the statutory period.

During the relevant statutory period, Employer requires/required Complainant and the Aggrieved Employees to utilize their personal cell phones for work-related duties and functions. Employer also requires/required Complainant and the Aggrieved Employees to download authenticator app on their personal cellular phones. Further, Employer requires/required Complainant and certain of the Aggrieved Employees to use their own personal Wi-Fi Internet access to perform their work with the company laptops. The personal Wi-Fi Internet access was essential to Complaint and certain of the Aggrieved Employees employment relationships with Employer as that is the only way they can connect with Employer's database and online portals for fulfilling their work duties. At no time has Employer ever reimbursed Complainant and the Aggrieved Employees for the expenses they incurred in the utilization of their personal cell phones and their personal Wi-Fi Internet access in the discharge of their work-related duties.

During the statutory period, Employer has unlawfully failed to pay all wages due upon termination to Complainant and certain of the Aggrieved Employees. In addition, Employer has failed to pay the waiting time penalties to which Complainant and certain of the Aggrieved Employees are lawfully entitled under Labor Code § 203.

Complainant is informed and believes that the said violations are ongoing, systematic, and uniform. Complainant intends to bring an action against Employers under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of § 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of § 96, § s 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of § 213, § s 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of § 226, § s 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3,

Rest/Meal Break Violations

Under Labor Code § 226.7 “(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

Further, pursuant to Labor Code § 512 (a) “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Per the IWC Wage Order No. 4, section 12(A) & B “Employers of California employees covered by the rest period provisions of the Industrial Welfare Commission Wage Orders must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.”

As stated, during the relevant statutory period, Complainant and certain of the Aggrieved Employees were routinely prohibited from taking Labor Code compliant, timely and duty-free rest and meal breaks. Employer has not paid premium pay penalties for all of the missed and non-compliant rest and meal breaks. This is a clear violation of the provisions of the Labor Code and the IWC No. 4, which set forth California employers’ affirmative obligation to provide timely, duty-free rest and meal break periods.

Pursuant to § 512 of the Labor Code and section 12 (B) of IWC No. 4, Complainant and certain of the Aggrieved Employees are owed premium pay penalties for each missed or noncompliant rest and meal break for which they were not paid during the statutory period.

230.4 , 230.7 , 230.8 , and 231, subdivision (c) of § 232 , subdivision (c) of § 232.5 , § s 233 , 234 , 351 , 353 , and 403, subdivision (b) of § 404 , § s 432.2 , 432.5 , 432.7 , 435 , 450 , 510 , 511 , 512 , 513 , 551 , 552 , 601 , 602 , 603 , 604 , 750 , 751.8 , 800 , 850 , 851 , 851.5 , 852 , 921 , 922 , 923 , 970 , 973 , 976 , 1021 , 1021.5 , 1025 , 1026 , 1101 , 1102 , 1102.5 , and 1153, subdivisions (c) and (d) of § 1174 , § s 1194 , 1197 , 1197.1 , 1197.5 , and 1198, subdivision (b) of § 1198.3 , § s 1199 , 1199.5 , 1290 , 1292 , 1293 , 1293.1 , 1294 , 1294.1 , 1294.5 , 1296 , 1297 , 1298 , 1301 , 1308 , 1308.1 , 1308.7 , 1309 , 1309.5 , 1391 , 1391.1 , 1391.2 , 1392 , 1683 , and 1695, subdivision (a) of § 1695.5 , § s 1695.55 , 1695.6 , 1695.7 , 1695.8 , 1695.9 , 1696 , 1696.5 , 1696.6 , 1697.1 , 1700.25 , 1700.26 , 1700.31 , 1700.32 , 1700.40 , and 1700.47 , § s 1735 , 1771 , 1774 , 1776 , 1777.5 , 1811 , 1815 , 2651 , and 2673, subdivision (a) of § 2673.1 , § s 2695.2 , 2800 , 2801 , 2802 , 2806 , and 2810, subdivision (b) of § 2929 , and § s 3073.4 , 6310 , 6311, and 6399.7.

Failure to Compensate Employees For Every Hour Worked When Due

Labor Code § 204 (a) states *“All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”*

Under Labor Code § 1194 (a) *“Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”*

At all times relevant, Labor Code § 210 provides, in pertinent part, *“every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”*

Labor Code §§ 204, 210, and 1194 (a) have been violated and Complainant and certain of the Aggrieved Employees are entitled to recover payment for all hours worked, including time worked off the clock, overtime, time worked through rest and meal breaks, and for late payment of wages with penalties and interest thereon, as well as their attorneys’ fees and costs.

Failure to Pay Overtime Pay

Labor Code § 510 (a) provides, *“Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”*

As indicated above, Complainant and certain of the Aggrieved Employees often worked off the clock through lunch and during their off hours, which meant they were working more than an eight-hour shift in a single day and/or more than forty hours in a week most of the time but were not paid their proper overtime wages at 1.5 (one and a half) times their regular rate of pay for the hours they worked in excess of eight hours in a day or in excess of 40 hours in a week. Complainant and certain of the Aggrieved Employees were working more than eight hours in a day and/or more than forty hours in a week throughout the relevant statutory period.

Labor Code § 510 (a) has been violated and Complainant and certain of the Aggrieved Employees are entitled to recover unpaid overtime for all hours worked, plus penalties and interest, as well as their attorney’s fees.

Failure To Maintain Records of Hours Worked

Labor Code § 1174(d) provides, *“Every person employing labor in this state shall:... (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the*

number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned."

As indicated above, the overtime hours Complainant and certain of the Aggrieved Employees worked were not properly recorded by the Employer and were not reflected on all of the payroll records issued by the Employer. Employer's current practice is in violation of Lab. Cod. § 1174(d).

Failure to Furnish Accurate Wage Statements

As a direct consequence of Employer's unlawful business and compensation practices under the Labor Code and IWC No. 4, Complainants and the Aggrieved Employees were/are not provided with accurately itemized wage statements.

At all times relevant, Labor Code § 226 requires Defendants to *"furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."*

As indicated above, Complainant and certain of the Aggrieved Employees often work/worked during their rest breaks, meal breaks, and outside of their regular 8 hour shifts. Hours worked off the clock are/were not properly recorded, were not recorded at the proper pay rate, and not all of the premium pay is reflected on Complainant and certain of the Aggrieved Employees' pay stubs during the statutory period.

In failing to account and compensate with accuracy, all of the hours worked by Complainant and certain of the Aggrieved Employees, and by failing to accurately set forth the net and gross wages earned, Employer violated the wage statement requirements of Labor Code § 226 by failing to accurately record Complainant and certain of the Aggrieved Employees' respective (1) gross wages earned, (2) net wages earned, and (3) all applicable hourly rates and the corresponding number of hour worked at each applicable hourly rate.

Failure To Reimburse Work-Related Expenses

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

As described above, during the relevant statutory period, Complainant and Aggrieved Employees daily utilize or utilized their personal internet and cell phones in the course of work-related duties with no reimbursement from Employers. Complainant and the Aggrieved Employees were required to download authenticator app on their personal cell phones. Employers violated Labor Code § 2802 and Complainant and the Aggrieved Employees seek reimbursement of these work-related expenses incurred, as well as their attorney's fees, penalties and interest thereon as permitted by § 2802.

Failure to Timely Pay all Wages Due Upon Separation or Termination of Employment

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with §§ 201 and 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 therefore is commenced, but the wages shall not continue for more than 30 days.

During the statutory period, when former Complainant and certain of the Aggrieved Employees' employment relationships with Employer terminated, Employer failed to pay them all of their earned wages (as set forth above), immediately upon their discharge or within 72 hours thereafter. In addition, Employer has failed to pay the waiting time penalties to which such Aggrieved Employees are lawfully entitled under Labor Code § 203.

To date, Employer has failed to pay the Complainant and Aggrieved Employees all of their earned wages, accrued interest thereon, and failed to remit the Labor Code penalties to be imposed as a consequence of said violations of the Labor Code.

Conclusion

In sum, as has been factually alleged, Employer violated Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 1174 (d), 1194(a), 2802 and Industrial Welfare Commission Wage Order No. 4-2001 (IWC No. 4). Complainant on his own behalf and on behalf of all similarly situated Aggrieved Employees, seeks to recover any and all applicable statutory penalties, and interest as provided by California law, as well as attorneys' fees and civil penalties as provided for under Labor Code § 2699.

Complainant requests the LWDA to investigate the above claims and to provide notice of the agency's intent to investigate under the PAGA's provisions. Alternatively, Complainant requests the agency please inform him if it does not intend to investigate these violations so that she may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

SW EMPLOYMENT LAW GROUP, APC


Maria Burciaga, Esq.

MB/ak