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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

FEB 15 2022

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8 *Attorneys for Plaintiffs, Jimmy Gray, Justin Gray,*
9 *Lori Gray, Ryan Gray and Jonathan McCuskey,*
10 *on behalf of themselves and all others similarly situated*

11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF RIVERSIDE

13 JIMMY GRAY, JUSTIN GRAY, LORI GRAY,
14 RYAN GRAY, and JONATHAN MCCUSKEY, on
15 behalf of themselves and all others similarly situated,

16 Plaintiffs,

17 vs.

18 BROKER SOLUTIONS, INC. dba NEW
19 AMERICAN FUNDING, and Does 1 through 50,
20 inclusive,

21 Defendants.

Case No.:

CVRI22 007104

CLASS ACTION COMPLAINT

Unlimited Civil Case

The Amount Demanded Exceeds \$25,000

1 Plaintiffs Jimmy Gray, Justin Gray, Lori Gray, Ryan Gray, and Jonathan McCuskey
2 (“Plaintiffs”), by their attorney, bring this action on behalf of themselves and all others similarly
3 situated, hereby allege as follows:

4 **SUMMARY OF CLAIMS**

5 1. This lawsuit alleges that Broker Solutions, Inc. dba New American Funding
6 (“Defendant”), engaged in unlawful conduct by their: (1) failure to pay Plaintiffs, and all proposed
7 class members, all wages when due, in violation of California Labor Code section 204; (2)
8 unlawful diversions and/or deductions from Plaintiffs’, and proposed class members’, earned
9 wages in violation of California Labor Code sections 221, 222, 223, and 224; (3) failure to
10 provide Plaintiffs, and proposed class members, whom Defendant paid commissions, with signed
11 written contracts that fully set forth the method by which commissions would be computed and
12 paid, in violation of California Labor Code section 2751(a); and, (4) failure to indemnify
13 Plaintiffs, and proposed class members, for all necessary expenditures or losses incurred in the
14 discharge of their duties, in violation of California Labor Code section 2802. These failures
15 further constitute unfair business practices, in violation of California Business and Professions
16 Code section 17200, et. seq., and violations of California Labor Code section 2698, et. seq., the
17 Private Attorneys General Act of 2004 (“the PAGA”), through which Plaintiffs, and proposed
18 class members, seek civil penalties.

19 **JURISDICTIONAL ALLEGATIONS**

20 2. Defendant is, and at all relevant times was, a corporation doing business within the
21 State of California and is an employer under applicable Industrial Welfare Commission Wage
22 Orders. Defendant maintained places of business located throughout the State of California,
23 including in Riverside, California.

24 3. Venue is proper in the County of Riverside because work was performed by
25 Plaintiffs for Defendant in the County of Riverside and the legal obligations of Defendant to
26 Plaintiffs were breached in the County of Riverside.

27 4. The California Superior Court has jurisdiction in this matter because Plaintiffs
28 regularly worked for Defendant in California, Defendant is qualified to do business in California,

1 and Defendant regularly conducts business in California. Further, there is no federal question at
2 issue, as the claims herein are based solely on California law.

3 5. This action seeks relief unremedied violations of California law, including, inter
4 alia; damages, reimbursements, restitution, penalties, interest, and attorneys' fees, as appropriate,
5 to members of the proposed class, aggrieved employees, and to victims of the practices at issue,
6 who have not been paid all wages due in violation of California Labor Code section 204; who
7 have had unlawful diversions and/or deductions from their earned wages in violation of California
8 Labor Code sections 221, 222, 223, and 224; who have were not provided with signed written
9 contracts that fully set forth the method by which commissions would be computed and paid, in
10 violation of California Labor Code section 2751(a); and who have not be indemnified for all
11 necessary expenditures or losses incurred in the discharge of their duties in violation of California
12 Labor Code section 2802. Plaintiffs are informed and believe that the damages, reimbursements,
13 restitution, penalties, interest, and attorneys' fees do not exceed an aggregate of \$4,999,999.99 and
14 that Plaintiffs' individual claims do not exceed \$74,999.99.

15 6. The names and capacities of defendants sued herein under California Code of Civil
16 Procedure section 474 as Does 1 through 50, inclusive, are presently not known to Plaintiff, who
17 therefore sues these defendants by such fictitious names. Plaintiff will seek to amend this
18 Complaint and include these Doe defendants' names and capacities when they are ascertained.
19 Each fictitiously named defendant is responsible in some manner for the conduct alleged herein
20 and for the injuries suffered by Plaintiff, the members of the class, aggrieved employees, and the
21 general public.

22 7. At all times mentioned in the causes of action alleged herein, each and every
23 Defendant was an agent and/or employee of each and every other Defendant. In doing the things
24 alleged in the causes of action stated herein, each and every Defendant was acting within the
25 course and scope of this agency or employment and was acting with the consent, permission and
26 authorization of each of the remaining Defendants. All actions of each Defendant as alleged in the
27 causes of action stated herein were ratified and approved by every other Defendant or their
28 officers or managing agents.

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9. When employed with Defendant, Plaintiffs, and proposed class members, were compensated in a hybrid salary-commission model. Defendant provided Plaintiffs, and proposed class members, documents detailing how and when they would receive commissions. Generally, Defendant paid Plaintiffs, and proposed class members, a commission contingent on whether they performed stipulated mortgage loan origination services.

11. These mortgage rate lock period extension fee diversions and/or deductions were part of a larger scheme which Defendant used to pay for what it called “Lean-In” expenses. Moreover, while Defendant routinely took the “Lean-In” deductions from earned wages, none of Plaintiffs’, and proposed class members’, commission plans, or employment agreements contained any mention of their existence. No such document explained that Defendant would deduct these “Lean-In” expense diversions and/or deductions from Plaintiffs’ and class members’ wages. Such diversions and/or deductions violate California Labor Code sections 204, 221, 222, 223, and 224.

COMPLAINT -4- 3317\PLEAINGS\COMPLAINT

1 Plaintiffs, and proposed class members, for the “Lean In” expenses, and other charges, deducted
2 from their earned commissions violates California Labor Code section 2802.

3 13. Given the violations of the aforementioned California Labor Code sections and
4 Wage Orders, Defendant is therefore liable for unfair business practices, in violation of California
5 Business & Professions Code section 17200, et. seq.

6 14. Given the violations of the aforementioned California Labor Code sections and
7 Wage Orders, Defendant is therefore liable for civil penalties set forth within, and authorized by,
8 the PAGA, California Labor Code section 2698, et. seq.

9 **CLASS ALLEGATIONS**

10 15. Plaintiffs bring this action on behalf themselves, and all similarly situated Branch
11 Managers and Loan Officers who worked for Defendant in California during the four years
12 preceding the filing of this complaint (the “proposed class”).

13 16. Because Defendant failed to pay Plaintiffs all wages when due; took unlawful
14 diversions and/or deductions from Plaintiffs’ earned wages; failed to provide Plaintiffs with signed
15 written contracts that fully set forth the method by which commissions would be computed and
16 paid; and, failed to indemnify Plaintiffs for all necessary expenditures or losses incurred by the
17 employees in the discharge of their duties; Plaintiffs’ claims are typical of the proposed class.

18 17. Plaintiffs will fairly and adequately represent and protect the interests of the
19 proposed class members in that they have no disabling conflicts of interest that would be
20 antagonistic to those of the other proposed class members. Plaintiffs retained counsel who are
21 competent and experienced in the prosecution of class action wage and hour violations.

22 18. The proposed class is sufficiently numerous and the class members are
23 geographically dispersed throughout California, the joinder of whom in one action is
24 impracticable, such that the disposition of those claims in a class action will provide substantial
25 benefits to both the parties and the Court.

26 19. There is a well-defined community of interest in the questions of law and fact
27 involved affecting the parties to be represented. The questions of law and fact common to the
28 proposed classes predominate over questions that may affect individual class members, include

1 but are not limited to the following:

2 (a) Whether Defendant implemented and engaged in a practice whereby Defendant failed
3 to pay proposed class members all wages due;

4 (b) Whether Defendant implemented and engaged in a practice whereby Defendant
5 engaged in a practice of taking unlawful deductions/diversions from proposed class
6 members' wages;

7 (c) Whether Defendant implemented and engaged in a practice whereby Defendant failed
8 to indemnify proposed class members for all necessary expenditures or losses incurred
9 in the discharge of their duties;

10 (d) Whether the practices of Defendant as alleged herein violated, inter alia, applicable
11 provisions of the California Labor Code, including but not limited to sections 204, 221,
12 222, 223, 224, 2751, 2802, applicable Industrial Welfare Commission Orders,
13 California Business and Professions Code section 17200, et seq., and the Private
14 Attorneys General Act of 2004, California Labor Code section 2698, et seq.

15 20. Plaintiffs and members of the proposed class have all similarly suffered irreparable
16 harm and damages as a result of Defendant's unlawful and wrongful conduct, including but not
17 limited to Defendant's: failure to pay Plaintiffs and proposed class members all wages when due;
18 taking of unlawful diversions and/or deductions from Plaintiffs', and proposed class members'
19 earned wages; failure to provide Plaintiffs, and proposed class members, with signed written
20 contracts that fully set forth the method by which commissions would be computed and paid; and
21 failure to indemnify Plaintiffs, and proposed class members, for all necessary expenditures or
22 losses incurred in the discharge of their duties. These issues are common to all proposed class
23 members, making class treatment especially appropriate. Because the actions of Defendant
24 towards proposed class members follow common patterns, all of which are reflected in the records
25 possessed by Defendant, this action will provide substantial benefits to all proposed class
26 members. Absent this action, Defendant's unlawful conduct will continue unremedied and
27 uncorrected.

1 **FIRST CAUSE OF ACTION**

2 **(Failure to Pay All Wages Due: Cal. Lab. Code § 204)**

3 21. Plaintiffs, and proposed class members, incorporate by reference the allegations
4 contained in the foregoing paragraphs of this complaint as if fully set forth herein.

5 22. Pursuant to California Labor Code section 204, “[a]ll wages...earned by any person
6 in any employment are due and payable twice during each calendar month.”

7 23. Defendant compensated Plaintiffs, and proposed class members, through a hybrid
8 salary-commission model. Defendant paid Plaintiffs, and proposed class members, a commission
9 contingent on whether they performed all stipulated mortgage loan origination services. Given the
10 complexity and uncertainty of the mortgage loan origination process, delays occurred. In
11 particular, the mortgage rate lock process was subjected to delays. When mortgage rate lock
12 periods needed extensions, Defendant diverted and/or deducted the cost of the associated fees
13 from Plaintiffs’, and proposed class members’, earned wages. These mortgage rate lock period
14 extension fee diversions and/or deductions were part of a larger scheme that Defendant used to
15 pay for what it called “Lean-In” expenses. Defendant’s decision to deduct these “Lean-In”
16 expenses from Plaintiffs’, and proposed class members’, commissions resulted in Defendant not
17 paying Plaintiffs, and proposed class members, all wages due, violation of California Labor Code
18 section 204.

19 24. Plaintiffs, and proposed class members, are therefore entitled to the relief requested
20 below.

21 **SECOND CAUSE OF ACTION**

22 **(Failure to Indemnify: Cal. Lab. Code § 2802)**

23 25. Plaintiffs, and proposed class members, incorporate by reference the allegations
24 contained in the foregoing paragraphs of this complaint as if fully set forth herein.

25 26. Pursuant to California Labor Code section 2802(a), “an employer shall indemnify
26 his or her employee for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
28 employer.”

27. Defendant compensated Plaintiffs, and proposed class members, through a hybrid salary-commission model. Defendant paid Plaintiffs, and proposed class members, a commission contingent on whether they performed all stipulated mortgage loan origination services. Given the complexity and uncertainty of the mortgage loan origination process, delays occurred. In particular, the mortgage rate lock process was subjected to delays. When mortgage rate lock periods needed extensions, Defendant diverted and/or deducted money from Plaintiffs', and proposed class members', commissions to pay for the associated fees. These mortgage rate lock period extension fee diversions and/or deductions were part of a larger scheme which Defendant used to pay for what it called "Lean-In" expenses. These "Lean-In" expenses, and in particular the mortgage rate lock period extension fees, are necessary expenditures and/or losses incurred by Plaintiffs, and proposed class members, as a direct consequence of their job duties. Defendant's decision to deduct these "Lean-In" expenses from Plaintiffs', and class members', commissions instead of reimbursing Plaintiffs, and proposed class members, for these expenses violates California Labor Code section 2802.

28. Plaintiffs, and proposed class members, also seek penalties and attorneys' fees for Defendant's violation of California Labor Code section 2802, pursuant to sections 2802(b) and (c), and the PAGA, including California Labor Code sections 2699(g)(1), 2699.3, and 2699.5.

29. Plaintiffs, and proposed class members, are therefore entitled to the relief requested below.

THIRD CAUSE OF ACTION

**(Unlawful, Unfair And Fraudulent Business Practices:
Business & Professions Code § 17200, et seq.)**

30. Plaintiffs, and proposed class members, incorporate by reference the allegations contained in the foregoing paragraphs of this complaint as if fully set forth herein.

31. At all relevant times, California Business & Professions Code section 17200, et seq., prohibited acts of unfair competition, defined as an “unlawful, unfair, or fraudulent business act or practice.”

32. The aforementioned policies, acts and practices described were and are unlawful business acts or practices because Defendant (1) failed to pay Plaintiffs, and proposed class

1 members, all wages when due, in violation of California Labor Code section 204; (2) unlawful
2 diverted/deducted from Plaintiffs', and proposed class members', earned wages in violation of
3 California Labor Code sections 221, 222, 223, and 224; (3) failed to provide Plaintiffs, and
4 proposed class members, who Defendant paid commissions, with signed written contracts that
5 fully set forth the method by which commissions would be computed and paid, in violation of
6 California Labor Code section 2751(a); (4) failed to indemnify Plaintiffs, and proposed class
7 members, for all necessary expenditures or losses incurred in the discharge of their duties, in
8 violation of California Labor Code section 2802; violated applicable California Labor Code
9 sections, Industrial Welfare Commission Wage Orders, the Private Attorneys General Act of
10 2004, Labor Code section 2698 et seq., and other provisions of California common and/or
11 statutory law. Plaintiffs, and proposed class members, reserve the right to allege additional
12 statutory and common law violations by Defendant.

13 33. Further, the policies, acts or practices described herein were and are an unfair
14 business acts or practices because any justifications for Defendant's illegal and wrongful conduct
15 were and are vastly outweighed by the harm such conduct caused Plaintiffs, and proposed class
16 members.

17 34. As a result of their unlawful and/or unfair and/or fraudulent acts, Defendant reaped
18 unfair benefits and illegal profits at the expense of Plaintiffs, and proposed class members.
19 Defendant should be made to disgorge ill-gotten gains and provide restitution to Plaintiffs, and
20 proposed class members, for the wrongfully withheld wages pursuant to Business and Professions
21 Code section 17203.

22 35. Accordingly, Plaintiffs, and proposed class members, respectfully request that the
23 Court award judgment and relief in their favor, to provide restitution, and other types of equitable
24 relief.

25 36. Plaintiffs, and proposed class members, are therefore entitled to the relief
26 requested below.
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FOURTH CAUSE OF ACTION

**(Labor Code Private Attorneys General Act of 2004 (the “PAGA”):
Cal. Lab. Code § 2698, et. seq.)**

37. Plaintiffs, and proposed class members, incorporate by reference the allegations contained in the foregoing paragraphs of this complaint as if fully set forth herein.

38. The policies, acts and practices heretofore described were and are unlawful because Defendant (1) failed to pay Plaintiffs, and proposed class members all wages when due, in violation of California Labor Code section 204; (2) unlawful diverted/deducted from Plaintiffs’, and proposed class members’, earned wages in violation of California Labor Code sections 221, 222, 223, and 224; (3) failed to provide Plaintiffs, and proposed class members, who Defendant paid commissions, with signed written contracts that fully set forth the method by which commissions would be computed and paid, in violation of California Labor Code section 2751(a); (4) failed to indemnify Plaintiffs, and proposed class members, for all necessary expenditures or losses incurred in the discharge of their duties, in violation of California Labor Code section 2802; violated applicable California Labor Code sections and gives rise to statutory and civil penalties as a result of such conduct, including but not limited to penalties as provided by Labor Code sections 2698, 2699(f), 2699.3, and 2699.5, and applicable Industrial Welfare Commission Wage Orders. Plaintiffs, and proposed class members, as aggrieved employees, hereby seek recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 on behalf of themselves.

39. On December 10, 2021, Plaintiffs exhausted their administrative resources by filing a PAGA complaint with the California Department of Industrial Relations, alleging that Defendant violated the California Labor Code.

40. Plaintiffs, and proposed class members, seek attorneys’ fees to achieve the same, pursuant to the Labor Code section 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE Plaintiffs pray for judgment and relief as follows:

1. An order certifying that the action may be maintained as a class action;
2. Compensatory and statutory damages, penalties and restitution, as appropriate and

1 available under each cause of action, in an amount to be proven at trial based
2 on, inter alia, the unpaid balance of compensation Defendant owes;

- 3 3. Reasonable attorneys' fees pursuant to the California Labor Code, including sections
4 2802 and 2698, et seq.;
- 5 4. Costs of this suit;
- 6 5. Pre- and post-judgment interest; and
- 7 6. Such other and further relief as the Court deems just and proper.
- 8 7. Plaintiffs are informed and believe that the damages, back wages, restitution, value of
9 injunctive relief sought, penalties, interest and attorneys' fees do not exceed an
10 aggregate of \$4,999,999.99.

11 **JURY DEMAND**

12 Plaintiffs hereby demand a trial by jury.

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15 Date: February 15, 2022

WORKMAN LAW FIRM, PC

16
17 By: 

18 Robin G. Workman
19 *Attorneys for Jimmy Gray, Justin Gray, Lori*
20 *Gray, Ryan Gray, and Jonathan McCuskey,*
21 *and all others similarly situated*