

1 Jason E. Baker, Esq. (SBN: 197666)  
2 [jbaker@keeganbaker.com](mailto:jbaker@keeganbaker.com)  
3 John J. Weber, Esq. (SBN: 313824)  
4 [jweber@keeganbaker.com](mailto:jweber@keeganbaker.com)  
5 **KEEGAN & BAKER, LLP**  
6 5820 Oberlin Drive, Suite 205  
7 San Diego, CA 92121  
8 Telephone: (858) 558-9402/7  
9 Facsimile: (858) 558-9401

Assigned for All Purposes  
Judge Peter Wilson  
CX-102

10 Attorneys for FARROZ ZAMANI on behalf of all similarly situated aggrieved employees

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ORANGE**

FARROZ ZAMANI on behalf of all similarly  
situated aggrieved employees,

Plaintiff,

v.

SUN WEST MORTGAGE COMPANY, INC.  
a California corporation; and DOES 1-50

Defendant.

**CASE NO.: 30-2022-01255275-CU-OE-CXC**

**COMPLAINT FOR RECOVERY OF  
PENALTIES UNDER THE CALIFORNIA  
LABOR CODE PRIVATE ATTORNEYS  
GENERAL ACT OF 2004 (PAGA)**

**DEMAND FOR JURY TRIAL**

Plaintiff FARROZ ZAMANI (hereinafter "Plaintiff"), by and through his attorneys of  
record, hereby alleges on personal knowledge as to himself, and on information and belief as to all  
others, as follows:

**PARTY ALLEGATIONS**

1. Defendant, SUN WEST MORTGAGE COMPANY, INC., ("Sun West") is a  
corporation organized and existing under the laws of the state of California. Respondent's principal  
place of business is located at 6131 Orangethorpe Avenue, Suite 500, Buena Park, California,  
90620.

2. Plaintiff FARROZ ZAMANI is an adult resident of the State of California. Plaintiff  
was hired by Defendants in or about September, 2020 as a Loan Officer and thereafter worked for  
Defendants during the one period preceding the filing of this Complaint in Orange County,  
California.

1           3.       This action is brought to seek PAGA penalties against Defendant for certain wage  
2 and hour violations that were committed by Defendant during the one-year period preceding the  
3 date of this Complaint until the date of Judgment.

4           4.       Each Defendant, including those named as DOES 1 through 50, was an owner,  
5 director, officer, managing agent and other person acting on behalf of Sun West in connection with  
6 the creation, management and enforcement of the wage, hours and working conditions,  
7 classifications and decisions described in this Complaint, was responsible for causing and  
8 supervising Sun West's business and employment activities occurring in the State of California,  
9 knowing advised Sun West in connection with the foregoing, and actively and directly participated  
10 in the unlawful and unfair business practices as alleged in this Complaint.

11           5.       The true names and capacities, whether individual, corporate, associate, or  
12 otherwise, of Defendants sued herein as DOES 1 through 50, inclusive, are currently unknown to  
13 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §  
14 474. Plaintiff is informed and believes and thereon alleges that each Defendant named herein,  
15 including DOES 1 through 50, is legally responsible for in some manner for the unlawful acts  
16 alleged herein, and acted in all respects pertinent to this action on behalf of and/or as the joint  
17 employer of Plaintiff and all similarly situated aggrieved employees deriving simultaneous benefit  
18 from the hours worked by Sun West employees, exercising direct and indirect control over Plaintiff  
19 and all similarly situated aggrieved employees through mandatory directions to Sun West that  
20 control Sun West's employees, controlled Plaintiff's and all similarly situated aggrieved  
21 employees' conditions of employment, determined the rate and method of payment of wages, and  
22 maintained employment records. Further, Plaintiff and all similarly situated aggrieved employees  
23 were agents of the joint employer DOE Defendants as demonstrated by double branded uniforms  
24 and work apparel, continuous access and use of the joint employer DOE Defendant's sales portal  
25 software for the benefit of the joint employer DOE Defendants, entering into sales and service  
26 contracts on behalf of the joint employer DOE Defendants, quoting of pricing and contract terms  
27 on behalf of the joint employer DOE Defendants, and receiving training and direction by the joint  
28 employer DOE Defendants on required policies and procedures. Each Defendant named herein,

1 including DOES 1 through 50, acted as an agent of the other Defendants, carried out a joint scheme,  
2 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally  
3 attributable to the other Defendants.

4 6. Plaintiff is informed, believes and thereon alleges that each of the Defendants is the  
5 agent, joint venture, managing agent, alter ego and/or employee of each of the remaining  
6 Defendants and in doing the things hereinafter alleged, each was acting within the course and scope  
7 of said agency, employment and/or joint venture with the advance knowledge, acquiescence or  
8 subsequent ratification of each and every remaining Defendant in exercising control over the wages,  
9 hours and working conditions of Plaintiff and all similarly situated aggrieved employees, suffered  
10 or permitted Plaintiff and all similarly situated aggrieved employees to work, and otherwise  
11 engaged Plaintiff and all similarly situated aggrieved employees to work.

12 **ALTER EGO ALLEGATIONS**

13 7. Plaintiff is informed and believes and thereon alleges that some of the individuals,  
14 corporations, limited liability companies, and entities named as Defendants herein, including as  
15 Defendants DOES 1 through 50, (hereinafter occasionally collectively referred to as the “ALTER  
16 EGO DEFENDANTS”), and each of them, were at all times relevant the alter ego individuals,  
17 corporations, limited liability companies or entities of each other Defendant by reason of the  
18 following:

19 (a) Plaintiff is informed and believes and thereon alleges that said Defendants,  
20 and each of them, at all times herein mentioned, dominated, influenced, and controlled each other  
21 Defendant and each of the ALTER EGO DEFENDANTS and the officers and managers thereof as  
22 well as the business, property, and affairs of each of said individuals, corporations, limited liability  
23 companies or entities or entities.

24 (b) Plaintiff is informed and believes and thereon alleges that, at all times herein  
25 mentioned, there existed and now exists a unity of interest and ownership between Defendants, and  
26 each of them, and each of the ALTER EGO DEFENDANTS; the individuality and separateness of  
27 said Defendants and each of the ALTER EGO DEFENDANTS have ceased.

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1           (c) Plaintiff is informed and believes and thereon alleges that, at all times since  
2 the incorporation of each, each ALTER EGO DEFENDANT has been and now is a mere shell and  
3 naked framework which said Defendants, and each of them, used as a conduit for the conduct of  
4 their personal business, property, and affairs.

5           (d) Plaintiff is informed and believes and thereon alleges that, at all times herein  
6 mentioned, Defendants, and each of them, and each of the ALTER EGO DEFENDANTS was  
7 organized by said Defendants as a device to avoid individual liability and for the purpose of  
8 substituting financially irresponsible employer corporations, limited liability companies or entities  
9 in the place and stead of said individual defendants, limited liability companies or entities and each  
10 of them, and accordingly, each ALTER EGO DEFENDANT was formed with capitalization totally  
11 inadequate for the business in which said corporation, limited liability company or entity was  
12 engaged.

13           (e) Plaintiff is informed and believes and thereon alleges that, at all times herein  
14 mentioned, Defendants, and each of them, and each of the ALTER EGO DEFENDANTS are and  
15 were an owner, director, officer, managing agent and other person or entity acting on behalf of Sun  
16 West in connection with the creation, management and enforcement of the wage, hours and working  
17 conditions, classifications and decisions described in this Complaint, was responsible for causing  
18 and supervising Sun West's business and employment activities occurring in San Diego County  
19 and the State of California, knowing advised Sun West in connection with the foregoing, and  
20 therefore, is personally liable for the obligations of Defendant Sun West arising under this  
21 Complaint, *inter alia*, pursuant to Labor Code Sections 226.8, 558.1, 1197.1, 2753, and 2698 *et*  
22 *seq.*

23           (g) Plaintiff is informed and believes and thereon alleges that each Defendant  
24 and/or ALTER EGO DEFENDANT is insolvent and that profits of said ALTER EGO  
25 DEFENDANTS were taken by said ALTER EGO DEFENDANTS.

26           (h) By virtue of the foregoing, adherence to the fiction of the separate corporate  
27 existence of each of the ALTER EGO DEFENDANTS would, under the circumstances, sanction a  
28 fraud and promote injustice in that Plaintiff would be unable to realize upon any judgment in their

1 favor.

2 12. Plaintiff is informed and believes and thereon alleges that, at all times relevant  
3 hereto, the individual defendants and the ALTER EGO DEFENDANTS acted for each other in  
4 connection with the conduct hereinafter alleged and that each of them performed the acts  
5 complained of herein or breached the duties herein complained of as agents of each other and each  
6 is therefore fully liable for the acts of the other.

7 **JURISDICTION & VENUE**

8 13. This Court has jurisdiction over this controversy under Article 6, § 10 of the  
9 California Constitution and California Code of Civil Procedure § 410.10 and various provisions of  
10 the Labor Code as alleged herein. Venue as to each Defendant is proper in this judicial district,  
11 pursuant to Code of Civil Procedure § 395(a) and Labor Code § 925 in that Plaintiff and a  
12 substantial number of all similarly situated aggrieved employees on whose behalf this action is  
13 brought work or worked in Defendant's facilities in this judicial district and otherwise performed  
14 employment services in this judicial district, a substantial part of the events or omissions giving rise  
15 to the claims stated herein arose within this judicial district and and/or each Defendant either is  
16 found, maintains offices, transacts business, and/or has an agent therein.

17 **GENERAL ALLEGATIONS**

18 14. Defendant (and DOES 1-50) is a direct mortgage lender which sells mortgages to  
19 residents throughout the United States. To facilitate the sales of mortgages, Defendant employs  
20 several Nationwide Multistate Licensing System & Registry ("NMLS") licensed Mortgage Loan  
21 Officers ("MLO"), such as Plaintiff, to contact leads and originate mortgage loans from remote  
22 offices in California called "branches." Defendant also employs similarly situated and aggrieved  
23 unlicensed support staff ("Unlicensed Staff") to assist licensed MLOs with sales related tasks for  
24 which an NMLS license is not required. Defendant also employs Loan Processors ("Processors")  
25 to process the loans originated by MLOs.

26 15. MLOs are generally compensated via an hourly wage and commissions, with hourly  
27 wages drawn back against commissions when paid. Defendant also frequently improperly classifies  
28 MLOs, such as Plaintiff, as exempt employees and thereby fails to pay these MLOs for all hours

1 worked and fails to pay proper meal and rest period premiums. Defendant also regularly fails to  
2 provide meal and rest periods, fails to pay proper meal and rest period premiums for missed meal  
3 and rest periods, fails to timely pay MLOs all commissions earned, regularly makes unlawful  
4 deductions from commissions, and unlawfully causes MLOs earned commissions to be forfeited at  
5 termination despite these employees meeting all requirements to earn and be paid their  
6 commissions.

7 16. Unlicensed Staff and Processors are generally compensated via an hourly wage plus  
8 production bonuses per loan originated on which the Unlicensed Staff assists the MLO or per loan  
9 processed by the Processor. Defendant regularly fails to pay Unlicensed Staff and Processors for  
10 all hours worked, fails to provide meal and rest periods, fails to pay proper meal and rest period  
11 premiums for missed meal and rest periods, fails to pay all earned bonuses, and causes bonus wages  
12 to be forfeited at termination despite these employees meeting all requirements to earn and be paid  
13 their bonuses.

14 17. This is an action for relief from Defendant's violation of certain of California's  
15 Labor Code provisions as it relates to Plaintiff and other similarly situated aggrieved employees,  
16 including but not limited to (i) willful misclassification of MLO employees as exempt employees;  
17 (ii) failure to reimburse employees for work expenses incurred in direct consequence of the  
18 discharge of their duties; (iii) failure to pay minimum and overtime wages; (iv) failure to timely  
19 pay earned wages; (v) willful failure to pay wages owed upon termination; (vi) failure to timely  
20 furnish legally compliant wage statements; (vii) unlawful deductions from wages; and (viii) failure  
21 to maintain records reflecting employment information.

22 **FIRST CAUSE OF ACTION**

23 **(Recovery of Penalties Under the Labor Code Private Attorneys General Act of 2004)**

24 **Plaintiff and The Aggrieved Employees**

25 **As Against All Defendants and DOES 1-50**

26 18. Plaintiff hereby incorporates all previous paragraphs by this reference.

27 19. Plaintiff bring this representative claim on behalf of himself and all other aggrieved  
28 employees of Defendant under the Labor Code Private Attorneys General Act of 2004, as codified  
in Labor Code §§ 2698, et seq. ("PAGA") to recover unpaid wages, expenses, and statutory

1 penalties.

2 20. Defendant is a “person” as contemplated within the meaning of subd. (b) of § 2699  
3 of the Labor Code. Plaintiff is an “aggrieved employee” of Defendant as contemplated within the  
4 meaning of subd. (c) of § 2699 of the Labor Code.

5 **A. SUN WEST Failed to Reimburse Employees for Work Expenses in Violation of**  
6 **Labor Code § 2800, 2802, and IWC Wage Order No. 7-2001**

7 21. Labor Code § 2802(a) provides that “[a]n employer shall indemnify his or her  
8 employee for all necessary expenditures or losses incurred by the employee in direct consequence  
9 of the discharge of his or her duties.”

10 22. During the one-year period preceding the filing of this Complaint, Plaintiff and other  
11 similarly situated aggrieved employees regularly used their own personal cell phones, computers,  
12 and maintained data and internet plans for the use of each. Defendant failed to reimburse Plaintiff  
13 for any or all these necessary business expenses in violation of § 2802.

14 23. Labor Code § 2802 provides that an employer who violates § 2802 is liable for all  
15 necessary expenditures or losses, including reasonable attorneys’ fees and costs, and interest  
16 accruing from the date of expenditure or loss. Additionally, pursuant to § 1197.1, any employer  
17 who violates § 2802 is also subject to a civil penalty of \$100.00 for each aggrieved employee per  
18 pay period for each intentional violation and \$250.00 for each subsequent violation, either  
19 intentional or unintentional.

20 **B. SUN WEST Failed to Pay Minimum Wages and Overtime Compensation in**  
21 **Violation of Labor Code §§ 204, 210, 218.6, 226.2, 510, 558, 1194, 1194.2, 1194.5,**  
22 **1197, 1197.1, 1198, and 1199.**

23 24. Labor Code § 204 states, in relevant part: “(a) All wages, other than those mentioned  
24 in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable  
25 twice during each calendar month, on days designated in advance by the employer as the regular  
26 paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be  
27 paid for between the 16th and the 26th day of the month during which the labor was performed,  
28 and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be

1 paid for between the 1st and 10th day of the following month...(b)(1) Notwithstanding any other  
2 provision of this section, all wages earned for labor in excess of the normal work period shall be  
3 paid no later than the payday for the next regular payroll period.”

4 25. Labor Code § 1197 states: “The minimum wage for employees fixed by the  
5 commission or by any applicable state or local law, is the minimum wage to be paid to employees,  
6 and the payment of a lower wage than the minimum so fixed is unlawful.”

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

11 27. Labor Code § 510 states: “Any work in excess of eight hours in one workday and  
12 any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh  
13 day of work in any one workweek shall be compensated at the rate of no less than one and one-half  
14 times the regular rate of pay for an employee.”

15 28. Labor Code § 226.2 states, in relevant part: “(a) For employees compensated on a  
16 piece-rate basis during a pay period, the following shall apply for that pay period: (1) Employees  
17 shall be compensated for rest and recovery periods and other nonproductive time separate from any  
18 piece-rate compensation.”

19 29. Employees paid on a commission basis are similarly entitled to separation  
20 compensation for rest periods. (See, *Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th  
21 98, 110-13).

22 30. During the one-year period preceding the filing of this Complaint, Defendant failed  
23 to timely pay Plaintiff and other current or former employees in accordance with the provisions of  
24 Labor Code § 204, frequently paying earned wages significantly later than the proscribed time  
25 period.

26 31. Also, during the one-year period preceding the filing of this Complaint Plaintiff and  
27 other similarly situated aggrieved employees regularly worked, and were regularly required to  
28 work, more than eight hours per day and/or forty hours a week, without receiving lawful overtime

1 compensation. Defendant would regularly fail to pay lawful overtime wages at the regular rate of  
2 pay and regularly paid commission and bonus wages separate from other earned wages for the same  
3 pay period to avoid paying all earned overtime wages.

4 32. Plaintiff also alleges that Defendant regularly failed to timely pay employees all  
5 earned bonuses and commissions at the time those wages were earned and capable of being  
6 calculated. Because bonuses and commissions constitute wages under California law, Defendant  
7 fails to timely pay earned wages due to Employees in violation of California law.

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

13 34. Labor Code § 1194.2(a) provides, in relevant part: “In any action under  
14 Section...1194...to recover wages because of the payment of a wage less than the minimum wage  
15 fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated  
16 damages in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this  
17 subdivision shall be construed to authorize the recovery of liquidated damages for failure to pay  
18 overtime compensation. A suit may be filed for liquidated damages at any time before the expiration  
19 of the statute of limitations on an action for wages from which the liquidated damages arise.”

20 35. Labor Code § 1194.5 provides: “In any case in which a person employing an  
21 employee has willfully violated any of the laws, regulations, or orders governing the wages, hours  
22 of work, or working conditions of such employee, the division may seek, in a court of competent  
23 jurisdiction, and the court may grant, an injunction against any further violations of any such laws,  
24 regulations, or orders by such person.”

25 36. Labor Code § 1197.1 provides that: “(a) Any employer or other person acting either  
26 individually or as an officer, agent, or employee of another person, who pays or causes to be paid  
27 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an  
28 order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages

1 payable to the employee, and any applicable penalties imposed pursuant to Section 203.” See also  
2 IWC Wage Order No. 7-2001, item 4.

3 37. Labor Code § 210 provides, in relevant part: “(a) In addition to, and entirely  
4 independent and apart from, any other penalty provided in this article, every person who fails to  
5 pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5,  
6 and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred  
7 dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any  
8 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee,  
9 plus 25 percent of the amount unlawfully withheld.”

10 38. Labor Code § 218.6 provides: “In any action brought for the nonpayment of wages,  
11 the court shall award interest on all due and unpaid wages at the rate of interest specified in  
12 subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages  
13 were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.”

14 39. Labor Code § 218.5 provides, in relevant part: “(a) In any action brought for the  
15 nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court  
16 shall award reasonable attorney's fees and costs to the prevailing party if any party to the action  
17 requests attorney's fees and costs upon the initiation of the action.”

18 40. Labor Code § 1199 provides that: “Every employer or other person acting either  
19 individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and  
20 is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less  
21 than 30 days, or by both, who does any of the following: (a) Requires or causes any employee to  
22 work for longer hours than those fixed, or under conditions of labor prohibited by an order of the  
23 commission. (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by  
24 an order of the commission. (c) Violates or refuses or neglects to comply with any provision of this  
25 chapter or any order or ruling of the commission.”

26 41. Labor Code § 558 provides, in relevant part: “(a) Any employer or other person  
27 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or  
28 any provision regulating hours and days of work in any order of the Industrial Welfare Commission

1 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each  
2 underpaid employee for each pay period for which the employee was underpaid in addition to an  
3 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred  
4 dollars (\$100) for each underpaid employee for each pay period for which the employee was  
5 underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered  
6 pursuant to this section shall be paid to the affected employee.”

7 **C. SUN WEST failed to Pay Wages Owed Upon Termination in Violation of Labor code**

8 **§§ 201, 202, 203 & 210**

9 42. Labor Code § 201 states, in relevant part: “(a) If an employer discharges an  
10 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

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

16 44. While Claimant was employed by Sun West, it willfully failed to timely pay  
17 Claimant and all other similarly situated aggrieved employees for all earned bonuses, commissions,  
18 hourly or salary wages due to them upon termination of their employment with Sun West, in  
19 violation of this section.

20 45. Labor Code § 203 provides that: “(a) If an employer willfully fails to pay, without  
21 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any  
22 wages of an employee who is discharged or who quits, the wages of the employee shall continue as  
23 a penalty from the due date thereof at the same rate until paid or until an action therefor is  
24 commenced; but the wages shall not continue for more than 30 days. An employee who secretes or  
25 absents himself or herself to avoid payment to him or her, or who refuses to receive the payment  
26 when fully tendered to him or her, including any penalty then accrued under this section, is not  
27 entitled to any benefit under this section for the time during which he or she so avoids payment.”

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1           46. Labor Code § 210 provides, in relevant part: “(a) In addition to, and entirely  
2 independent and apart from, any other penalty provided in this article, every person who fails to  
3 pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5,  
4 and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred  
5 dollars (\$100) for each failure to pay each employee. 2) For each subsequent violation, or any  
6 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee,  
7 plus 25 percent of the amount unlawfully withheld.”

8           47. Labor Code § 218.5 provides, in relevant part: “(a) In any action brought for the  
9 nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court  
10 shall award reasonable attorney's fees and costs to the prevailing party if any party to the action  
11 requests attorney's fees and costs upon the initiation of the action.”

12           48. Labor Code § 218.6 provides: “In any action brought for the nonpayment of wages,  
13 the court shall award interest on all due and unpaid wages at the rate of interest specified in  
14 subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages  
15 were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.”

16           **D. SUN WEST Failed to Timely Furnish Legally Compliant Wage statements in**  
17           **Violation of Labor Code §§ 226, 226.2, 226.3, and IWC Wage Order No. 7-2001**

18           49. Labor Code § 226(a) states, in relevant part:

19           “Every employer shall, semimonthly or at the time of each payment of wages,  
20 furnish each of his or her employees, either as a detachable part of the check, draft,  
21 or voucher paying the employee’s wages, or separately when wages are paid by  
22 personal check or cash, an accurate itemized statement in writing showing (1) gross  
23 wages earned, (2) total hours worked by the employee...(3) the number of piece-  
24 rate units earned and any applicable piece rate if the employee is paid on a piece-  
25 rate basis, (4) all deductions, provided that all deductions made on written orders  
26 of the employee may be aggregated and shown as one item, (5) net wages  
27 earned...(7) the name of the employee and only the last four digits of his or her  
28 social security number...(9) all applicable hourly rates in effect during the pay

1 period and the corresponding number of hours worked at each hourly rate by the  
2 employee...The deductions made from payment of wages shall be recorded in ink  
3 or other indelible form, properly dated, showing the month, day, and year, and a  
4 copy of the statement and the record of the deductions shall be kept on file by the  
5 employer for at least three years at the place of employment or at a central location  
6 within the State of California. For purposes of this subdivision, "copy" includes a  
7 duplicate of the itemized statement provided to an employee or a computer-  
8 generated record that accurately shows all of the information required by this  
9 subdivision."

10 50. The wage statements provided by Sun West to Claimant, and other similarly situated  
11 aggrieved employees, fail to comply with the requirements of §§ 226(a) and 226.2 by failing to  
12 provide all the information required by this section. The missing information required by §§ 226(a)  
13 and 226.2 includes, but is not limited to, the total hours worked, the beginning and/or ending dates  
14 of the pay period, name and address of the legal entity that is the employer, all applicable hourly  
15 rates in effect during the pay period and the corresponding number of hours worked at each hourly  
16 rate, the overtime rate of pay, all deductions, and an itemization, accounting, or other explanation  
17 of how the commission is calculated.

18 51. Labor Code § 226.3 provides: "Any employer who violates subdivision (a) of  
19 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per  
20 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for  
21 each violation in a subsequent citation, for which the employer fails to provide the employee a wage  
22 deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil  
23 penalties provided for in this section are in addition to any other penalty provided by law."

24 **E. SUN WEST Unlawfully Deducted Wages in Violation of Labor Code § 221, 225, &**  
25 **225.5**

26 52. Labor Code § 221 states: "It shall be unlawful for any employer to collect or receive  
27 from an employee any part of wages theretofore paid by said employer to said employee."

28 53. While Plaintiff was employed by Sun West, Sun West made unlawful deductions

1 from Plaintiff's and other similarly situated aggrieved employees' wages. Plaintiff further alleges  
2 that Sun West has a policy, practice, guideline and/or procedure by which employees are not paid  
3 earned bonus and commission wages after termination. Claimant also alleges that Sun West  
4 unlawfully withheld balance of these wages upon termination of Employees in violation of Labor  
5 Code § 221.

6 54. Labor Code § 225 provides: "The violation of any provision of Sections 221, 222,  
7 222.5, or 223 is a misdemeanor."

8 55. Labor Code § 225.5 provides, in relevant part: "In addition to, and entirely  
9 independent and apart from, any other penalty provided in this article, every person who unlawfully  
10 withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be  
11 subject to a civil penalty as follows: (a) For any initial violation, one hundred dollars (\$100) for  
12 each failure to pay each employee. (b) For each subsequent violation, or any willful or intentional  
13 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the  
14 amount unlawfully withheld."

15 **F. SUN WEST failed to maintain sufficient employment records in violation of Labor**  
16 **Code §§ 1174 & 1174.5**

17 56. Labor Code § 1174 states, in relevant part: "Every person employing labor in this  
18 state shall...(c) Keep a record showing the names and addresses of all employees employed...  
19 (d) Keep, at a central location in the state or at the plants or establishments at which employees are  
20 employed, payroll records showing the hours worked daily by and the wages paid to, and the  
21 number of piece-rate units earned by and any applicable piece rate paid to, employees employed at  
22 the respective plants or establishments. These records shall be kept in accordance with rules  
23 established for this purpose by the commission, but in any case shall be kept on file for not less  
24 than three years. An employer shall not prohibit an employee from maintaining a personal record  
25 of hours worked, or, if paid on a piece-rate basis, piece-rate units earned." Claimant alleges that,  
26 while employed by Sun West, it failed to keep and maintain employment records in accordance  
27 with the location and temporal provisions of Labor Code § 1174.

28 //

57. Labor Code § 1174.5 provides: “Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

## L. PAGA Notice Compliance

58. Plaintiff alleges that Sun West violated Labor Code §§ violated Labor Code §§ 201, 202, 203, 204, 210, 221, 225, 225.5, 226, 226.2, 226.3, 510, 558, 1021.5, 1174, 1174.5, 1194, 1197, 1198, 1199, 2751, 2800, & 2802. Plaintiff has complied with the PAGA administrative requirements in the manner prescribed in Labor Code § 2699.3, including providing notice pursuant to Labor Code § 2699.3(a)(1) on February 1, 2022. Plaintiff gave written notice of the violations described herein, including the relevant code sections violated and the facts and theories supporting the allegations, to the Labor and Workforce Development Agency and to Defendants. A true and correct copy of Plaintiff's PAGA notice, is attached hereto as Exhibit "A," and incorporated herein by reference. The Labor and Workforce Development Agency has not responded to the notice after more than 65 calendar days have elapsed since the postmark date of Plaintiff' notices.

## **PRAYER FOR RELIEF**

WHEREFORE Plaintiff request the following relief on all causes of action:

A. That the Court finds that Defendant violated each of the Labor Code sections alleged above, including, but not limited to, §§ 201, 202, 203, 204, 210, 221, 225, 225.5, 226, 226.2, 226.3, 510, 558, 1021.5, 1174, 1174.5, 1194, 1197, 1198, 1199, 2751, 2800, & 2802 of the California Labor Code, and § 17200 of the California Bus. & Prof. Code and the applicable IWC Orders, as set forth above;

B. That the Court awards civil penalties pursuant to PAGA;

C. That the Court award pre-judgment and post-judgment interest as provided by law;

D. That the Court award Plaintiff and all similarly situated aggrieved employees attorneys' fees and costs of suit as provided by law.

//

1 E. That Plaintiff recover, for themselves and all aggrieved employees, penalties under  
2 PAGA, including for willful misclassification and to recover all earned and unpaid minimum wage,  
3 overtime, expenses, including all liquidated damages, reasonable costs, penalties, attorneys' fees,  
4 and interest accruing from the date such wages and expenses were earned and due.

5 F. Such other and further relief as the Court may deem appropriate.

6  
7 **KEEGAN & BAKER, LLP**

8 Dated: April 7, 2022

By: /s/ John J. Weber

Jason E. Baker, Esq.

John J. Weber, Esq.

Attorneys for FARROZ ZAMANI, on behalf of all  
similarly situated aggrieved employees

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demand a trial by jury on all issues so triable.

**KEEGAN & BAKER, LLP**

Dated: April 7, 2022

By: /s/ John J. Weber  
Jason E. Baker, Esq.  
John J. Weber, Esq.  
Attorneys for FARROZ ZAMANI, on behalf of all  
similarly situated aggrieved employees

## **EXHIBIT A**



5820 Oberlin Dr., Suite 205 San Diego, CA 92121

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Main: 858.558.9400 | Direct: 858.558.9407 | Facsimile: 858.558.9401 | Email: jweber@keeganbaker.com

February 1, 2022

**Via Electronic Submission**

California Labor & Workplace Development Agency  
801 K Street, Suite 2101  
Sacramento, CA 95814

**Via Certified Mail, Return Receipt Requested**

Sun West Mortgage Company, Inc.  
6131 Orangethorpe Ave., Suite 500  
Buena Park, California 90620

Paracorp Incorporated, Agent  
For Service of Process for Sun West Mortgage Company, Inc.  
2804 Gateway Oaks Dr., #100  
Sacramento, California 95833

**Notice Under Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698 et seq.)**

Dear Sir or Madam:

This firm represents Michael Zamani (hereinafter, "Claimant"). This letter is sent pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698 et seq.) as a prerequisite to bringing an action to enforce the California labor laws described below and to recover wages, expenses and penalties thereunder.

**I. STATEMENT OF FACTS.**

SUN WEST MORTGAGE COMPANY, INC., ("Sun West") is a corporation organized and existing under the laws of the state of California. Sun West's principal place of business is located at 6131 Orangethorpe Avenue, Suite 500, Buena Park, California, 90620.

Sun West maintains multiple offices in the State of California.

Sun West is a direct mortgage lender which sells mortgages to residents throughout the United States. To facilitate the sales of mortgages, Respondent employs several Nationwide Multistate Licensing System & Registry ("NMLS") licensed Mortgage Loan Officers ("MLO"), such as Claimant, to contact leads and originate mortgage loans from remote offices in California called "branches." Sun West also employs similarly situated and aggrieved Loan Processors ("Processors") and other unlicensed support staff ("Unlicensed Staff") to assist licensed MLOs with tasks for which an NMLS is not required.

Claimant is an adult resident of the State of California. Claimant, and other similarly aggrieved employees, were employed by Sun West as Loan Officers during the twelve (12) months preceding this notice in the State of California. As a Loan Officer, Claimant and other current or former Loan Officers

were required to obtain an NMLS Mortgage Loan Originator License. Claimant and other similarly situated aggrieved Loan Officer earned either hourly wages plus commission, or salary wages plus commission. Loan Processors and Unlicensed Staff earn hourly wages plus production bonuses.

While Claimant was employed by Sun West, Sun West willfully misclassified Claimant and other similarly situated aggrieved Loan Officers as exempt employees.

While Claimant was employed by Sun West, Sun West failed to reimburse Claimant and other similarly situated aggrieved employees for work expenses incurred in direct consequence of the discharge of their duties in violation of Labor Code § 2800, 2802, and IWC Wage Order No. 7-2001.

While Claimant was employed by Sun West, Sun West failed to pay Claimant, and other similarly situated aggrieved employees, minimum wages and overtime compensation in violation of Labor Code §§ 204, 210, 218.6, 226.2, 510, 558, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, and 1199.

While Claimant was employed by Sun West, Sun West willfully failed to pay Claimant, and other similarly situated aggrieved employees, wages owed upon termination in violation of Labor Code §§ 201, 202, 203 & 210.

While Claimant was employed by Sun West, Sun West failed to timely furnish to Claimant, and other similarly situated aggrieved employees, legally compliant wage statements in violation of Labor Code §§ 226, 226.2, 226.3, and IWC Wage Order No. 7-2001.

While Claimant was employed by Sun West, it unlawfully deducted wages from Claimant, and other similarly situated aggrieved employees, in violation of Labor Code § 221, 225, & 225.5.

While Claimant was employed by Sun West, it failed to maintain records reflecting the employment information for Claimant and other similarly situated aggrieved employees, for at least three (3) years, as required by California Labor Code § 1174.5.

## **II. LEGAL THEORY OF RECOVERY.**

### **A. SUN WEST Failed to Reimburse Employees for Work Expenses in Violation of Labor Code § 2800, 2802, and IWC Wage Order No. 7-2001.**

Labor Code § 2800 states:

“An employer shall in all cases indemnify his employee for losses caused by the employer’s want of ordinary care.”

Labor Code § 2802(a) states, in relevant part:

“(a) 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....”

While Claimant was employed by Sun West, Employees regularly used their own personal cell

phone, computers, and maintained data and internet plans for the use of each. SUN WEST failed to reimburse Claimant for any or all of these necessary business expenses in violation of § 2802.

Labor Code § 2802(c) provides that:

“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.” Also, pursuant to §1197.1, any employer who violates § 2802 is also subject to a civil penalty of \$100 for each aggrieved employee per pay period for each intentional initial violation and \$250 for each subsequent violation, either intentional or unintentional, plus the unlawfully withheld expenses.

**B. SUN WEST Failed to Pay Minimum Wages and Overtime Compensation in Violation of Labor Code §§ 204, 210, 218.6, 226.2, 510, 558, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, and 1199.**

Labor Code § 204 states, in relevant part:

“(a) 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. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1<sup>st</sup> and 10th day of the following month...

...(b)(1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.”

Labor Code § 1197 states:

“The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

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.”

Labor Code § 510 states:

“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.”

Labor Code § 226.2 states, in relevant part:

“(a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

(1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.”

Employees paid on a commission basis are similarly entitled to separation compensation for rest periods. *See, Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98, 110-13.

While Claimant was employed by Sun West, it failed to timely pay Claimant, and other current or former Employees, in accordance with the provisions of Labor Code § 204, frequently paying earned wages significantly later than the proscribed time period.

Also, while employed by Sun West, Claimant, and other current or former Employees, regularly worked, and were regularly required to work more than eight hours per day and/or forty hours a week, without receiving lawful overtime compensation. Sun West would regularly fail to pay lawful overtime wages at the regular rate of pay and regularly paid commission and bonus wages separate from other earned wages for the same pay period to avoid paying all earned overtime wages.

Claimant also alleges that SUN WEST regularly failed to timely pay employees all earned bonuses and commissions at the time those wages were earned and capable of being calculated. Because bonuses and commissions constitute wages under California law, SUN WEST fails to timely pay earned wages due to Employees in violation of California law.

Labor Code § 1194 provides that:

“(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.”

Labor Code § 1194.2(a) provides, in relevant part:

“In any action under Section...1194...to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to authorize the recovery of liquidated damages for failure to pay overtime compensation. A suit may be filed for liquidated damages at any time before the expiration of the statute of limitations on an action for wages from which the liquidated damages arise.”

Labor Code § 1194.5 provides:

“In any case in which a person employing an employee has willfully violated any of the

laws, regulations, or orders governing the wages, hours of work, or working conditions of such employee, the division may seek, in a court of competent jurisdiction, and the court may grant, an injunction against any further violations of any such laws, regulations, or orders by such person.”

Labor Code § 1197.1 provides that:

“(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203.” See also IWC Wage Order No. 7-2001, item 4.

Labor Code § 210 provides, in relevant part:

“(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 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 § 218.6 provides:

“In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.”

Labor Code § 218.5 provides, in relevant part:

“(a) In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, 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.”

Labor Code § 1199 provides that:

“Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

(a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

(b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.

(c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.”

Labor Code § 558 provides, in relevant part:

“(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.”

**C. SUN WEST failed to Pay Wages Owed Upon Termination in Violation of Labor code §§ 201, 202, 203 & 210.**

Labor Code § 201 states, in relevant part:

“(a) If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code § 202 states, in relevant part:

“(a) 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.”

While Claimant was employed by Sun West, it willfully failed to timely pay Claimant and all other similarly situated aggrieved employees for all earned bonuses, commissions, hourly or salary wages due to them upon termination of their employment with Sun West, in violation of this section.

Labor Code § 203 provides that:

“(a) If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, 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. An employee who sequesters or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued

under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code § 210 provides, in relevant part:

“(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 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 § 218.5 provides, in relevant part:

“(a) In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, 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.”

Labor Code § 218.6 provides:

“In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.”

**D. SUN WEST Failed to Timely Furnish Legally Compliant Wage statements in Violation of Labor Code §§ 226, 226.2, 226.3, and IWC Wage Order No. 7-2001.**

Labor Code § 226(a) states, in relevant part:

“Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her 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 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee...(3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned...(7) the name of the employee and only the last four digits of his or her social security number...(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...The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for

at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, “copy” includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.”

The wage statements provided by Sun West to Claimant, and other current or former Employees, fail to comply with the requirements of §§ 226(a) and 226.2 by failing to provide all the information required by this section. The missing information required by §§ 226(a) and 226.2 includes, but is not limited to, the total hours worked, the beginning and/or ending dates of the pay period, name and address of the legal entity that is the employer, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, the overtime rate of pay, all deductions, and an itemization, accounting, or other explanation of how the commission is calculated.

Labor Code § 226.3 provides:

“Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.”

**E. SUN WEST Unlawfully Deducted Wages in Violation of Labor Code § 221, 225, & 225.5**

Labor Code § 221 states:

“It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

As stated above, Claimant alleges that SUN WEST has a policy, practice, guideline and/or procedure by which Employees are not paid earned bonus and commission wages after termination. Claimant alleges that SUN WEST unlawfully withheld balance of these wages upon termination of Employees in violation of Labor Code § 221.

Labor Code § 225 provides:

The violation of any provision of Sections 221, 222, 222.5, or 223 is a misdemeanor.”

Labor Code § 225.5 provides, in relevant part:

“In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:

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

(b) 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.”

**F. SUN WEST failed to maintain sufficient employment records in violation of Labor Code §§ 1174 & 1174.5**

Labor Code § 1174 states, in relevant part:

“Every person employing labor in this state shall...

(c) Keep a record showing the names and addresses of all employees employed...

(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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case 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.”

Claimant alleges that, while employed by Sun West, it failed to keep and maintain employment records in accordance with the location and temporal provisions of Labor Code § 1174.

Labor Code § 1174.5 provides:

“Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

**III. LABOR CODE PROVISIONS VIOLATED BY SUN WEST**

Claimant alleges that Sun West violated Labor Code §§ 201, 202, 203, 204, 210, 221, 225, 225.5, 226, 226.2, 226.3, 510, 558, 1021.5, 1174, 1174.5, 1194, 1197, 1198, 1199, 2751, 2800, & 2802.

If Claimant does not receive written notice from the Labor and Workforce Development Agency within the time prescribed in Labor Code § 2699.3 subd. (a)(2)(a) that it intends to investigate the alleged violations, Claimant intends to file an action against Sun West seeking wages, expenses, penalties and other allowed damages pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698 et seq.) for the alleged violations, 66 days from the date of this notice.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'John J. Weber', with a long horizontal flourish extending to the right.

John J. Weber  
For **KEEGAN & BAKER, LLP**