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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

MISAEL MEJIA, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

v.

BETTER MORTGAGE CORPORATION,
a corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO. 22CV009600

**FIRST AMENDED REPRESENTATIVE
COMPLAINT FOR VIOLATION OF LABOR
CODE §2698, ET SEQ.**

FILED
Superior Court of California
County of Alameda
11/22/2022
Clad Flake, Executive Officer / Clerk of the Court
By: A. Linhares Deputy

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1 Plaintiff Misael Mejia (“Plaintiff”) hereby submits this First Amended Representative
2 Complaint for Violation of Labor Code §2698, *et seq.*, the Private Attorney General Act
3 (“PAGA”) against Defendants Better Mortgage Corporation (the “Company” or “Defendant”)
4 and DOES 1-50 (hereinafter collectively referred to as “Defendants”), as a proxy for the State of
5 California and on behalf of all aggrieved employees for penalties as follows:

6 **INTRODUCTION**

7 1. The Court has jurisdiction over the violations of Private Attorneys General Act
8 (the “PAGA”), Labor Code § 2698, *et seq.* Moreover, Defendants are subject to the PAGA as
9 they operate businesses in the State of California.

10 2. This Complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against employees of Defendants.

12 **JURISDICTION AND VENUE**

13 3. The Court has jurisdiction over the violations of the PAGA. As alleged below,
14 Plaintiff has exhausted his administrative remedies under the PAGA.

15 4. Venue is proper in Alameda County because Defendants maintain business
16 locations in this County and Plaintiff performed work for Defendants in this County.

17 **PARTIES**

18 5. In or around September 2019, Plaintiff was hired to work for Defendant as a non-
19 exempt, or hourly employee. Plaintiff’s employment ended on or about March 21, 2022.
20 Plaintiff worked for Defendant as a loan processor in Oakland, California.

21 6. Defendant is a mortgage loan processing company. Plaintiff is informed and
22 believes and based thereon alleges that Defendant is a California corporation.

23 7. Plaintiff was and is a victim of the policies, practices, and customs of Defendants
24 complained of in this action in ways that have deprived Plaintiff of the rights guaranteed by
25 California Labor Code §§ 201-204, 226, 226.7, 246, and 512, and the applicable IWC Wage
26 Orders.

27 8. Plaintiff is informed and believes, and based thereon alleges, that at all times
28 herein mentioned Defendants and DOES 1 through 50 are and were business entities, individuals,

1 and partnerships, licensed to do business and actually doing business in the State of California.

2 9. As such, and based upon all the facts and circumstances incident to Defendants'
3 business in California, Defendants are subject to California Labor Code §§ 201-204, 226, 226.7,
4 246, 512 and 2698, *et seq.* and the IWC Wage Orders.

5 10. Plaintiff does not know the true names or capacities, whether individual, partner or
6 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
7 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
8 complaint when the true names and capacities are known. Plaintiff is informed and believes, and
9 based thereon alleges, that each of said fictitious Defendants was responsible in some way for the
10 matters alleged herein and proximately caused Plaintiff and aggrieved employees to be subject to
11 the illegal employment practices, wrongs and injuries complained of herein.

12 11. At all times herein mentioned, each of said Defendants participated in the doing of
13 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
14 Defendants, and each of them, were the agents, servants and employees of each of the other
15 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
16 within the course and scope of said agency and employment.

17 12. Plaintiff is informed and believes, and based thereon alleges, that at all times
18 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
19 joint venturer of, or working in concert with each of the other co- Defendants and was acting
20 within the course and scope of such agency, employment, joint venture, or concerted activity. To
21 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
22 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
23 Defendants.

24 13. At all times herein mentioned, Defendants, and each of them, were members of,
25 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
26 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

27 14. At all times herein mentioned, the acts and omissions of various Defendants, and
28 each of them, concurred and contributed to the various acts and omissions of each and all of the
other Defendants in proximately causing the injuries and damages as herein alleged. At all times

1 herein mentioned, Defendants, and each of them, ratified each and every act or omission
2 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
3 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
4 the damages as herein alleged.

5 **FIRST CAUSE OF ACTION**

6 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

7 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

8 15. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
9 though fully set for herein.

10 16. Plaintiff brings this cause of action as a proxy for the State of California and in this
11 capacity, seeks penalties on behalf of all Aggrieved Employees from April 5, 2021, through the
12 present, for Defendant's violations of Labor Code §§ 201-204, 226, 226.7, 246, 512 and 2698, *et*
13 *seq.* and the IWC Wage Orders.

14 17. Plaintiff alleges that Defendant violated Labor Code §§ 226.7 and 512 by failing to
15 Plaintiff and other similarly situated aggrieved employees their meal and rest period premium pay
16 at their regular rates of pay as required by these provisions. Labor Code § 226.7(c) states that "the
17 employer shall pay the employee one additional hour of pay at the employee's **regular rate** of
18 compensation for each workday that the meal or rest or recovery period is not provided."
19 Throughout their employment with Defendant, other non-exempt employees and Plaintiff earned
20 non-discretionary remuneration, including, but not limited to bonuses and incentives. As these
21 items are non-discretionary forms of remuneration, they should have been included in the regular
22 rate of pay for purposes of paying Plaintiff and other employees our meal and rest period
23 premium pay. However, whenever the Defendant paid Plaintiff and other employees their meal
24 and rest period premium pay during periods in which we earned this non-discretionary
25 remuneration, the meal and rest period premium was always paid at their base rate of pay. Further
26 as a result of such violations, Defendant violated Labor Code §§ 201-203 by not paying
27 employees all of their wages upon separation of employment due to the underpaid meal and rest
28 break premiums and Labor Code § 226 by failing to accurately identifying the accurate rate of

1 pay, and gross and net wages earned.

2 18. Further, Defendant violated Labor Code §§ 201-204 and 246 by failing to pay
3 Plaintiff and all similarly situated aggrieved employees sick pay at the regular rate of pay.
4 Defendant failed to include non-discretionary incentives, including, but not limited to bonuses
5 and incentives, into the regular rate of pay for sick pay wages. Further, as a result of such
6 violations, Defendant violated Labor Code § 226 as the wage statements failed to accurately
7 identify the accurate rates of pay and gross/net wages earned.

8 19. On or about April 5, 2022, Plaintiff sent written notice to the California Labor &
9 Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code §§ 201-
10 204, 226, 226.7, 246, 512 and 2698, *et seq.* and the IWC Wage Orders. As of the date of filing of
11 this Complaint, the LWDA has not sent written notice of its intent to investigate Plaintiff’s
12 claims.

13 20. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all
14 applicable civil penalties for Defendants’ violation of Labor Code §§ 201-204, 226, 226.7, 246,
15 512 and 2698, *et seq.* and the IWC Wage Orders.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for judgment on behalf of the State of California and on
18 behalf of all aggrieved employees against Defendants, jointly and severally, as follows:

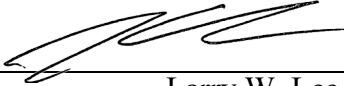
19 1. Upon the First Cause of Action, for civil penalties according to proof pursuant to
20 the PAGA, Labor Code §226.3, and for costs and attorneys’ fees;

21 2. On all causes of action, for attorneys’ fees and costs as provided by California
22 Labor Code §2699.3 and Code of Civil Procedure § 1021.5; and

23 3. For such other and further relief as the Court may deem just and proper.

24 DATED: November 22, 2022

DIVERSITY LAW GROUP, LLP

25
26 By: 
27 Larry W. Lee
28 Attorneys for PLAINTIFF

PROOF OF SERVICE

I am employed in the County of Los Angeles; I am over the age of 18 years and not a party to the within action; my business address is 515 S. Figueroa St. Suite 1250, Los Angeles, California 90071.

On November 22, 2022, I served the foregoing document(s) described as: **FIRST AMENDED REPRESENTATIVE COMPLAINT FOR VIOLATION OF LABOR CODE §2698, ET SEQ.**, on the interested parties in this action by placing a true copy thereof, in a sealed envelope(s) addressed as follows:

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X

BY MAIL

 X

As follows: I am “readily familiar” with the practice of Choi & Associates, Attorneys at Law for collection and processing of correspondence for mailing with the United States Postal Service and that correspondence placed in the outgoing mail tray in my office for collection would be deposited in the United States Mail that same day in the ordinary course of business.

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BY ELECTRONIC SERVICE

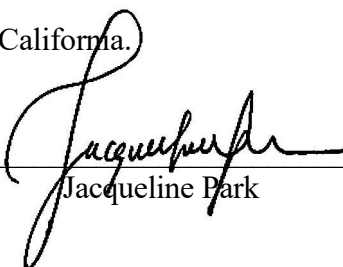
I caused such document to be uploaded to **One Legal** to be served on the offices of the addressees.

 X

(State) I declare under penalty of perjury that the foregoing is true and correct.

(Federal) I declare under penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on November 22, 2022, at Los Angeles, California.



Jacqueline Park