

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Armen Tamzarian

1 RUBEN ESCOBEDO (SBN 277866)
2 WORKWORLD LAW CORP.
3 A Professional Corporation
4 6907 El Camino Real, Suite A
5 Atascadero, CA 93422
6 Telephone: (805) 335-2476
7 Facsimile: (805) 892-6213
8 Email: ruben@workworldlaw.com

9 Attorneys for Plaintiff, BOBBY KHALESSI

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE

BOBAK “BOBBY” KHALESSI,

Plaintiff,

vs.

LOANDEPOT.COM, LLC; and DOES 1-25, inclusive,

Defendants.

CASE NO: ~~22STCV28809~~

Assigned for All Purposes to:

COMPLAINT FOR:

- (1) Civil Penalties under the Private Attorneys General Act**
- (2) Failure to Pay All Wages Owed for Rest Periods**
- (3) Failure to Pay All Premium Wages Owed for Noncompliant Meal Periods**
- (4) Failure to Pay Vacation Wages and Other Paid Time Off**
- (5) Failure to Provide Accurate Wage Statements**
- (6) Waiting Time Penalties**
- (7) Failure to Reimburse Expenses**
- (8) Breach of Contract**

Trial Date: None

Complaint filed:

COMES NOW Plaintiff BOBAK “BOBBY” KHALESSI (“Plaintiff”), who asserts claims against LOANDEPOT.COM, LLC and DOES 1-25, inclusive (collectively “Defendants” or “Employer”) as follows:

1 **INTRODUCTION**

2 1. With respect to the First Cause of Action, Plaintiff brings this action purely in his
3 representative capacity under the Labor Code Private Attorneys General Act of 2004 (“PAGA”),
4 Labor Code sections 2698, *et seq.*, on behalf of approximately more than 2,000 current and former
5 employees employed by Employer in the State of California between June 24, 2021, and the
6 resolution of the forthcoming action (“Statutory Period”), and the People of the State of California
7 (hereinafter collectively “Employees”).

8 2. PAGA, specifically Section 2699, subdivision (a) of the California Labor Code,
9 permits an aggrieved employee to recover civil penalties set forth within the California Labor
10 Code for violations of the California Labor Code. In addition, Section 2699(f) establishes civil
11 penalties for violations of California Labor Code provisions that do not contain their own civil
12 penalties. Employees bring this civil action to recover civil penalties for the violations identified
13 below, including civil penalties pursuant to Section 2699, subdivision (f) as well as those civil
14 penalties specifically set forth within the text of the California Labor Code. Those civil penalties
15 are sought for violations committed against Employees of Employer.

16 3. Plaintiff has exhausted or will exhaust all applicable administrative procedures
17 with the California Labor and Workforce Development Agency (“LWDA”) providing notice of his
18 intent to bring a private attorneys general action for recovery of penalties under the PAGA. To the
19 extent any violations were curable, Employer failed to cure within the time prescribed by law.

20 4. With respect to the Second through Eighth Causes of Action, Plaintiff brings these
21 claims in his individual capacity.

22 **JURISDICTION AND VENUE**

23 5. This Court has jurisdiction over this action pursuant to the California Constitution,
24 Article VI, §10.

25 6. Venue is proper in this Court because the PAGA action arises from aggrieved
26 employees’ work performed in Los Angeles County. *See Crestwood Behavioral Health, Inc. v.*
27 *Superior Court* (2021) 60 Cal.App.5th 1069, 1075 (“venue is proper in any county in which an
28 aggrieved employee worked and Labor Code violations allegedly occurred”).

1 7. For all times relevant herein, BOBAK “BOBBY” KHALESSI was an adult
2 individual residing in the State of California. With respect to the First Cause of Action, Mr.
3 Khalessi is not suing in his individual capacity; he is proceeding herein solely under the PAGA in
4 a representative capacity, on behalf of the State of California for all aggrieved employees. With
5 respect to the Second through Eighth Causes of Action, Plaintiff brings these claims in his
6 individual capacity.

7 8. For all times relevant herein, Plaintiff is informed and believes, and on that basis
8 alleges, that Defendant LOANDEPOT.COM, LLC (“Loan Depot”) was and is a business entity
9 with its principal place of business in California and doing business and employing Employees in
10 Los Angeles County, California, among other locations.

11 9. Whenever in this Complaint reference is made to any act, deed, or conduct of
12 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or
13 through one or more of its agents, employees, or representatives, who was actively engaged in the
14 management, direction, control, or transaction of the business and affairs of Defendants.

15 10. Plaintiff is ignorant of the true names and capacities, whether individual, corporate,
16 associate, or otherwise, of the defendants sued herein as Does 1 through 25, inclusive, and
17 therefore sues said defendants (the “Doe Defendants”) by such fictitious names. Plaintiff will
18 amend this Complaint to insert the true names and capacities of the Doe Defendants at such time
19 as the identities of the Doe Defendants are ascertained.

20 11. Plaintiff is informed and believes, and based thereon alleges, that the Doe
21 Defendants are the partners, agents, or principals and co-conspirators of Defendants, and of each
22 other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged
23 directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and
24 accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable
25 to the extent of the liability of Defendants as alleged herein.

26 12. Plaintiff is further informed and believe, and thereon allege, that at all times herein
27 material, each Defendant was completely dominated and controlled by its co-Defendant(s) and
28 each was the alter ego of the other. Whenever and wherever reference is made in this Complaint to

1 any conduct by Defendants, or any of them, such allegations and references shall also be deemed
2 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
3 Whenever and wherever reference is made to individuals who are not named as defendants in this
4 Complaint, but were employees and/or agents of Defendants, such individuals at all relevant times
5 acted on behalf of Defendants named in this Complaint within the scope of their respective
6 employment or agency with Defendants.

7 **BACKGROUND**

8 13. Mr. Khalessi worked for Loan Depot as a Lending Officer in Foothill Ranch, CA,
9 starting September 23, 2019, and starting at \$12.50 per hour plus commissions and other
10 compensation. Mr. Khalessi served in a non-exempt position and was entitled to paid rest periods
11 pursuant to the California Labor Code and Industrial Welfare Commission Wage Order 4

12 14. Throughout his employment, Loan Depot failed to pay Mr. Khalessi at the
13 appropriate rate of pay for his rest periods. While Loan Depot factored in Mr. Khalessi's
14 commission wages for purposes of determining his rate of pay for purposes of overtime, it failed
15 to do so with respect to his rest period time. Although Loan Depot paid Mr. Khalessi a base
16 hourly rate for rest periods (between \$12 and \$13 an hour), it did not factor in Mr. Khalessi's
17 commission wages and other wages to determine the applicable hourly rate for payment of rest
18 periods.

19 15. Similarly, Loan Depot failed to pay Mr. Khalessi all vacation wages owed; contrary
20 to Loan Depot's representations as to how vacation pay would be calculated, Loan Depot paid Mr.
21 Khalessi for vacation time based only on his baseline hourly rate without factoring in his
22 commission pay and other wages.

23 16. As a result of the foregoing, Loan Depot failed to pay all wages owed to Mr.
24 Khalessi for hours worked, failed to pay all vacation wages owed to Mr. Khalessi, failed to pay
25 premium wages for the noncompliant rest periods, failed to issue accurate wage statements
26 reflecting the correct wages owed at each rate of pay, and failed to pay all wages owed at the time
27 of his termination. Mr. Khalessi seeks all wages owed, premium wages owed, interest thereon,
28 statutory penalties for Loan Depot's intentionally inaccurate wage statements, statutory penalties

1 for Loan Depot's intentional failure to pay all wages owed at the time of termination, attorneys'
2 fees, and all other relief as provided by law. Loan Depot also breached the contracts it entered
3 into with Mr. Khalessi.

4 17. Loan Depot breached its contracts with Mr. Khalessi in two separate and
5 independent manners: (A) by violating its own policies, failing to respond to customer inquiries
6 requiring review and action by Loan Depot; and (B) in connection with Mr. Khalessi's transition
7 to Loan Depot's "Direct Flex" program, and Loan Depot's reliance on the transition (which it
8 permitted) as a basis to later terminate Mr. Khalessi's employment.

9 18. Loan Depot provided Mr. Khalessi with lists of sales incentives promising Mr.
10 Khalessi the opportunity to earn commissions on loans funded. Loans resulting from cold calls or
11 "cold leads" made for more difficult sales and yielded higher commissions to lending officers to
12 compensate them for their additional efforts. Loans resulting from a contact generated by Loan
13 Depot's call center or "warm leads" made for simpler sales and yielded lower commissions. Mr.
14 Khalessi's sales leads were his "pipeline": an industry term commonly used by Loan Depot.

15 19. Loan Depot's customer service policy indicated that if a customer call, text, or
16 email could not be returned for whatever reason, employees including Mr. Khalessi "must notify
17 your manager." Managers were likewise bound to comply with Loan Depot's customer service
18 policy, indicating customer care must be a "top priority for each and every loanDepot employee."
19 Just as Mr. Khalessi was required to timely respond to customer calls, it was implied in the
20 parties' contract that Loan Depot management was likewise required to respond to customer calls
21 that required manager-level review or action.

22 20. Mr. Khalessi performed his end of the bargain, including responding to calls from
23 customers as required by Loan Depot policy. The same cannot be said for Loan Depot,
24 particularly with respect to the loan file number 103752506. The customer for this file number
25 contacted Mr. Khalessi on several occasions requesting assistance with a matter that required
26 action and review by Loan Depot management. Mr. Khalessi performed his end of the bargain by
27 notifying management of the need for Loan Depot to review the file and take action to further
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1 assist the customer. Loan Depot failed to do so, breaching the implied covenant of good faith and
2 fair dealing, and causing Mr. Khalessi substantial damages (including loss of his job).

3 21. Following the episode with file number 103752506, Mr. Khalessi and Loan Depot
4 later entered into a contract that allowed Mr. Khalessi to move to Loan Depot's "Direct Flex"
5 program to develop so-called "cold" sales leads for Loan Depot. *See* Letter of Understanding,
6 Exh. 1; Direct Flex Lending Officer Agreement, Exh. 2. In Direct Flex, Mr. Khalessi would not
7 be required or expected to focus his attention on cultivating "warm" sales leads.

8 22. Loan Depot used Mr. Khalessi's desire to cultivate cold leads vis-à-vis Direct Flex
9 as a reason to terminate his employment as part of a bad-faith investigation of a customer
10 complaint arising from file number 103752506. Although it was completely extraneous to Loan
11 Depot's investigation of the complaint, Loan Depot's last words before it sealed Mr. Khalessi's
12 fate were that "He is currently on DF." That was explanation enough for Loan Depot, who
13 promptly responded: "Please fire."

14 23. Mr. Khalessi seeks general damages, special damages including lost earnings, and
15 all other relief as provided by law.

16 **FIRST CAUSE OF ACTION**

17 **Civil Penalties under the Private Attorneys General Act (Against all Defendants)**

18 24. Plaintiff realleges the foregoing allegations and hereby incorporates them by
19 reference as though fully set forth.

20 25. Labor Code § 432.5 provides that no employer, or agent, manager, superintendent,
21 or officer thereof, shall require any employee or applicant for employment to agree, in writing, to
22 any term or condition which is known by such employer, or agent, manager, superintendent, or
23 officer thereof to be prohibited by law.

24 26. This Cause of Action is brought exclusively on a nonindividual basis for violations
25 of Section 432.5 committed against Employees other than Mr. Khalessi. "PAGA standing does
26 not depend on maintaining an individual Labor Code claim." *Johnson v. Maxim Healthcare*
27 *Services, Inc.* (2021) 66 Cal.App.5th 924, 930. There are no individual PAGA claims asserted in
28 this case.

1 27. Throughout the Statutory Period, Employer has committed and continues to
2 commit the unlawful practice of knowingly requiring California Employees to agree to various
3 illegal terms and conditions.

4 28. These illegal terms and conditions include, but are not limited to, (i) all contracts
5 that unlawfully prohibit Employees from soliciting Employer’s customers, employees, and others,
6 (ii) all contracts that unlawfully require Employees to pay and forfeit to Employer their wages
7 upon certain occurrences, and (iii) all contracts that unlawfully impose unreasonable penalties on
8 employees for contractual violations. These provisions, and similar provisions in other contracts
9 required by Employer for California Employees, are prohibited. Employer knows these provisions
10 are prohibited yet refuses to stop requiring Employees to sign these illegal terms.

11 29. Employer’s non-solicitation provisions are prohibited because they are overbroad
12 and unlawfully encompass all solicitation, including matters in which the trade secret exception
13 does not apply. *See Wanke, Industrial, Commercial, Residential, Inc. v. Keck* (2012) 209
14 Cal.App.4th 1151, 1177 (“Business and Professions Code section 16600 generally prohibits the
15 enforcement of a nonsolicitation agreement in all cases in which the trade secret exception does
16 not apply.”) (footnote and emphasis omitted); Civ. Code, § 1667 (contract is unlawful if contrary
17 to express provision of law or public policy); *see also Johnson v. Maxim Healthcare Services, Inc.*
18 (2021) 66 Cal.App.5th 924, 932 (aggrieved employee had standing to seek penalties for employer
19 requiring employees to sign unlawful nonsolicitation and noncompete agreement).

20 30. Employer’s claw-back provisions are prohibited because they require Employees to
21 pay and forfeit all or a portion of their wages to Employer upon certain occurrences. *See Lab.*
22 *Code*, § 221 (“It shall be unlawful for any employer to collect or receive from an employee any
23 part of wages theretofore paid by said employer to said employee.”); *Prachasaisoradej v. Ralphs*
24 *Grocery Co., Inc.* (2007) 42 Cal.4th 217, 241 (“sections 221 through 224, in combination with
25 other statutes, establish a public policy against ... recoupments by an employer from employee
26 wages or earnings, except those deductions specifically authorized by statute.”); Civ. Code, § 1667
27 (contract is unlawful if contrary to express provision of law or public policy).

31. Finally, Employer’s liquidated damages provisions are prohibited because they unlawfully require payment of unenforceable penalties in violation of California public policy. *See* Civ. Code, § 1667 (contract is unlawful if contrary to express provision of law or public policy); Civ. Code § 1671 (liquidated damages provision is invalid if it was "unreasonable under the circumstances existing at the time the contract was made."); *Purcell v. Schweitzer* (2014) 224 Cal.App.4th 969, 975 (“the public policy expressed in Civil Code sections 1670 and 1671 may not be circumvented by words used in a contract”) (emphasis omitted).

32. Employer is subject to civil penalties as provided by law.

SECOND CAUSE OF ACTION

Failure to Pay All Wages Owed for Rest Periods (Against all Defendants)

33. Plaintiff realleges the foregoing allegations and hereby incorporates them by reference as though fully set forth.

34. Employers must provide non-exempt employees a ten (10) minute duty-free rest period for every four (4) hours worked or major fraction thereof. Duty-free rest periods must be paid and ***“there shall be no deduction from wages”*** in connection with the rest period. Cal. Lab. Code, § 226.7, subd. (d) (emphasis added).

35. Where an employee is compensated based solely on an hourly rate, the rest period must be counted as “hours worked” and, accordingly, paid at the employee’s regular hourly rate for hours worked. Cal. Lab. Code, § 226.7, subd. (d). For example, if an employee earns a regular rate of \$25 per hour, paying the employee at a rate of \$15 per hour for rest periods would not fully count the rest-period time as “hours worked” and be an illegal “deduction from wages” prohibited by 226.7.

36. An employer who fails to provide a duty-free rest period must pay the employee an additional one (1) hour of regular pay for each day in which a fully compliant rest period is not provided. Cal. Lab. Code, § 226.7, subd. (c). The “regular rate” includes nondiscretionary payments like bonuses and commissions. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 875-876 880.

1 37. Where the claim is that a break is not properly paid, the employer must pay both
2 the break time at the employee’s applicable rate *plus* an extra hour of pay pursuant to Labor Code
3 section 226.7; there is no offset. *Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685,
4 706-707.

5 38. Plaintiff alleges that Loan Depot provided rest periods, but failed to pay Plaintiff at
6 his regular rate of pay for such periods. Throughout Plaintiff’s employment, he regularly worked
7 more than 3.5 hours daily and was entitled to take paid rest periods, which he did at least to some
8 extent. Loan Depot paid Plaintiff for his rest periods at a rate as low as \$12 an hour in 2019 and
9 \$13 an hour in 2020, which was lower than his regular rate of pay. Plaintiff’s regular rate of pay
10 included his earned commissions. Under the California Labor Code, “sales commissions are
11 considered ‘wages.’” *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1166. As
12 a result, Plaintiff’s regular wage rate was significantly higher than \$12 or \$13 an hour. For
13 example, as reflected in Plaintiff’s wage statements, in the pay period beginning February 9, 2020
14 and ending February 22, 2020, Loan Depot calculated Plaintiff’s regular wage rate as \$23.07 per
15 hour. Between March 8, 2020, and March 21, 2020, Plaintiff’s regular wage rate was \$23.60 per
16 hour. And between May 17, 2020, and May 30, 2020, his regular wage rate was \$48.90.

17 39. But when taking his rest periods (e.g., to use the bathroom), Loan Depot paid
18 Plaintiff at a rate as low as \$12 per hour for this time (in 2019) and \$13 per hour for this time (in
19 2020). In calculating the rate of pay for Plaintiff’s rest periods, Loan Depot deducted the portion
20 of his wages attributable to his commissions in violation of California law. *See* Cal. Lab. Code, §
21 226.7, subd. (d) (rest periods “shall be counted as hours worked, for which there shall be no
22 deduction from wages”). As with workers employed on a piece-rate basis, Loan Depot was
23 required to pay Plaintiff’s rest period based on his regular rate of pay.

24 40. In 2013, the Court of Appeal held that “rest periods must be separately
25 compensated in a piece-rate system. Rest periods are considered hours worked and must be
26 compensated.” *Bluford v. Safeway Inc.* (2013) 216 Cal.App.4th 864, 872. In *Bluford*, the
27 employer paid drivers by the mile, but did not pay the drivers a wage allocated to their rest periods
28 (time during which they were not driving and, therefore, not being paid). The Court agreed with

1 the Plaintiff’s argument that “Safeway did not pay its drivers for rest periods because its
2 compensation system, based on miles driven and the performance of specific tasks, did not
3 account for rest periods or provide an ability to be paid for them.” *Id.*, at 870. Such rest periods
4 must be compensated “at either the legal minimum wage or the contractual hourly rate,” if any.
5 *Id.* The Court reached the same decision in *Gonzalez v. Downtown LA Motors, LP* (2013) 215
6 Cal.App.4th 36.

7 41. Following *Bluford*, the Legislature examined the issue and agreed to codify *Bluford*
8 and *Gonzalez* by passing AB 1513. “This bill would: 1) Codify the *Gonzalez* and *Bluford*
9 decisions that nonproductive time, rest breaks, and recovery breaks are separately compensated; 2)
10 Codify that, for rest and recovery periods, ***the rate of compensation is the higher of the average***
11 ***hourly rate or the applicable minimum wage....***” Sen. Com. on Industrial Relations, Analysis of
12 Assem. Bill No. 1513 (2015-2016 Reg. Sess.) as amended Sept. 9, 2015, p. 2 (emphasis altered).

13 42. Now, the statute explicitly provides that “Employees shall be compensated for rest
14 and recovery periods at a regular hourly rate that is no less than ***the higher of:*** (i) An average
15 hourly rate determined by dividing the total compensation for the workweek, exclusive of
16 compensation for rest and recovery periods and any premium compensation for overtime, by the
17 total hours worked during the workweek, exclusive of rest and recovery periods. (ii) The
18 applicable minimum wage.” Lab. Code, § 226.2, subd. (a)(3) (emphasis added). The legislative
19 history of Section 226.2 indicates that the Legislature considered this to be the proper method of
20 calculating the rate of pay for piece-rate workers’ rest periods, even before the statute’s enactment.

21 43. AB 1513 was unusual in that it provided a “safe harbor” defense for past liability to
22 employers who provided back-pay to employees within a prescribed period. The Court of Appeal
23 has found that AB 1513’s safe-harbor provision illustrates the Legislature’s intent behind the
24 meal-and-rest statute, Labor Code § 226.7. *See Sanchez v. Martinez* (2020) 54 Cal.App.5th 535,
25 545 (“In creating this safe harbor, the Legislature plainly contemplated that section 226.7 actions
26 could indeed be ‘based solely’ on the nonpayment of these wages.”). “While subsequent
27 legislation interpreting a statute ... cannot change the meaning of the earlier enactment, it does
28 supply an indication of the legislative intent which may be considered together with other factors

1 in arriving at the true intent existing at the time the legislation was enacted.” *Donorovich-*
2 *Odonnell v. Harris* (2015) 241 Cal.App.4th 1118, 1133 (internal marks and brackets omitted)

3 44. As explained in the legislative analysis, the bill “[a]llows employers to utilize an
4 affirmative defense against claims of an employer’s failure to timely pay compensation due for
5 rest periods, recovery periods, and nonproductive time if the alleged failure occurred between July
6 1, 2012, and December 31, 2015 if the employer: a) Make payments to all current and former
7 piece-rate employees for uncompensated or undercompensated rest and recovery periods and
8 nonproductive time, plus interest, from July 1, 2012, to December 31, 2015; or [pays based on an
9 alternative calculation].” See Office of Senate Floor Analyses, 3d reading analysis of Assem. Bill
10 No. 1513 (2015-2016 Reg. Sess.) as amended Sept. 9, 2015, p. 3. Significantly, the Legislature
11 did not prescribe any different rate of pay to be used by employers for purposes of making their
12 safe-harbor payments for their pre-AB 1513 debts. The original statute, now former Labor Code §
13 226.2(b)(1)(A) (repealed by sunset effective January 1, 2021), simply provided that employers
14 may “determine[] and pay[] the actual sums due together with accrued interest” to take advantage
15 of the safe harbor. The reason: even prior to *Bluford* and *Gonzalez*, Section 226.7 required that
16 rest breaks must be paid at the higher of the employee’s regular rate or minimum wage.

17 45. In the wake of *Bluford*, *Gonzalez*, and AB 1513, the Court of Appeal has extended
18 the same principles to commission-based employees. See *Vaquero v. Stoneledge Furniture, LLC*
19 (2017) 9 Cal.App.5th 98, 113. The law treats commissioned and piece-rate workers alike, and
20 “[t]here is no reason California law should not treat these categories of workers the same for
21 purposes of complying with the requirement to provide paid rest periods.” *Id.*, at 112. “Nothing
22 in section 226.2 ... suggests that the Legislature intended to adopt a different rule for commission-
23 based employees....” *Id.*, at 113. “[T]he application or interpretation of a wage order or Labor
24 Code provision must be applied similarly to various types of compensation plans, e.g., piece-rate
25 or commission-based.” *Wright v. Renzenberger, Inc.* (C.D. Cal. Mar. 8, 2018) 2018 U.S. Dist.
26 LEXIS 234702, *18-19. As with the case of piece-rate workers, Loan Depot was required to pay
27 Plaintiff’s rest periods at his regular rate of pay, which was significantly higher than the wage rate
28 used by Loan Depot, resulting in an underpayment of wages.

1 46. This approach is in accord with the federal Fair Labor Standards Act (“FLSA”),
2 which is instructive. *See's Candy Shops, Inc. v. Super. Ct.* (2012) 210 Cal.App.4th 889, 903 (to
3 the extent there is a lack of authority, “California courts generally look to federal regulations under
4 the FLSA for guidance”). Under FLSA regulations, “the regular rate for non-productive time is,
5 by default, the same rate as paid for productive time absent an agreement for a lesser rate (but
6 never less than minimum wage).” *Serrano v. Republic Servs., Inc.* (S.D. Tex. June 12, 2017) No.
7 2:14-CV-77, 2017 WL 2531918, at *9, citing to 29 C.F.R. § 778.318(b). “In the absence of any
8 agreement setting a different rate for nonproductive hours, the employee would be owed
9 compensation ***at the regular hourly rate set for productive work for all hours*** up to 40,”
10 including nonproductive periods such as rest breaks. *See* 29 C.F.R. § 778.318(b) (emphasis
11 added). And for any hours over 40, it is undisputed that California law required Plaintiff’s
12 commission wages to be included to determine his regular rate of pay. *See Morales v. Factor*
13 *Surfaces LLC* (2021) 70 Cal.App.5th 367, 372 (undisputed that “the proper method for calculating
14 the ‘regular rate of pay’ for commission workers is to divide the total commission payments for
15 the week by the actual number of hours worked during the week, including overtime hours”).

16 47. Loan Depot promised and agreed that “rest periods are paid by loanDepot” and
17 there was no agreement to pay Plaintiff’s rest periods at a rate lower than his regular rate of pay
18 (which, unlike the FLSA, would be prohibited in any event in California law as an unlawful
19 deduction from wages).

20 48. Throughout Plaintiff’s employment, Defendant maintained an illegal practice of not
21 providing Plaintiff with fully-paid 10-minute rest periods at his regular rate of compensation.

22 49. Throughout Plaintiff’s employment, Loan Depot disincentivized Plaintiff from
23 taking compliant off-duty rest periods because it refused to pay Plaintiff at his regular hourly rate
24 for said periods. To take a full 10-minute rest period, Plaintiff would have been required to forfeit
25 his commission wages for said period. As a result, and to minimize his lost wages, Clamant
26 regularly took rest periods of less than 10 minutes. Based on Loan Depot’s policies and practices
27 disincentivizing him from taking compliant rest periods, Plaintiff regularly worked without taking
28 a full, 10-minute, off-duty rest period.

50. Plaintiff is entitled to all premium wages and interest as provided by law. Plaintiff also seeks to recover attorneys' fees pursuant to Labor Code § 218.5, which is applicable here. *Sanchez v. Martinez* (2020) 54 Cal.App.5th 535, 544-545.

THIRD CAUSE OF ACTION

Failure to Pay All Premium Wages Owed for Noncompliant Meal Periods (Against all Defendants)

51. Plaintiff realleges the foregoing allegations and hereby incorporates them by reference as though fully set forth.

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

53. Pursuant to Labor Code sections 226.7 and 512, and the applicable IWC Wage Order, duty-free meal periods of no less than thirty (30) minutes are required for all non-exempt employees who work at least five (5) hours in a work period per day. The employee must be relieved of all duty. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. Time records of meal periods must be kept. Meal periods must be paid when the employee is not timely relieved of all duties.

54. “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall

1 pay the employee one additional hour of pay at the employee's regular rate of compensation for
2 each workday that the meal or rest or recovery period is not provided." Cal. Lab. Code, § 226.7,
3 subd. (c).

4 55. Throughout Plaintiff's employment, Defendant maintained an illegal practice of not
5 providing employees, including Plaintiff, with compliant 30-minute meal periods where
6 employees were free of all duties; Defendant regularly required Plaintiff to continue performing
7 work until tasks were complete, without regard for meal-period schedules, allowing Plaintiff to
8 take meal periods only after 5 hours of work or for less than 30 minutes.

9 56. Plaintiff is entitled to all premium wages, interest, and penalties as provided by
10 law.

11 57. On several occasions, Loan Depot paid Plaintiff meal premiums for noncompliant
12 meal breaks at a rate of only \$13 per hour. On July 15, 2021, the Supreme Court held that the
13 "regular rate" includes nondiscretionary payments like bonuses and commissions. *See Ferra v.*
14 *Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 875-876 880. As a result, Loan Depot
15 underpaid Plaintiff's meal period premiums previously paid.

16 58. Plaintiff seeks all relief afforded by law, including unpaid premium wages and
17 interest thereon.

18 **FOURTH CAUSE OF ACTION**

19 **Failure to Pay Vacation Wages and Other Paid Time Off (Against all Defendants)**

20 59. Plaintiff realleges the foregoing allegations and hereby incorporates them by
21 reference as though fully set forth.

22 60. "It is established that vacation pay is not a gratuity or a gift, but is, in effect,
23 additional wages for services performed. ...A vacation with pay is in effect additional wages. It
24 involves a reasonable arrangement to secure the well being of employees and the continuance of
25 harmonious relations between employer and employee." *Suastez v. Plastic Dress-Up Co.* (1982)
26 31 Cal.3d 774, 779. The "the amount of vacation pay an employee is entitled to be paid as wages
27 is to be determined with reference to the employer's policy." *Id.*, at 783 (emphasis added).
28 Determining the applicable rate of pay is, in essence, a matter of contractual interpretation.

1 61. “It is fundamental that when construing contracts involving substantial employment
2 rights, courts should avoid mechanical and arbitrary tests if at all possible; employment contracts,
3 like other agreements, should be construed to give effect to the intention of the parties as
4 demonstrated by the language used, the purpose to be accomplished and the circumstances under
5 which the agreement was made.” *Drzewiecki v. H & R Block, Inc.* (1972) 24 Cal.App.3d 695,
6 703.

7 62. Contracts drafted by the employer are construed against the employer. *Goddard v.*
8 *South Bay Union High School Dist.* (1978) 79 Cal.App.3d 98, 105. “One who is hired under such
9 a contract has no opportunity to bargain for a change in the language of the document; hence, any
10 ambiguous provision should be resolved against the draftsman and in favor of the other party.” *Id.*
11 “The rule of resolving ambiguities against the drafter does not serve as a mere tie breaker; it rests
12 upon fundamental considerations of policy.” *Id.* (marks omitted).

13 63. “Unless otherwise provided by a collective–bargaining agreement, whenever a
14 contract of employment or employer policy provides for paid vacations, and an employee is
15 terminated without having taken off his vested vacation time, all vested vacation shall be paid to
16 him as wages at his final rate in accordance with such contract of employment or employer policy
17 respecting eligibility or time served; provided, however, that an employment contract or employer
18 policy shall not provide for forfeiture of vested vacation time upon termination. The Labor
19 Commissioner or a designated representative, in the resolution of any dispute with regard to vested
20 vacation time, ***shall apply the principles of equity and fairness.***” Lab. Code, § 227.3 (emphasis
21 added). Even before the enactment of this statute, “California courts have already recognized that
22 the principles of equity and justice weigh in favor of granting relief to employees who are denied
23 payment for earned vacation pay.” *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 783–
24 784.

25 64. “The law directs the Labor Commissioner to enforce the contract of employment or
26 employer policy with respect to vacation pay, which is typically based on the wage paid to the
27 worker on a regular basis.” *Drumm v. Morningstar, Inc.* (N.D.Cal. 2010) 695 F.Supp.2d 1014,
28 1019 (internal marks omitted).

1 65. Evidence that other employees' vacation wages included incentive pay is evidence
2 that the employer's policy provided vacation wages at said rate. *Churchill v. Chevrolet* (N.D.Cal.
3 June 9, 2005) No. C-04-0489 JCS) 2005 U.S.Dist.LEXIS 47970, at *59 ("There is, however, some
4 evidence suggesting that the vacation pay should have been calculated based on the previous
5 year's salary *including* bonus. The bookkeeper, Lenore Nelson, testified that she included the
6 bonus in calculating the vacation pay rate for other employees but did not include Churchill's.")).

7 66. Loan Depot failed to pay Mr. Khalessi all vacation wages owed; contrary to Loan
8 Depot's representations as to how vacation pay would be calculated and how other Loan Depot
9 employees' vacation pay was calculated (other Loan Depot employees' vacation pay rate included
10 their commission pay), Loan Depot paid Mr. Khalessi for vacation time based only on his baseline
11 hourly rate without factoring in his commission pay and other wages. The parties' contract
12 construed consistently with California law provided for all PTO time to be paid at a single rate —
13 Mr. Khalessi's regular rate of pay, including commissions — rather than the base rate of pay.

14 67. Loan Depot's offer letter to Plaintiff indicates "You will be eligible to accrue 15
15 days of PTO [Paid Time Off] annually pursuant to the policies set forth in the Employee
16 Handbook." In turn, Loan Depot's handbook provides that Plaintiff accrued vacation at a rate of
17 4.6154 hours biweekly. Loan Depot's policy was that "PTO can be used for a variety of purposes
18 including vacation or personal days, when you or a family member is ill, or for any other reason an
19 employee might need or choose." "LD's Paid Time Off policy is a universal policy that allows for
20 use of any accrued paid time off for numerous reasons when an employee needs to take time away
21 from work, including sick leave."

22 68. Loan Depot's policy indicates that it is a "single" PTO policy, indicating there is
23 only one, single applicable rate of pay for all PTO taken. For California employees, the policy
24 also incorporates California's paid sick leave law, which requires payment of PTO used for sick
25 leave to be based on employees' "regular rate of pay" (Lab. Code, § 246(l)), which includes
26 incentive pay, such as bonuses and commissions. *See Ferra v. Loews Hollywood Hotel, LLC*
27 (2021) 11 Cal.5th 858, 869; *Furry v. East Bay Publishing, LLC* (2018) 30 Cal.App.5th 1072, 1081
28 (agreeing with employee "that the commissions he received in connection with the events should

1 have been used to calculate his regular rate of pay”). In fact, Loan Depot paid some of Plaintiff’s
2 PTO based on his “regular rate,” including commissions, and not his base hourly rate.

3 69. On some occasions, for example when Plaintiff took PTO when he was sick, Loan
4 Depot paid Plaintiff’s PTO using his applicable regular hourly rate for the period in question (for
5 example, \$48.90 for the pay period between May 17, 2020, and May 30, 2020). Loan Depot itself
6 construed its PTO policy to require payment of Plaintiff’s PTO time based on his regular rate of
7 pay.

8 70. “It must also be presumed that the parties intended to enter into a legal, and not an
9 illegal, transaction.” *Linden v. Moore* (1945) 68 Cal.App.2d 501, 502. Likewise, “it will not be
10 presumed that the parties intended to perform in an illegal manner.” *Platt v. Wells Fargo Bank*
11 *American Trust Co.* (1963) 222 Cal.App.2d 658, 666. There is no indication that the parties
12 intended to pay PTO at a rate less than employees’ regular rate, which would violate California
13 law regulating sick leave pay.

14 71. The contractual language indicates that the parties intended for the single PTO rate
15 in California to comply with California law. If Loan Depot had intended to apply a different PTO
16 rate to certain kinds of PTO, it certainly could have, but did not, do so. The only way for Loan
17 Depot’s PTO policy to be construed as a “single” policy in compliance with California law is to
18 pay all forms of PTO, including vacations and holidays, using Plaintiff’s regular rate of pay as
19 well. Loan Depot failed to do so, and is liable for all wages, statutory damages, interest thereon,
20 costs, and attorneys’ fees.

21 FIFTH CAUSE OF ACTION

22 Failure to Provide Accurate Wage Statements (Against all Defendants)

23 72. Plaintiff realleges the foregoing allegations and hereby incorporates them by
24 reference as though fully set forth.

25 73. “An employer, semimonthly or at the time of each payment of wages, shall furnish
26 to his or her employee, either as a detachable part of the check, draft, or voucher paying the
27 employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized
28 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,

1 except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable
2 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
3 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
4 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
5 name of the employee and only the last four digits of his or her social security number or an
6 employee identification number other than a social security number, (8) the name and address of
7 the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in
8 subdivision (b) of Section 1682, the name and address of the legal entity that secured the services
9 of the employer, and (9) all applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the employee and, beginning July 1,
11 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay
12 and the total hours worked for each temporary services assignment.” Cal. Lab. Code, § 226, subd.
13 (a).

14 74. “The deductions made from payment of wages shall be recorded in ink or other
15 indelible form, properly dated, showing the month, day, and year, and a copy of the statement and
16 the record of the deductions shall be kept on file by the employer for at least three years at the
17 place of employment or at a central location within the State of California. For purposes of this
18 subdivision, ‘copy’ includes a duplicate of the itemized statement provided to an employee or a
19 computer-generated record that accurately shows all of the information required by this
20 subdivision.” Cal. Lab. Code, § 226, subd. (a).

21 75. Throughout Plaintiff’s employment, Defendant knowingly and intentionally failed
22 to furnish Plaintiff with accurate itemized statements at the time of each payment of wages
23 showing the correct gross and net wages earned at each rate of pay as a result of its failure to pay
24 all premium wages owed.

25 76. Plaintiff suffered a presumptive injury as a result of the foregoing violations.
26 Plaintiff also suffered an actual injury because Defendant’s underreporting of Plaintiff’s wages
27 earned caused him to be eligible for lower benefits, if any, based on Plaintiff’s earnings.
28

77. Plaintiff is entitled to all statutory penalties provided by law, attorneys' fees, injunctive relief for issuance of accurate wage statements and records, and all other relief provided by § 226(e).

SIXTH CAUSE OF ACTION

Waiting Time Penalties (Against All Defendants)

78. Plaintiff realleges the foregoing allegations and hereby incorporates them by reference as though fully set forth.

79. “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Cal. Lab. Code, § 201, subd. (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 secretes 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.” Cal. Lab. Code, § 203, subd. (a).

80. Defendant terminated Plaintiff and knowingly and intentionally failed to issue payment for the foregoing earned wages to Plaintiff.

81. Plaintiff is entitled to all statutory penalties available under the law.

SEVENTH CAUSE OF ACTION

Failure to Reimburse Expenses (Against all Defendants)

82. Plaintiff realleges the foregoing allegations and hereby incorporates them by reference as though fully set forth.

83. Pursuant to Labor Code 2802, Defendant owed and owes a duty to Plaintiff to indemnify Plaintiff for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

84. As required by Defendant, and in direct consequence of the discharge of his duties, Plaintiff has incurred expenses arising from Plaintiff's maintenance, storage, and return of Defendant's property.

85. Plaintiff demanded that Defendant comply with its obligations under Section 2802 and reimburse Plaintiff for these expenses.

86. Defendant refuses, and continues to refuse, to accept its responsibility to pay the above-referenced expenses and Plaintiff seeks all relief available by law to remedy the same.

EIGHTH CAUSE OF ACTION

Breach of Contract (Against all Defendants)

87. Plaintiff realleges the foregoing allegations and hereby incorporates them by reference as though fully set forth.

A. Failure to Respond to Customer Inquiries

88. The parties entered into contracts which, among other things, required Defendant to pay wages and commissions to Plaintiff in exchange for sales made. When notified by Plaintiff that assistance was required in responding to inquiries, Defendant was required to respond to customer contacts with due diligence toward the parties' common goal of making sales, to allow both parties to reap the benefits of the parties' contracts.

89. Plaintiff substantially performed his obligations and conditions under the contract, which were otherwise excused.

90. Defendant materially breached the contract by, on several occasions, failing to respond to customer inquiries that required Defendant and its management to review and take action to move loan file number 103752506 towards a sale.

91. Defendant has caused Plaintiff substantial damages and losses, including eventual loss of lucrative employment, as a result of the foregoing breaches and misconduct, as well as other acts and omissions of misconduct.

92. Defendant's acts and omissions described above were substantial factors in causing harm to Plaintiff.

1 93. As a result of Defendant’s acts and omissions described above, Plaintiff was
2 harmed and sustained damages according to proof.

3 **B. Failure to Honor Direct Flex Agreement**

4 94. The parties also entered into a contract which, among other things, required
5 Defendant to allow Plaintiff to transition into a Direct Flex position.

6 95. Plaintiff substantially performed his obligations and conditions under the contract,
7 which were otherwise excused.

8 96. Defendant was required to perform its duties in compliance with the duty of good
9 faith and fair dealing. “[I]n every contract, there is inherent an ‘implied covenant that neither
10 party shall do anything which will have the effect of destroying or injuring the right of the other
11 party to receive the fruits of the contract, which means that in every contract there exists an
12 implied covenant of good faith and fair dealing.’” *San Bernardino Valley Water Development Co.*
13 *v. San Bernardino Valley Municipal Water Dist.* (1965) 236 Cal.App.2d 238, 257.)

14 97. "Subterfuges and evasions violate the obligation of good faith in performance even
15 though the actor believes his conduct to be justified. But the obligation goes further: bad faith may
16 be overt or may consist of inaction, and fair dealing may require more than honesty. A complete
17 catalogue of types of bad faith is impossible, but the following types are among those which have
18 been recognized in judicial decisions: evasion of the spirit of the bargain, lack of diligence and
19 slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and
20 interference with or failure to cooperate in the other party's performance.” *R. J. Kuhl Corp. v.*
21 *Sullivan* (1993) 13 Cal.App.4th 1589, 1602.

22 98. By terminating Mr. Khalessi based in substantial part on his transfer to Direct Flex
23 — to which the parties expressly agreed — Loan Depot “eva[ded] the spirit of the bargain,” which
24 constitutes breach of the implied covenant of good faith and fair dealing. *See R. J. Kuhl Corp. v.*
25 *Sullivan* (1993) 13 Cal.App.4th 1589, 1602. DF status was so determinative of Mr. Khalessi’s fate
26 that Loan Depot did not see any need to inform Mr. Khalessi or question him in its purported
27 investigation, which is further evidence of bad faith. *See King v. U.S. Bank National Assn.* (2020)
28 53 Cal.App.5th 675, 708 (“[HR] did not interview [Plaintiff] or ask him for any documents or

1 witnesses that could potentially refute the allegations against him. This is the precise situation our
2 Supreme Court explained could give rise to a violation of the implied covenant.”).

3 99. In bad faith, Loan Depot terminated Mr. Khalessi’s employment. A substantial
4 motivating reason for the termination was that Mr. Khalessi chose to cultivate more cold leads,
5 which Loan Depot was obligated to permit as a part of the implied covenant of good faith and fair
6 dealing. Loan Depot violated its duty to act in good faith. Loan Depot also provided a pretextual
7 explanation to Mr. Khalessi regarding the reason for separation, which occurred on September 16,
8 2020.

9 100. Defendant has caused Plaintiff substantial damages and losses as a result of the
10 foregoing breaches and misconduct, as well as other acts and omissions of misconduct.

11 101. Defendant’s acts and omissions described above were substantial factors in causing
12 harm to Plaintiff.

13 102. As a result of Defendant’s acts and omissions described above, Plaintiff was
14 harmed and sustained damages according to proof.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for an award against Defendants in an amount in excess of
17 \$25,000 as follows:

- 18 1. Civil penalties according to proof;
- 19 2. For general, compensatory, and economic damages according to proof;
- 20 3. Statutory penalties according to proof;
- 21 4. For interest;
- 22 5. For reasonable attorneys’ fees;
- 23 6. For costs incurred herein; and
- 24 7. For such other relief as the Court deems proper.

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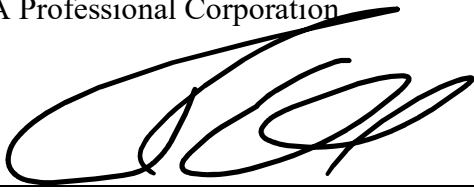
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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury with respect to all causes of action for which Plaintiff is entitled to a trial by jury.

DATED: September 2, 2022

WORKWORLD LAW CORP.
A Professional Corporation

By: 
RUBEN ESCOBEDO
Attorney for Plaintiff, BOBAK "BOBBY"
KHALESSI