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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MICKAEL HERSZKOWICZ,

Plaintiff,

v.

LOANGUYS.COM, INC.;

JOSHUA NOURI, an individual;

and DOES 1 THROUGH 100, inclusive,

Defendants.

) Case No.: **22STCV40948**

) **COMPLAINT FOR DAMAGES:**

) **(1) FAILURE TO PAY WAGES IN**
) **VIOLATION OF CAL. LABOR**
) **CODE §§ 200 ET SEQ.;**

) **(2) FAILURE TO PAY OVERTIME**
) **WAGES, VIOLATION OF CAL.**
) **LABOR CODE § 510 & IWC WAGE**
) **ORDER NO. 4;**

) **(3) FAILURE TO PROVIDE MEAL**
) **AND REST PERIODS, VIOLATION**
) **OF CAL. LABOR CODE §§ 226.7,**
) **512 & IWC WAGE ORDER NO. 4;**

) **(4) FAILURE TO FURNISH**
) **COMPLIANT WAGE**
) **STATEMENTS AND MAINTAIN**
) **ACCURATE PAY RECORDS,**
) **VIOLATION OF CAL. LABOR**
) **CODE §§ 226, 1174(D), AND 1198;**

) **(5) WAITING TIME PENALTIES;**

) **(6) UNFAIR BUSINESS PRACTICES,**
) **VIOLATION OF CAL. BUS. &**
) **PROF. CODE §§ 17200 ET SEQ.;**

) **(7) WRONGFUL TERMINATION AND**
) **RETALIATION IN VIOLATION OF**
) **PUBLIC POLICY; AND**

)
) (8) CIVIL PENALTIES UNDER PAGA,
) VIOLATION OF CAL. LABOR
) CODE §§ 2698, 2699, AND PAGA.

) **JURY TRIAL DEMANDED**
)

COMES NOW PLAINTIFF MICKAEL HERSZKOWICZ (hereinafter referred to as “Plaintiff”) and complains against the above-named Defendants and for causes of action against the Defendants, and each of them, as follows:

I.

FIRST CAUSE OF ACTION

For Failure to Pay Wages

[California Labor Code §§ 200 et seq.]

Against All Defendants & DOES 1 Through 100, Only

1. At all times mentioned herein, Plaintiff was, and now is, an individual domiciled in the County of Alameda, State of California.

2. Plaintiff is informed and believes, and thereon alleges that at all times relevant herein, Defendant LOANGUYS.COM, INC. (hereinafter “Loanguys.com,” or “Defendant”) was, and now is, a valid corporation organized and existing under the laws of the State of California, having their principal places of business in Los Angeles, State of California.

3. At all times mentioned herein, Defendant JOSHUA NOURI (hereinafter “Nouri” and collectively with Defendants as “Defendants”), was, and now is, an individual domiciled in the County of Los Angeles, State of California, and was a Manager, Officer, Shareholder, Director, Supervisor, Manager, Managing Agent, Owner, Principal, and/or Employee of Defendants and DOES 1 through 100, and each of them.

4. Plaintiff is ignorant of the true names and capacities, whether corporate, associate, individual, or otherwise, of Defendants sued herein as DOES 1 through 100, inclusive, and therefore sues said Defendants by such fictitious names. Plaintiff will seek leave of Court to amend this Complaint to assert the true names and capacities of the fictitiously named

1 Defendants when the same have been ascertained. Plaintiff is informed and believes, and thereon
2 alleges, that each Defendant designated as “DOES” herein is legally responsible for the events,
3 happenings, acts, occurrences, indebtedness, damages and liabilities hereinafter alleged and
4 caused injuries and damages proximately thereby to the Plaintiff, as hereinafter alleged.

5 5. Plaintiff is informed, believes, and herein alleges that at all times relevant herein, a unity
6 of interest and ownership existed between Defendants and DOES 1 through 100, such that
7 individuality and separateness between these entities had ceased and that they were actually the
8 alter ego of one another.

9 6. Plaintiff is informed, believes, and herein also alleges that at all times relevant herein,
10 Defendants and DOES 1 through 100, were used merely as shells, instrumentalities, and/or
11 conduits of one another and by which the others were doing business.

12 7. Plaintiff is further informed and herein alleges that despite the formation of purported
13 corporate existence, Defendants and DOES 1 through 100, are in reality, one and the same thing.

14 8. Plaintiff is informed and believes, and herein further alleges, that the business affairs of
15 Defendants and DOES 1 through 100, are, and at all times relevant hereto, were, so mixed and
16 intermingled that the same cannot reasonable be segregated, and the same are in inextricable
17 confusion.

18 9. Accordingly, Defendants and DOES 1 through 100, constitute the alter egos for each
19 other and the fiction of their separate existence must be disregarded in the interest of justice.

20 10. At all times relevant herein, Plaintiff performed services for each and all of Defendants,
21 and to the mutual benefit of all Defendants, and all Defendants shared control of Plaintiff as an
22 employee, either directly or indirectly, and the manner in which Defendants’ business was and is
23 conducted.

24 11. Plaintiff is informed and believes and thereon alleges that each of the Defendants named
25 herein and DOES, has at all times relevant to this action, been the officer, agent, employee
26 and/or representative of the remaining Defendants and has acted within the course and scope of
27 such agency and employment, and with the permission and consent of the co-defendants.
28

12. Plaintiff began working at the Loanguys.com around April 2021 as a Mortgage Loan Officer until his wrongful termination on or about May 28, 2022.

13. Defendants intentionally misclassified Plaintiff as an independent contractor throughout his employment, thereby depriving Plaintiff of overtime compensation, rest periods, and other protections under the California Labor Code.

14. Despite performing services as an employee, Plaintiff was misclassified as an independent contractor and was provided a “commission only” payment structure.

15. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an employer, who violates, or causes to be violated, Labor Code § 200, may be held liable as the employer for such violation. The term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and in this case, including Defendant Nouri.

16. Failure to properly classify employees may subject an employer to liability for minimum wage and overtime pay, denied rest and meal period compensation, expense reimbursement, and all other wage and hour violations. California Labor Code § 226.8(b) provides for a civil penalty of \$5,000 to \$15,000 for the willful misclassification of an individual as an independent contractor. It is further provided that, in the event that an employer is found to have engaged in “a pattern or practice of these violations,” the penalties increase to “not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.” Cal. Labor Code § 226.8(b).

17. Plaintiff is also entitled to attorney’s fees and costs pursuant to Cal. Labor Code § 218.5, which declares that in any action brought for the nonpayment of wages, the Court shall award reasonable attorneys’ fees and costs to the prevailing party if any party to the action requests attorneys’ fees and costs upon the initiation of the action.

18. As a result of the acts of Defendants and DOES 1 through 100, and each of them, as alleged herein, Plaintiff is entitled to reasonable attorneys’ fees and costs of said suit as specifically provided by Cal. Code of Civil Procedure § 1021.5. Plaintiff’s action enforces important rights affecting the public interest by bringing forth this lawsuit to ensure Defendants

as an employer, compensates its employees with the full and correct amount of earned wages, accrued vacation pay, and reimbursement for work-related expenses immediately upon termination, thereby conferring a significant benefit on the general public. The necessity and financial burden of this private enforcement, as well as the interest of justice, entitles Plaintiff to reasonable attorneys' fees and costs under Cal. Code of Civil Procedure § 1021.5.

II.

SECOND CAUSE OF ACTION

For Failure to Pay Overtime Wages

[California Labor Code § 510 and IWC Wage Order No. 4]

Against All Defendants & DOES 1 Through 100, Only

19. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this Complaint as though duly set forth in full herein.

20. Plaintiff began working at the Loanguys.com around April 2021 as a Mortgage Loan Officer until his wrongful termination on or about May 28, 2022.

21. Defendants intentionally misclassified Plaintiff as an independent contractor throughout his employment, thereby depriving Plaintiff of overtime compensation, rest periods, and other protections under the California Labor Code.

22. Despite performing services as an employee, Plaintiff was misclassified as an independent contractor and was provided a "commission only" payment structure.

23. Further, throughout the course of his employment, Plaintiff routinely worked around five (5) hours per week which he should have been compensated with his overtime rate of pay. Instead, Loanguys.com routinely paid Plaintiff for 80 hours biweekly without accounting for any overtime compensation.

24. Throughout his employment, Plaintiff was routinely ordered by Defendants to work in excess of eight (8) hours per day, in excess of forty (40) hours per week, and/or in excess of six (6) days in any workweek.

25. However, despite Plaintiff routinely working overtime and thus being entitled to overtime pay, Defendants intentionally failed to compensate Plaintiff the true and/or full amount of overtime pay.

26. Failure to properly classify employees may subject an employer to liability for minimum wage and overtime pay, denied rest and meal period compensation, expense reimbursement, and all other wage and hour violations. California Labor Code § 226.8(b) provides for a civil penalty of \$5,000 to \$15,000 for the willful misclassification of an individual as an independent contractor. It is further provided that, in the event that an employer is found to have engaged in “a pattern or practice of these violations,” the penalties increase to “not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.” Cal. Labor Code § 226.8(b).

27. At all times relevant herein, Cal. Labor Code § 510 et seq. and IWC Wage Order No. 4, § 3(A) generally declare eight (8) hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

28. As a result of Defendants failure to compensate the true and/or full and/or correct amount of his overtime pay, Plaintiff is entitled to recover in a civil action the unpaid balance of the overtime compensation, including interest, reasonable attorney’s fees, and costs of suit pursuant to California Labor Code § 1194, which declares:

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, reasonable attorney’s fees, and costs of suit.

29. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an employer, who violates, or causes to be violated, Labor Code § 510, may be held liable as the employer for such violation. The term “other person acting on behalf of an employer” is limited

to a natural person who is an owner, director, officer, or managing agent of the employer, and in this case, including Defendant Nouri.

30. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

III.

THIRD CAUSE OF ACTION

Failure to Provide Meal and Rest Periods

[California Labor Code § 226.7, 512 and Wage Order No. 4]

Against All Defendants & DOES 1 Through 100, Only

31. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this Complaint as though duly set forth in full herein.

32. Plaintiff began working at the Loanguys.com around April 2021 as a Mortgage Loan Officer until his wrongful termination on or about May 28, 2022.

33. Throughout Plaintiff's employment, Defendants failed to provide Plaintiff with all of his timely mandatory rest periods as required by California law.

34. At all times herein relevant, the public policy of the State of California, as codified, expressed and mandated by Industrial Welfare Commission ("IWC") Wage Order No. 4, Section 11(A) also declares unless the employee is relieved of all duty during his/her thirty minute meal period, the meal period shall be considered an "on duty" meal period and counted as hours worked, which must be compensated at the employee's regular rate of pay. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the employer and employee an on-the-job paid meal period is agreed to.

35. At all times herein relevant, the public policy of the State of California, as codified, expressed and mandated by IWC Wage Order No. 4, Section 12(a) requires that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten minutes net rest time per four hours or major fraction thereof. Authorized rest period time shall be counted as hours worked for which there shall be no

deduction from wages.

36. At all times herein relevant, the public policy of the State of California, as codified, expressed and mandated by Labor Code § 226.7(a) declares that no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the IWC.

37. Section § 226.7(b), IWC Wage Order No. 4 §§ 11(B), 12(B) declare that if an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

38. As such, Plaintiff is entitled to one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period was not provided.

39. As a result of the acts of Defendants and DOES 1 through 100, and each of them, Plaintiff is also entitled to compensation for each meal period where Plaintiff was "on duty."

40. Plaintiff is also entitled to any and all relief as provided for by Cal. Labor Code § 203.

41. As a result of the retaliatory acts of Defendants and DOES 1 through 100, and each of them, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as specifically provided in Cal. Code of Civil Procedure § 1021.5. Plaintiff's action enforces important rights affecting the public interest by bringing forth this lawsuit to ensure Defendants, as an employer, offers its employees meal and rest periods, thereby conferring a significant benefit on the general public's health and well-being as a result. The necessity and financial burden of this private enforcement, as well as the interest of justice, entitles Plaintiff to reasonable attorneys' fees and costs under Cal. Code of Civil Procedure § 1021.5.

42. The acts of Defendants and DOES 1 through 100, were willful, wanton, malicious, intentional, oppressive and despicable and were done in willful and conscious disregard of the rights, welfare and safety of Plaintiff, and were done by managerial agents and employees of Defendants and DOES 1 through 100, and with the express knowledge, consent, and ratification of managerial agents and employees of Defendants and DOES 1 through 100, thereby justifying the awarding of punitive and exemplary damages in an amount to be determined at the time of trial pursuant to Cal. Civil Code §§ 3294(a) and (b).

43. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an employer, who violates, or causes to be violated, Labor Code § 226.7, may be held liable as the employer for such violation. The term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and in this case, including Defendant Nouri.

44. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

45. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an employer, who violates, or causes to be violated, Labor Code § 226, may be held liable as the employer for such violation. The term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and in this case, including Defendant Nouri.

IV.

FOURTH CAUSE OF ACTION

For Failure to Furnish Complaint Wage Statements and Maintain Accurate Pay Records

[California Labor Code § 226, 1174 (D), and 1198]

Against All Defendants & DOES 1 Through 100, Only

46. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this Complaint as though duly set forth in full herein.

47. Plaintiff began working at the Loanguys.com around April 2021 as a Mortgage Loan Officer until his wrongful termination on or about May 28, 2022.

48. Defendants intentionally misclassified Plaintiff as an independent contractor throughout his employment, thereby depriving Plaintiff of overtime compensation, rest periods, and other protections under the California Labor Code.

49. Despite performing services as an employee, Plaintiff was misclassified as an independent contractor and was provided a “commission only” payment structure.

50. Pursuant to Cal. Labor Code §§ 226 and 1174, employers have a duty to provide their non-exempt employees with accurate itemized statements showing total hours worked, hourly wages, gross wages, total deductions net wages earned and name of the employer. An employer

1 who violates these Code sections is liable to its employees for the greater of actual damages
2 suffered by the employee, or \$50.00 in civil penalties for the initial pay period in which a
3 violation occurred, and \$100.00 per employee for each subsequent pay period, up to a statutory
4 maximum of \$4,000.00.

5 51. Pursuant to Cal. Labor Code § 558.1, any employer or other person acting on behalf of an
6 employer, who violates, or causes to be violated, Labor Code § 226, may be held liable as the
7 employer for such violation. The term ‘other person acting on behalf of an employer’ is limited
8 to a natural person who is an owner, director, officer, or managing agent of the employer.

9 52. At all relevant times, Defendants knowingly and intentionally provided Plaintiff with
10 uniform, incomplete, and inaccurate wage statements.

11 53. Because Defendants failed to document and deducted time worked from Plaintiff’s wage
12 statements and employment records for meal periods they did not actually receive, Defendants
13 unlawfully deducted wages earned and meal period premiums that should have been paid. Thus,
14 Defendants did not furnish wage statements to Plaintiff containing: the correct amount of gross
15 wages earned in violation of Cal. Labor Code § 226(a)(1), the accurate total hours worked in
16 violation of Cal. Labor Code § 226(a)(2), correct amount of net wages earned in violation of
17 Cal. Labor Code § 226(a)(5), or accurate number of hours worked at each corresponding hourly
18 rate in violation of Cal. Labor Code § 226(a)(9).

19 54. To the extent that Defendants paid any meal break premium and/or rest break premium
20 payments, Defendants failed to identify such payments on Plaintiff’s wage statements and
21 employment records, and Defendants otherwise failed to provide information on the wage
22 statements sufficient to identify how many premium payments were paid during each pay period,
23 the specific dates worked giving rise to the premium payments owed, or to determine whether
24 such premium payments adequately and/or accurately compensated Plaintiff for any and all
25 premiums owed.

26 55. California Labor Code § 1198 provides that the maximum hours of work and the standard
27 conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the
28 applicable IWC Wage Orders. California Labor Code § 1198 further provides that “the

1 employment of any employees for longer hours than those fixed by the order or under conditions
2 of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order,
3 employers are required to keep accurate time records showing when the employee begins and
4 ends each work period and meal period. At all relevant times, Defendants failed, on a company-
5 wide basis, to keep records of meal period start and stop times for Plaintiff in violation of Cal.
6 Labor Code § 1198.

7 56. California Labor Code §1174(d) provides that “every person employing labor in this state
8 shall... keep a record showing the names and addresses of all employees employed and the ages
9 of all minors” and “keep, at a central location in the state or at the plants or establishments at
10 which employees are employed, payroll records showing the hours worked daily by and the
11 wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,
12 employees employed at the respective plants or establishments...” At all relevant times, and in
13 violation of Cal. Labor Code § 1174(d), Defendants willfully failed to maintain accurate payroll
14 records for Plaintiff showing the daily hours he worked and the wages paid thereto as a result of
15 unlawfully classifying Plaintiff as an independent contractor.

16 57. Plaintiff is entitled to recover from Defendants the greater of his actual damages caused
17 by Defendants’ failure to comply with Cal. Labor Code § 226(a), or an aggregate penalty not
18 exceeding four thousand dollars \$4,000 per employee, in addition to attorneys’ fees and costs.

19 58. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an
20 employer, who violates, or causes to be violated, Labor Code § 226, may be held liable as the
21 employer for such violation. The term “other person acting on behalf of an employer” is limited
22 to a natural person who is an owner, director, officer, or managing agent of the employer, and in
23 this case, including Defendant Nouri.

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V.

FIFTH CAUSE OF ACTION

For Waiting Time Penalties

[California Labor Code § 203]

Against All Defendants & DOES 1 Through 100, Only

59. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this Complaint as though duly set forth in full herein.

60. Defendants willfully failed to pay Plaintiff all wages due as set forth above and owe him wages in an amount to be ascertained at trial.

61. Defendants' failure to pay the full amount due to Plaintiff on termination of his employment violates the provisions of California Labor Code §§ 200, 201, 206, and 216.

62. Defendants violated or caused to be violated this section of the California Labor Code.

63. Pursuant to the California Labor Code § 200 et seq., it is a violation of law for an employer to fail to pay wages, immediately upon termination of an employee by the employer or within seventy-two hours of the employee's quitting his employment and/or to forfeit an employee's wages to the employer. Pursuant to California Labor Code § 216, it is a misdemeanor for an employer to keep the wages and not pay it to the employee either immediately or within seventy-two hours of the employee's termination, depending on whether the employee was discharged or quit, as after that time the pay becomes the property of the employee as a matter of law.

64. On or about December 30, 2021, Plaintiff finalized the origination of a mortgage loan for a client and did not receive his entitled commission of \$1,968.75. Accordingly, Defendants owe Plaintiff waiting time penalties under California Labor Code § 203.

65. By willfully failing to pay Plaintiff unpaid overtime to which Plaintiff was entitled to, as set forth above, in a timely manner as required by California Labor Code § 201 and § 202, Defendants are liable to Plaintiff for penalties pursuant to California Labor Code § 203, in an amount equal to 30 days of Plaintiff's per diem wage rate in an amount according to proof.

66. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an employer, who violates, or causes to be violated, Labor Code § 203, may be held liable as the

1 employer for such violation. The term ‘other person acting on behalf of an employer’ is limited
2 to a natural person who is an owner, director, officer, or managing agent of the employer, and in
3 this case, including Defendant Nouri.

4 67. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

5 **VI.**

6 **SIXTH CAUSE OF ACTION**

7 **For Unfair Business Practices**

8 **[California Business & Professions Code §§ 17200 et seq.]**

9 **Against Defendant Loanguys.com, Inc. & DOES 1 Through 100, Only**

10 68. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this
11 Complaint as though duly set forth in full herein.

12 69. Plaintiff began working at the Loanguys.com around April 2021 as a Mortgage Loan
13 Officer until his wrongful termination on or about May 28, 2022.

14 70. Defendants engaged in unfair, unlawful, fraudulent, deceptive, untrue, and/or misleading
15 business practices through the following, among others:

16 a) Defendants intentionally misclassified Plaintiff as an independent contractor
17 throughout his employment, thereby depriving Plaintiff of overtime compensation, rest
18 periods, and other protections under the California Labor Code.

19 b) Defendants failed to lawfully provide meal and rest periods to Plaintiff, in
20 violation of Cal. Labor Code §§ 226.7, 512 and IWC Wage Order No. 4.

21 71. Through the aforementioned acts, Defendant’s engaged in unfair, unlawful, fraudulent,
22 deceptive, untrue, and/or misleading business practices in direct violation of Cal. Bus. & Prof.
23 Code § 17200, which prohibits conducting such business.

24 72. Defendant’s willful and/or reckless conduct constituted unfair business practices and acts
25 because the harm to the general public outweighed any utility that its conduct may have
26 produced.

27 73. As a direct result of the conduct, act and omissions of Defendant’s and DOES 1 through
28 100, and each of them, Plaintiff has been harmed and damaged in an amount to be shown at the

time of trial, together with prejudgment interest thereon from the time owed until paid, all within an amount within the jurisdictional limits of this Court.

74. Plaintiff is also entitled to all penalties provided by Cal. Bus. & Prof. Code § 17206.

75. Additionally, Cal. Bus. & Prof. Code § 17205 declares, unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.

76. As a result of the retaliatory acts of Defendants and DOES 1 through 100, and each of them, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as specifically provided in Cal. Code of Civil Procedure § 1021.5. Plaintiff's action enforces important rights affecting the public interest by bringing forth this lawsuit to ensure Defendants, as an employer, does not engage in unfair business practices, thereby conferring a significant benefit on the general public's health and well-being as a result. The necessity and financial burden of this private enforcement, as well as the interest of justice, entitles Plaintiff to reasonable attorneys' fees and costs under Cal. Code of Civil Procedure § 1021.5.

77. The acts of Defendants and DOES 1 through 100, were willful, wanton, malicious, intentional, oppressive and despicable and were done in willful and conscious disregard of the rights, welfare and safety of Plaintiff, and were done by managerial agents and employees of Defendants and DOES 1 through 100, and with the express knowledge, consent, and ratification of managerial agents and employees of Defendants and DOES 1 through 100, thereby justifying the awarding of punitive and exemplary damages in an amount to be determined at the time of trial pursuant to Cal. Civil Code §§ 3294(a) and (b).

78. Plaintiff is entitled to both declaratory and injunctive relief as a result of Defendants' unlawful conduct.

79. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

1 **VII.**

2 **SEVENTH CAUSE OF ACTION**

3 **For Wrongful Termination and Retaliation in Violation of Public Policy**

4 **Against Defendant Loanguys.com, Inc. & DOES 1 Through 100, Only**

5 80. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this
6 Complaint as though duly set forth in full herein.

7 81. Plaintiff began working at the Loanguys.com around April 2021 as a Mortgage Loan
8 Officer until his wrongful termination on or about May 28, 2022.

9 82. Plaintiff was retaliated against due to Plaintiff's aforesaid legally protected activities
10 (complaints/protests against being misclassified among others) as aforesaid.

11 83. As such, Plaintiff was retaliated against for reasons that violate a public policy(s).

12 84. At all times relevant herein, Plaintiff was employed by Defendants.

13 85. Accordingly, the actions of Defendants and DOES 1 through 100, in retaliating against
14 Plaintiff on the grounds alleged and described herein were wrongful and do not promote the
15 welfare and well-being of the community at large.

16 86. As a direct and legal result of the acts and omissions of Defendants and DOES 1 through
17 100, and each of them, Plaintiff was rendered sick, sore, lame, disabled and/or disordered, both
18 internally and/or externally, and suffered, among other things, emotional distress, including but
19 not limited to shock, pain, discomfort and/or anxiety.

20 87. As a further legal result of the acts and omissions of Defendants, and DOES 1 through
21 100, and each of them, Plaintiff has been forced to incur expenses for medical care, X-rays,
22 and/or laboratory costs during the period of Plaintiff's disability, and is informed and believes,
23 and/or thereon alleges, that Plaintiff will in the future be forced to incur additional expenses of
24 the same nature, all in an amount which is at present unknown. Plaintiff will pray leave of court
25 to show the exact amount of said expenses at the time of trial.

26 88. Prior to the occurrence of the incidents, Plaintiff was an able-bodied individual, but since
27 said incidents has been unable to engage fully in Plaintiff's occupation, and/or is informed and
28 believes, and thereon alleges, that Plaintiff will be partially and/or fully incapacitated and/or

1 unable to perform Plaintiff's usual work for an indefinite period of time in the future, all to
2 Plaintiff's damages in an amount which is at present unascertained. Plaintiff will pray leave of
3 court to show the total amount of loss of earnings at the time of trial.

4 89. As a further direct and legal result of the acts and conduct of Defendants, and DOES 1
5 through 100, and each of them, Plaintiff has been caused, and did suffer, and continues to suffer
6 severe and/or permanent emotional and/or mental distress and anguish, humiliation,
7 embarrassment, fright, shock, pain, discomfort and/or anxiety. The exact nature and extent of
8 said injuries is presently unknown to Plaintiff, who will pray leave of court to assert the same
9 when they are ascertained.

10 90. The aforementioned acts of Defendants and DOES 1 through 100, and each of them, were
11 willful, wanton, malicious, intentional, oppressive and/or despicable and were done in willful
12 and conscious disregard of the rights, welfare and safety of Plaintiff, and were done by
13 managerial agents and employees of Defendants, and with the express knowledge, consent,
14 and/or ratification of managerial agents and employees of Defendants and DOES 1 through 100,
15 thereby justifying the awarding of punitive and exemplary damages in an amount to be
16 determined at the time of trial pursuant to Cal. Civil Code §§ 3294(a) and (b).

17 91. By the aforesaid acts and conduct of Defendants and DOES 1 through 100, and each of
18 them, Plaintiff has been directly and legally caused to suffer actual damages pursuant to Cal.
19 Civil Code § 3333 including, but not limited to, loss of earnings and future earning capacity,
20 medical and related expenses for care and procedures both now and in the future, attorneys' fees,
21 and other pecuniary loss not presently ascertained, for which Plaintiff will seek leave of court to
22 amend when ascertained.

23 92. As a result of the unlawful acts of Defendants and DOES 1 through 100, and each of
24 them, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as
25 specifically provided in Cal. Code of Civil Procedure § 1021.5. Plaintiff's action enforces
26 important rights affecting the public interest by bringing forth this lawsuit to ensure Defendants
27 refrain from unlawfully and wrongfully terminating their employees, thereby conferring a
28 significant benefit on the general public's health and well-being as a result. The necessity and

1 financial burden of this private enforcement, as well as the interest of justice, entitles Plaintiff to
2 reasonable attorneys' fees and costs under Cal. Code of Civil Procedure § 1021.5.

3 93. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

4 **VIII.**

5 **EIGHTH CAUSE OF ACTION**

6 **For Civil Penalties Under PAGA**

7 **[California Labor Code §§ 2698, 2699; Private Attorneys General Act ("PAGA")]**

8 **Against Defendant Loanguys.com, Inc. & DOES 1 Through 100, Only**

9 94. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this
10 Complaint as though duly set forth in full herein.

11 95. Plaintiff is an "aggrieved employee" under the Labor Code Private Attorneys General Act
12 ("PAGA"), as Plaintiff is or was employed by Defendants during the applicable statutory period
13 and suffered one or more of the Cal. Labor Code violations set forth herein. Accordingly,
14 Plaintiff seeks to recover, on behalf of Plaintiff and all other aggrieved current and former
15 employees of Defendants, the civil penalties provided by PAGA, plus reasonable attorneys' fees
16 and costs.

17 96. Plaintiff seeks to recover the PAGA civil penalties through a representative action
18 permitted by PAGA and the California Supreme Court in, among other authorities, Arias v.
19 Superior Court, (2009) 46 Cal.4th 969. According to the same authorities, class certification of
20 the PAGA allegations described herein is not required.

21 97. California Labor Code § 2699(a) and (g), as well as Cal. Labor Code §§ 210, 226.3, 558,
22 1174.5 and 1197.1 authorizes aggrieved employees such as Plaintiff, on behalf of herself and
23 other current and former employees within the statutory period, to bring a civil action to recover
24 civil penalties pursuant to the procedures specified in Cal. Labor Code § 2699.3.

25 98. Plaintiff complied with the procedures for bringing suit specified in Cal. Labor Code
26 § 2699.3. Specifically, on or about July 19, 2022, Plaintiff gave written notice to the California
27 Labor and Workforce Development ("LWDA") and to Defendants of the specified provisions of
28 the Cal. Labor Code alleged to have been violated and those included below ("PAGA Notice").

Plaintiff is informed and believes that, to date, the LWDA has still not elected to investigate, pursuant to Amaral v. Cintas Corp. No. 2, (2008) 163 Cal.App.4th 1157.

99. During the period beginning one (1) year preceding the filing of the Complaint in this Action (the “Civil Penalty Period”), Defendants violated, *inter alia*, Cal. Labor Code §§ 200, 201, 203, 204, 226, 226.7, 227.3, 510, 512, 2810.5 and the applicable Wage Order(s), among other things. In connection with the violations of Cal. Labor Code §§ 200, 201, 203, 204, 226, 226.7, 227.3, 510, 512, 2810.5, Plaintiff seeks to represent only non-exempt current and former employees of Defendants working in California from one (1) year prior to filing the PAGA Notice with the LWDA through the present. In connection with the violation of Cal. Labor Code §§ 227 et seq., and 2810.5, Plaintiff seeks to represent all current and former employees of Defendants working in California from one (1) year prior to filing the PAGA Notice with the LWDA through the present. Collectively, the employees that Plaintiff plans to represent shall be referred to as “Aggrieved Employees.”

100. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants has, at times, failed to pay overtime wages to Plaintiff and Aggrieved Employees, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive work day in a work week by, among other things, failing to, at times, accurately track and/or pay for all hours actually worked at the proper overtime rate of pay to the detriment of Plaintiff and Aggrieved Employees including, without limitation, due to failure to account for skill differential pay.

101. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have, at times, failed to provide Plaintiff and Aggrieved Employees, or some of them, full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on which they worked in excess of ten (10) hours in a work day, and failing to, at times,

1 provide compensation for such unprovided meal periods as required by California wage and hour
2 laws due to, without limitation, assigning tasks to employees during what should be an
3 uninterrupted meal period.

4 102. For at least three (3) years prior to the filing of this action and continuing to the present,
5 Defendants have, at times, failed to pay Plaintiff and Aggrieved Employees, or some of them, the
6 full amount of their wages owed to them upon termination and/or resignation as required by Cal.
7 Labor Code §§ 201 and 202, including for, without limitation, Defendants' occasional failing to
8 pay overtime wages and premium wages.

9 103. For at least one (1) year prior to the filing of this Action and continuing to the present,
10 Defendants have, at times, failed to furnish Plaintiff and Aggrieved Employees, or some of them,
11 with itemized wage statements that accurately reflect gross wages earned; total hours worked;
12 net wages earned; all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate; and other such information as
14 required by Cal. Labor Code § 226(a). As a result thereof, Defendants have occasionally failed to
15 furnish employees with an accurate calculation of gross and gross wages earned, as well as gross
16 and net wages paid.

17 104. Plaintiff, on Plaintiff's own behalf and on behalf of Aggrieved Employees, pursuant to
18 Cal. Bus. & Prof. Code §§ 17200 through 17208, also seeks (an) injunction(s) prohibiting
19 Defendants from further violating the Cal. Labor Code and requiring the establishment of
20 appropriate and effective means to prevent further violations, as well as all monies owed but
21 withheld and retained by Defendants to which Plaintiff and Aggrieved Employees are entitled, as
22 well as restitution of amounts owed.

23 105. California Labor Code § 204, requires and required that: "[l]abor performed between the
24 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th
25 day of the month during which the labor was performed, and labor performed between the 16th
26 and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day
27 of the following month."
28

1 106. California Labor Code § 210(a) states that “[i]n addition to, and entirely independent and
2 apart from, any other penalty provided in this article, every person who fails to pay the wages of
3 each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
4 1197.5, shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars
5 (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or
6 intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
7 percent of the amount unlawfully withheld.”

8 107. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges,
9 that Defendants had and have a consistent policy or practice of failing to pay Plaintiff and during
10 their employment on a timely basis as per Cal. Labor Code § 204.

11 108. As a direct and proximate result of the herein-described Cal. Labor Code violations, and
12 pursuant to Cal. Labor Code § 210, Plaintiff and other Aggrieved Employees are entitled to
13 recover civil penalties for Defendants’ violations of Cal. Labor Code § 204, in the amount of one
14 hundred dollars (\$100) for each Aggrieved Employee for each initial violation per employee, and
15 two hundred dollars (\$200) for each Aggrieved Employee for each subsequent violation in
16 connection with each payment that was made in violation of Cal. Labor Code § 204.

17 109. California Labor Code § 226.3 states that “[a]ny employer who violates subdivision (a) of
18 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
19 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
20 for each violation in a subsequent citation, for which the employer fails to provide the employee
21 a wage deduction statement or fails to keep the records required in subdivision (a) of Section
22 226.”

23 110. California Labor Code § 226.3 further provides that “[t]he civil penalties provided for in
24 this section are in addition to any other penalty provided by law.”

25 111. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges,
26 that Defendants, and each of them, had and have a policy or practice of failing to comply with
27 Cal. Labor Code § 226(a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
28 with itemized wage statements that accurately reflect gross wages earned; total hours worked;

1 net wages earned; the name and address of each employer with whom they have been placed to
2 work; all applicable hourly rates in effect during the pay period and the corresponding number of
3 hours worked at each hourly rate; the legal name of the employer and/or the name and address of
4 the legal entity securing the employer's services if the employer is a farm labor contractor and
5 other such information as required by Cal. Labor Code § 226(a).

6 112. As a direct and proximate result of the herein-described Cal. Labor Code violations, and
7 pursuant to Cal. Labor Code § 226.3, Plaintiff and other Aggrieved Employees are entitled to
8 recover civil penalties for Defendants' violation of Cal. Labor Code § 226(a) in the amount of
9 two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period for the initial
10 violation, and one thousand dollars (\$1000) for each Aggrieved Employee per pay period for
11 each subsequent violation.

12 113. California Labor Code § 558(a) states: "Any employer or other person acting on behalf of
13 an employer who violates, or causes to be violated... any provision regulating hours and days of
14 work in any of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
15 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each pay
16 period for which the employee was underpaid in addition to an amount sufficient to recover
17 underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each
18 underpaid employee for each pay period for which the employee was underpaid in addition to an
19 amount sufficient to recover underpaid wages; (3) Wages recovered pursuant to this section shall
20 be paid to the affected employee."

21 114. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges,
22 that Defendants, and each of them, violated, or caused to be violated, the Cal. Labor Code
23 sections described herein, including causing Plaintiff and other Aggrieved Employees not to: be
24 paid overtime wages; receive meal and rest periods or compensation in lieu thereof; be paid
25 timely wages during their employment and after their employment separation; and receive
26 accurate, itemized wage statements.

27 115. As a direct and proximate result of the herein-described Cal. Labor Code violations, and
28 pursuant to Cal. Labor Code § 558, Plaintiff and other Aggrieved Employees are entitled to

1 recover civil penalties for Defendants' herein-described Cal. Labor Code violations in the
2 amount fifty dollars (\$50) for each Aggrieved Employee per pay period for the initial violation,
3 and one hundred dollars.

4 116. California Labor Code § 1174(b) states that every person employing labor in California is
5 required to "[a]llow any member of the commission or the employees of the Division of Labor
6 Standards Enforcement free access to the place of business or employment of the person to
7 secure any information or make any investigation that they are authorized by this chapter to
8 ascertain or make. The commission may inspect or make excerpts, relating to the employment of
9 employees, from the books, reports, contracts, payrolls, documents, or papers of the person."

10 117. California Labor Code § 1174(c) has required every person employing labor in California
11 to "[k]eep a record showing the names and addresses of all employees employed and the ages of
12 all minors."

13 118. California Labor Code § 1174(d) has required every person employing labor in California
14 to "[k]eep, at a central location in the state or at the plants or establishments at which employees
15 are employed, payroll records showing the hours worked daily by and the wages paid to, and the
16 number of piece-rate units earned by and applicable piece rate paid to, employees employed at
17 the respective plants or establishments. These records shall be kept in accordance with rules
18 established for this purpose by the commission, but in any case, shall be kept on file for not less
19 than three years. An employer shall not prohibit an employee from maintaining a personal record
20 of hours worked, or, if paid on a piece-rate basis, piece-rate units earned."

21 119. California Labor Code § 1174.5 states that, "[a]ny person employing labor who willfully
22 fails to maintain the records required by subdivision (c) of [Cal. Labor Code] Section 1174 or
23 accurate and complete records required by subdivision (d) of [Cal. Labor Code] Section 1174, or
24 to allow any member of the commission or employees of the division to inspect records pursuant
25 to subdivision (b) of [Cal. Labor Code] Section 1174, shall be subject to a civil penalty of five
26 hundred dollars (\$500)."

27 120. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges,
28 that Defendants, and each of them, have willfully failed to maintain the records required by Cal.

1 Labor Code 1174(c), failed to maintain accurate and complete records required by Cal. Labor
2 Code 1174(d), and/or failed to allow inspection of records as required by Cal. Labor Code
3 1174(b).

4 121. As a direct and proximate result of the herein-described Cal. Labor Code violations, and
5 pursuant to Cal. Labor Code § 1174.5, Plaintiff and other Aggrieved Employees are entitled to
6 recover civil penalties for Defendants' herein-described Cal. Labor Code violations in the
7 amount of five hundred dollars (\$500) per violation per Aggrieved Employee.

8 122. California Labor Code § 2699(f), provides that for all provisions of the Cal. Labor Code
9 "except those for which a civil penalty is specifically provided, there is established a civil
10 penalty for a violation of these provisions, as follows:... (2) If, at the time of the alleged
11 violation, the person employs one or more employees, the civil penalty is one hundred dollars
12 (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
13 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation."

14 123. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges,
15 that Defendants, and each of them, violated the Cal. Labor Code sections described herein,
16 including, without limitation, for the failure to: pay overtime wages; provide meal and rest
17 periods or compensation in lieu thereof; provide accurate, itemized wage statements; pay timely
18 wages during employment and after the cessation of the employment relationship; reimburse
19 Aggrieved Employees for costs incurred in furtherance of their work duties as required under
20 Cal. Labor Code § 2802; provide notice as required under Cal. Labor Code § 2810.5; paying
21 employees all owed paid time off and vacation time owed by separation at the proper rate of pay;
22 placing restraints on competition, whistleblowing and freedom of speech; and entitling Plaintiff
23 and other Aggrieved Employees to civil penalties for each of these Cal. Labor Code violations in
24 the amounts set forth in Cal. Labor Code § 2699(f).

25 124. As a direct and proximate result of the herein-described Cal. Labor Code violations, and
26 pursuant to Cal. Labor Code section 2699(g), among other authorities, Plaintiff and similarly
27 Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of the
28 herein and therein described Cal. Labor Code violations during the Civil Penalty Period in the

amount of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent violation.

125. Moreover, Plaintiff and Aggrieved Employees are also entitled to an award of reasonable attorneys' fees and costs in connection with their herein-described claims for civil penalties.

WHEREFORE, PLAINTIFF MICKAEL HERSZKOWICZ prays for judgment against the Defendants, and each of them, as follows:

1. For general damages in an amount within the jurisdictional limits of this Court;
2. For special damages in an amount within the jurisdictional limits of this Court;
3. For medical expenses and related items of expense, according to proof;
4. For loss of earnings, according to proof;
5. For consequential and incidental damages according to proof;
6. For prejudgment interest according to proof;
7. For declaratory relief;
8. For injunctive relief;
9. For damages, penalties, cost of suit, and attorney fees against Defendants provided for by Cal. Labor Code §§ 226, 226.7, 432, 510, 512, 558.1, 1174, 1198.5, and IWC Wage Order No. 4;
10. For civil penalties and attorneys' fees for each violation of Cal. Labor Code §§ 226.3, 558, 1102.5, 2699;
11. For punitive and exemplary damages as provided for by Cal. Civil Code § 3294;
12. For damages, penalties and costs of suit as provided for by Cal. Civil Code § 3333;
13. For civil penalties as provided for by Cal. Bus. & Prof. Code §§ 17200 and 17206;
14. For damages, penalties and reasonable attorneys' fees and costs of suit against Defendants as provided for by Cal. Code of Civil Procedure § 1021.5, according to proof;

1 15. For such other and further relief as the Court may deem just and proper.
2

3 Dated: December 28, 2022

AKHAVAN & ASSOCIATES

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5 By: 
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7 BARDIA AARON AKHAVAN, ESQ.
8 Attorney for PLAINTIFF
9 MICKAEL HERSZKOWICZ
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