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Assigned for All Purposes

Judge Randall J. Sherman

Dept. CX105

Attorneys for Plaintiff and the Putative Classes

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

MAXIMUS FLORE, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

E-MORTGAGE CAPITAL, INC., a California
Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 30-2022-01295017-CU-OE-CXC

**FIRST AMENDED CLASS ACTION AND
PAGA COMPLAINT:**

(1) FAILURE TO PAY OVERTIME
WAGES;

(2) MEAL PERIOD VIOLATIONS;

(3) REST PERIOD VIOLATIONS;

(4) WAGE STATEMENT VIOLATIONS;

(5) WAITING TIME PENALTIES;

(6) UNFAIR COMPETITION; and

(7) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff Maximus Flore (“Plaintiff”) on behalf of himself, and all other similarly situated non-
2 exempt employees, alleges and complains of defendant E-Mortgage Capital, Inc. (“Defendant”), and
3 DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendants are a mortgage bank that offer a variety of loans solutions such as
6 conventional, FHA, VA, USDA and non-QM headquartered in Irvine, California.

7 2. Plaintiff brings this class and PAGA representative action against Defendants for
8 alleged violations of the California Labor Code and Business and Professions Code.

9 3. As set forth below, Plaintiff alleges that Defendants failed and continue to fail to pay
10 all overtime wages due and properly calculate non-exempt employees’ overtime rate by failing to
11 include all forms of remuneration in calculating the “regular rate of pay.” Further, Plaintiff alleges
12 that Defendants’ meal and rest period policies and practices failed to provide him and all other
13 similarly situated employees with compliant meal and rest periods or pay premium pay at the “regular
14 rate of pay” in lieu thereof. As a result, Plaintiff alleges that Defendants failed to provide non-exempt
15 employees with accurate written itemized wage statements and failed to timely pay all final wages
16 upon separation of employment.

17 4. Based on these alleged Labor Code violations, Plaintiff now brings this class and
18 PAGA representative action to recover unpaid wages, restitution, penalties, and other related relief
19 on behalf of himself and all others similarly situated.

20 **JURISDICTION AND VENUE**

21 5. This class action is brought pursuant to California Code of Civil Procedure § 382.

22 6. Plaintiff, on behalf of himself and all others similarly situated employees hereby
23 brings this class action for recovery of unpaid wages and penalties under California Labor Code §§
24 200, 201-203, 204, 210, 226(a), 226(e), 226.3, 226.7, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199,
25 2698 *et seq.* and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in
26 addition to seeking declaratory relief and restitution pursuant to California Business and Professions
27 Code § 17200, *et. seq.*

28 ///

1 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
2 corporate, were responsible in some manner for the acts and omissions alleged herein, and
3 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
4 alleged herein.

5 14. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
6 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
7 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
8 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
9 them, were the agents, servants, and employees of each and every one of the other Defendants, as
10 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
11 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
12 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

13 15. At all times mentioned herein, Defendants, and each of them, were members of and
14 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
15 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
16 alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the
17 Classes.

18 **COMMON FACTUAL ALLEGATIONS**

19 16. Defendants are a mortgage bank that offer a variety of loans solutions such as
20 conventional, FHA, VA, USDA and non-QM headquartered in Irvine, California. Defendants is a
21 hybrid mortgage banker and broker and the first mortgage banker in the country to offer full-service
22 mortgage banking abilities with enhanced rates & pricing.

23 17. Plaintiff was employed by Defendants as a non-exempt employee Mortgage Loan
24 Officer from approximately November 21, 2021, until his termination on or about the August 22,
25 2022. Plaintiff and other non-exempt employees were employed as non-exempt employees of
26 Defendants and were responsible for all aspects of Defendants' operations, including but not limited
27 to mortgage loan officer, junior loan officer, loan processor, and various other non-exempt positions.
28

1 18. First, from at least one year ago continuing into today, Plaintiff and non-exempt
2 employees who were paid on a commission basis were not properly paid at the correct overtime rate
3 for all hours worked in excess of eight (8) hours per workday and/or forty (40) hours per workweek.
4 While non-exempt employees regularly worked overtime hours, they were not compensated at one
5 and one-half times their “regular rate of pay” for all overtime hours worked.

6 19. In addition, because Defendants failed to include all forms of compensation, including
7 but not limited to, commission pay, bonuses, and other forms of non-hourly remuneration when
8 calculating the “regular rate of pay used in overtime calculations. For instance, although Defendants
9 consistently paid its employees commission pay based on certain sales, Defendants omitted these
10 payments when calculating the regular rate of pay used in overtime calculations and when paying
11 overtime to non-exempt employees. Upon information and belief, Defendants paid and continue to
12 pay overtime at the statutory minimum without including all forms of compensation, including
13 commissions.

14 20. In 2010, the U.S. Department of Labor issued new Administrator’s Interpretation
15 claiming that it was virtually impossible for mortgage loan officers to meet the duties tests for the
16 administrative exemption because their primary duty was selling loans to individuals and related work
17 incidental to those sales. It said, “The typical job duties of a mortgage loan officer comprise a financial
18 services business’ marketplace offerings, the selling of loan products.” This statement seemed to
19 apply equally to other loan officers at financial institutions (those who sell consumer and agricultural
20 loans) and not just those selling mortgages.

21 21. Further, under the California Labor Code (as well as the FLSA), courts have held that
22 regularly paid non-discretionary pay, including commissions and bonuses must be included in
23 determining an employee’s “regular rate of pay” for purposes of calculating overtime. (See *Haber v.*
24 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
25 bonuses must be included in calculating the “regular rate”]; *Wang v. Chinese Daily News, Inc.* 435 F.
26 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006); See Labor Commissioner’s Office FAQ on “Overtime”,
27 https://www.dir.ca.gov/dlse/FAQ_Overtime.htm)
28

1 22. At all relevant times, Defendants consistently paid Plaintiff and other non-exempt
2 employees commission pay but failed to pay one and a half times the “regular rate of pay” for all
3 overtime hours worked in violation of Labor Code § 510. Additionally, as it pertains to other non-
4 exempt employees, Defendants also failed to pay overtime at the proper “regular rate of pay” due to
5 its uniform failure to include all commissions, bonuses and other remunerations when calculating
6 non-exempt employees’ “regular rate of pay”.

7 23. Labor Code § 510 requires an employer to compensate an employee who works more
8 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
9 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
10 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
11 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
12 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
13 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
14 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
15 (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek.

16 24. By their policy of requiring non-exempt employees to work in excess of eight (8)
17 hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of
18 one-half (1 1/2) their “regular rate of pay,” Defendants willfully violated the provisions of Labor Code
19 § 510 and the applicable Wage Orders.

20 25. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
21 by an applicable state or local law, or by an order of the commission a civil penalty, restitution of
22 wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed,
23 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
24 is underpaid. . . [and] (2) [f]or each subsequent violation for the same specific offense, two hundred
25 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
26 underpaid regardless of whether the initial violation is intentionally committed.

27 26. Accordingly, to the extent permitted by law, non-exempt employees are entitled to
28 recover unpaid wages and liquidated damages for violations of Labor Code § 1197.1. Based upon

1 these same factual allegations, non-exempt employees are entitled to penalties under Labor Code §
2 1199.

3 27. Furthermore, from at least one year ago and continuing into the present, Plaintiff and
4 other non-exempt employees regularly worked shifts in excess of 6.0 hours, and often shifts in excess
5 of 10.0 hours, but were not provided with legally compliant off-duty meal periods of at least thirty
6 (30) minutes before the end of the fifth and tenth hour of work due to Defendants' uniform meal
7 period policies/practices. At all relevant times, Plaintiff alleges that he and other non-exempt
8 employees were not provided legally compliant off-duty meal periods of at least thirty (30) minutes
9 before the end of the fifth hour of work. For shifts in excess of 10.0 hours, Plaintiff and other non-
10 exempt employees were not provided with a second meal period before the tenth hour of work.

11 28. Importantly, each time Plaintiff and other non-exempt employees were unable to take
12 a compliant meal period, Defendants failed and continues to fail to adequately pay meal period
13 premium payments at the "regular rate of pay" as required by Labor Code § 226.7.

14 29. Labor Code § 226.7 provides "an employer shall not require an employee to work
15 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
16 regulation, standard, or order of the Industrial Welfare Commission ("IWC") See *Brinker Restaurant*
17 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1016-1017 ("[T]he wage order's meal period
18 requirement is satisfied if the employee (1) has at least 30 minutes uninterrupted, (2) is free to leave
19 the premises, and (3) is relieved of all duty for the entire period. . .The employer satisfies the [meal
20 period] obligation if it relieves its employees of all duty, relinquishes control over their activities and
21 permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede
22 or discourage them from doing so")(emphasis added).

23 30. As a result of Defendants' unlawful meal period policies/practices, Plaintiff seeks to
24 recover on behalf of himself and all non-exempt employees' meal period premiums and penalties
25 under Labor Code § 226.7 and § 512.

26 31. Moreover, at all relevant times, Defendants failed and continues to fail to authorize
27 and permit Plaintiff and other non-exempt employees from taking legally compliant rest periods.
28 Plaintiff and other non-exempt employees were often unable to take legally compliant rest periods,

1 or had their rest periods cut short, due to the demands of the job, interruptions, and job responsibilities.
2 As a result, Plaintiff and other non-exempt employees were and are often unable to take (10) minute
3 duty free rest periods for every major fraction of four hours worked. This includes a second rest period
4 for shifts in excess of six hours, and a third rest period for shifts in excess of 10.0 hours in a workday.

5 32. Importantly, each time Plaintiff and other non-exempt employees were unable to take
6 a compliant rest period, Defendants failed and continues to fail to adequately pay rest period premium
7 payments at the “regular rate of pay” as required by Labor Code § 226.7.

8 33. Accordingly, for each day that Plaintiff and other non-exempt employees did not
9 receive compliant meal or rest periods, they are entitled to receive meal/rest period premiums
10 pursuant to Labor Code § 226.7 and the applicable Wage Order.

11 34. As a result of Defendants’ unlawful rest period policies/practices, Plaintiff seeks to
12 recover on behalf of himself and all non-exempt employees’ rest period premiums and penalties under
13 Labor Code § 226.7 and § 516.

14 35. Moreover, at all relevant times, and as it pertains to Plaintiff and other non-exempt
15 employees paid on a commission only basis, Defendants failed to establish a regular payday and is
16 required to post a notice that shows the day, time and location of payment in compliance with Labor
17 Code § 207.

18 36. As a result of Defendants’ failure to pay Plaintiff and other non-exempt employees for
19 all overtime worked at the correct overtime rate, failure to pay for all meal and rest period premiums
20 at the “regular rate of pay”, Defendants issued wage statements which failed to accurately identify
21 the gross wages earned, the total hours worked, the net wages earned, and the correct corresponding
22 number of hours worked at each hourly rate, in violation of Labor Code §226(a) (1, 2, 5, and 9).

23 37. In addition, the wage statements issued by Defendants include the incorrect inclusive
24 dates of the period for which Plaintiff and other non-exempt employees are paid commissions in
25 violation of Labor Code §226(a)(6).

26 38. Further, the wage statements issued by Defendants include the incorrect address of the
27 legal entity that is the employer in violation of Labor Code §226(a)(8). The address listed on the
28 California Secretary of State Website is 18071 Fitch Irvine, Ca 92614, while the address listed on the

1 wage statement is 939 E Santa Ana Blvd Santa Ana, CA 92701.

2 39. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
3 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
4 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
5 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
6 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

7 40. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
8 non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants’ violations of
9 Labor Code § 226(a). As such, the wage statements Defendants issued to Plaintiff and other non-
10 exempt employees are in violation of Labor Code §§ 226 (a)(1, 2, 5, 6, 9). Consequently, because
11 Defendants failed to comply with Labor Code § 226(a) and applicable Wage Orders, Plaintiff and
12 other non-exempt employees would be entitled to recover penalties under Labor Code §§ 226(e).

13 41. Finally, because of, Defendants’ failure to pay all overtime wages, and meal and rest
14 period premiums at the “regular rate of pay,” Defendants also failed and continues to fail to pay
15 Plaintiff and other non-exempt employees all wages owed at their time of separation from
16 employment in violation of Labor Code §§ 201-203 and applicable Wage Orders. Thus, non-exempt
17 employees would be entitled to recover penalties under Labor Code §§ 201-203.

18 **CLASS ACTION ALLEGATIONS**

19 42. Plaintiff brings this action on behalf of himself and the following Classes pursuant to
20 § 382 of the Code of Civil Procedure:

21 All non-exempt employees who work or worked for Defendants in California,
22 during the four years immediately preceding the filing of the Complaint through
the date of trial. (“Class”);

23 All non-exempt employees who work or worked for Defendants in California and
24 who worked overtime hours for at least one shift, during the four years immediately
25 preceding the filing of the Complaint through the date of trial. (“Overtime
Subclass”);

26 All non-exempt employees who work or worked for Defendants in California, and
27 during the one year immediately preceding the filing of the Complaint through the
28 date of trial. (“Wage Statement Subclass”);

1 All employees who work or worked for Defendants in California, and who left their
2 employ during the three years immediately preceding the filing of the Complaint
3 through the date of trial. (“Waiting Time Penalty Subclass”)

4 (collectively “the Classes”)

5 43. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
6 joinder of all members would be unfeasible and not practicable. The membership of the Classes is
7 unknown to Plaintiff at this time; however, it is estimated that the Classes consist of at least one
8 hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of
9 Defendants’ employment and payroll records.

10 44. **Common Questions of Law and Fact Predominate/Well Defined Community of**
11 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated
12 employees, which predominate over questions affecting only individual members including, without
13 limitation to:

14 1. Whether Defendants failed to pay overtime at the appropriate legal rate to members
15 of the Classes;

16 2. Whether Defendants provided legally compliant meal and rest periods or proper
17 compensation at the “regular rate of pay” in lieu thereof to members of the Classes;

18 3. Whether Defendants furnished legally compliant wage statements to members of the
19 Classes pursuant to Labor Code § 226(a); and

20 4. Whether the timing and amount of payment of final wages to members of the Class at
21 the time of separation from employment were unlawful.

22 45. **Predominance of Common Questions:** Common questions of law and fact
23 predominate over questions that affect only individual members of the Classes. The common
24 questions of law set forth above are numerous and substantial and stem from Defendants’ policies
25 and/or practices applicable to each individual class member, such as Defendants’ policy/practice of
26 failing to pay overtime at the appropriate premium rate, Defendants’ uniform policy of failing to
27 provide compliant meal and rest periods or adequate compensation in lieu thereof, and Defendants’
28 resulting failure to provide accurate itemized wage statements, and to pay for all wages due upon

1 separation of employment. As such, the common questions predominate over individual questions
2 concerning each individual class member's showing as to his or her eligibility for recovery or as to
3 the amount of his or her damages.

4 46. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
5 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
6 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
7 Plaintiff, like the members of the Classes was deprived of overtime wages, was deprived of meal and
8 rest period premium wages, was subject to Defendants' uniform meal and rest period
9 policies/practices, was not provided accurate itemized wage statements, and was not paid all wages
10 owed at the time of his separation of employment.

11 47. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
12 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
13 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.
14 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
15 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
16 members of the Classes.

17 48. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
18 important public interest in establishing minimum working conditions and standards in California.
19 These laws and labor standards protect the average working employee from exploitation by
20 employers who have the responsibility to follow the laws and who may seek to take advantage of
21 superior economic and bargaining power in setting onerous terms and conditions of employment. The
22 nature of this action and the format of laws available to Plaintiff and members of the Classes make
23 the class action format a particularly efficient and appropriate procedure to redress the violations
24 alleged herein. If each employee were required to file an individual lawsuit, Defendants would
25 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the
26 limited resources of each individual plaintiff with their vastly superior financial and legal resources.

27 49. Moreover, requiring each member of the Classes to pursue an individual remedy
28 would also discourage the assertion of lawful claims by employees who would be disinclined to file

1 an action against their former and/or current employer for real and justifiable fear of retaliation and
2 permanent damages to their careers at subsequent employment. Further, the prosecution of separate
3 actions by the individual class members, even if possible, would create a substantial risk of
4 inconsistent or varying verdicts or adjudications with respect to the individual class members against
5 Defendants herein; and which would establish potentially incompatible standards of conduct for
6 Defendants; and/or legal determinations with respect to individual class members which would, as a
7 practical matter, be dispositive of the interest of the other class members not parties to adjudications
8 or which would substantially impair or impede the ability of the class members to protect their
9 interests. Further, the claims of the individual members of the class are not sufficiently large to
10 warrant vigorous individual prosecution considering all of the concomitant costs and expenses
11 attending thereto. As such, the Classes identified in Paragraph 40 are maintainable as Classes under
12 § 382 of the Code of Civil Procedure.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY ALL OVERTIME WAGES**

15 **(AGAINST ALL DEFENDANTS)**

16 50. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

17 51. This cause of action is brought pursuant to Labor Code §§ 204, 210, 510, 558, 1194,
18 and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime
19 hours worked and provide a private right of action for the failure to pay all overtime compensation
20 for overtime work performed.

21 52. At all times relevant herein, Defendants were required to properly pay Plaintiff and
22 members of Class for all overtime hours worked pursuant to California Labor Code § 1194 and the
23 applicable Wage Orders.

24 53. Section 3 of the applicable Wage Order requires an employer to pay an employee “one
25 and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of 8 hours per
26 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
27 employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve
28 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in

1 the workweek.

2 54. Defendants failed to conform their pay practices to the requirements of the law. This
3 unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice of
4 failing to include all forms of compensation including, but not limited to, sales commissions and other
5 non-discretionary non-hourly pay in calculating the "regular rate of pay" for purposes of paying
6 overtime, which resulted in the Class not being paid all overtime wages owed.

7 55. The foregoing policies and practices are unlawful and create entitlement to recovery
8 by Plaintiff and the members of Class in a civil action for the unpaid amount of overtime wages,
9 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
10 Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure §
11 1021.5.

12 **SECOND CAUSE OF ACTION**

13 **MEAL PERIOD VIOLATIONS**

14 **(AGAINST ALL DEFENDANTS)**

15 56. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

16 57. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in
17 their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiff
18 and members of the Class, with all required meal periods in accordance with the mandates of the
19 California Labor Code and applicable Wage Orders, for the reasons set forth in the Common
20 Allegations section of this Complaint.

21 58. As a result, Defendants are responsible for paying premium compensation for meal
22 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
23 applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

24 **THIRD CAUSE OF ACTION**

25 **REST PERIOD VIOLATIONS**

26 **(AGAINST ALL DEFENDANTS)**

27 59. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28 60. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish

1 the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for
2 each four (4) hour period worked, or major fraction thereof.

3 61. Due to their unlawful rest period policy and practices, Defendants did not authorize
4 and permit Plaintiff and members of the Class to take code-compliant rest periods to which they were
5 legally entitled, including, but not limited to, failing to provide non-exempt employees with a
6 replacement rest period when their rest period was affirmatively interrupted by Defendants. Despite
7 Defendants' violations, Defendants have not paid an additional hour of pay at the "regular rate of
8 pay" to Plaintiff and members of the Class at their respective regular rates of pay for each violation,
9 in accordance with California Labor Code § 226.7.

10 62. The foregoing violations create an entitlement to recovery by Plaintiff and members
11 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
12 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
13 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
16 **(AGAINST ALL DEFENDANTS)**

17 63. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 64. Labor Code 226(a) states in pertinent part the following:

19 "(a) An employer, semimonthly or at the time of each payment of wages, shall
20 furnish to his or her employee, either as a detachable part of the check, draft, or
21 voucher paying the employee's wages, or separately if wages are paid by personal
22 check or cash, an accurate itemized statement in writing showing (1) gross wages
23 earned, (2) total hours worked by the employee, except as provided in subdivision
24 (j), (3) the number of piece-rate units earned and any applicable piece rate if the
25 employee is paid on a piece-rate basis, (4) all deductions, provided that all
26 deductions made on written orders of the employee may be aggregated and shown
27 as one item, (5) net wages earned, (6) the inclusive dates of the period for which
28 the employee is paid, (7) the name of the employee and only the last four digits of
his or her social security number or an employee identification number other than
a social security number, (8) the name and address of the legal entity that is the
employer and, if the employer is a farm labor contractor, as defined in subdivision
(b) of Section 1682, the name and address of the legal entity that secured the

1 services of the employer, and (9) all applicable hourly rates in effect during the pay
2 period and the corresponding number of hours worked at each hourly rate by the
3 employee.”

4 65. As set forth above, during the Class Period, Defendants issued and continue to issue
5 wage statements to its employees including Plaintiff and members of the Wage Statement Subclass,
6 which are inadequate under Labor Code Section 226(a).

7 66. As a result of Defendants failure to pay for all overtime wages at the appropriate legal
8 rate, and missed meal and rest period premiums, Defendants failed to include required information
9 on Plaintiff and the Wage Statement Subclass’ wage statements, including, but not limited to, the
10 gross wages earned, the net wages earned in violation of Labor Code section 226(a).

11 67. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing and
12 intentional.

13 68. As a result of Defendants’ issuance of inaccurate itemized wage statements to Plaintiff
14 and members of the Wage Statement Subclass in violation of section 226(a) of the California Labor
15 Code, Plaintiff and members of the Wage Statement Subclass are each entitled to recover an initial
16 penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty
17 of \$4,000 per Plaintiff and per every member of the Wage Statement Subclass from Defendants
18 pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys’ fees.

19 **FIFTH CAUSE OF ACTION**

20 **WAITING TIME PENALTIES**

21 **(AGAINST ALL DEFENDANTS)**

22 69. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23 70. The actionable period for this cause of action is three years prior to the filing of this
24 Complaint through the present, and on-going until the violations are corrected, or the class is certified.

25 71. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing
26 to Plaintiff and the Waiting Time Penalty Subclass during the actionable period for this cause of
27 action at or around the time that their employment is or was terminated or ended.
28

72. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

73. Defendants willfully failed to pay Plaintiff and the members of the Waiting Time Penalty Subclass for all hours worked, including all minimum and overtime wages, and their meal and rest period premiums at the “regular rate of pay”, prior to or upon termination or separation from employment with Defendants as required by Labor Code §§ 201 and 202.

74. As a result, Defendants are liable to Plaintiff and the Waiting Time Penalty Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Classes pursuant to Labor Code § 203. *See, e.g.,* DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

75. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

76. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay all overtime wages at the appropriate legal rate, by failing to provide all legally required meal and rest periods or pay premium payments at the “regular rate of pay” in lieu thereof, by failing to provide accurate itemized wage statements, by failing to reimburse employees for all necessary business expenses, and by failing to pay all earned wages at the time of separation from employment.

77. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

78. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of

monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

79. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

80. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current hourly non-exempt employees and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

SEVENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT PENALTIES (AGAINST ALL DEFENDANTS)

81. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

82. Defendants have committed several Labor Code violations against Plaintiff and other non-exempt employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other non-exempt employees, bring this representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly non-exempt employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided based on the following Labor Code violations:

a. Failing to provide Plaintiff and other non-exempt employees all overtime and sick pay compensation at the appropriate premium rate in violation of Labor Code §§ 204, 210, 510, 1194 and 1198;

b. Failing to provide Plaintiff and other non-exempt employees with all of their statutorily mandated meal or rest periods or compensation at the "regular rate of pay" in lieu thereof in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;

c. Failing to timely compensate Plaintiff and other non-exempt employees with all

1 earnings at their separation of employment in violation of Labor Code §§ 201-203; and

2 d. Failing to furnish Plaintiff and other non-exempt employees with complete, accurate,
3 itemized wage statements in violations of Labor Code § 226(a).

4 83. On or about October 28, 2023, Plaintiff notified Defendants via certified mail, and the
5 California Labor and Workforce Development Agency (“LWDA”) via its website of Defendant’s
6 violations of the California Labor Code § 2698 et seq., with respect to violations of the California
7 Labor Code identified in Paragraph 82(a)-(d). Now that sixty-five days have passed from Plaintiff
8 notifying Defendant and the LWDA of these violations, Plaintiff will have exhausted his
9 administrative requirements for bringing a claim under the Private Attorneys General Act with respect
10 to these violations.

11 84. Plaintiff was compelled to retain the services of counsel to file this court action to
12 protect their interests and the interests of other non-exempt employees, and to assess and collect the
13 civil penalties owed by Defendants.

14 85. Plaintiff has hereby incurred attorneys’ fees and costs, which he is entitled to receive
15 under California Labor Code § 2698 *et seq.*

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiff prays for judgment for himself and for all others on whose behalf
18 this suit is brought against Defendants, as follows:

- 19 1. For an order certifying the proposed Classes;
- 20 2. For an order appointing Plaintiff as representative of the Classes;
- 21 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 22 4. Upon the First Cause of Action, for compensatory, consequential, general and
23 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 24 5. Upon the Second Cause of Action, for compensatory, consequential, general and
25 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 26 6. Upon the Third Cause of Action, for compensatory, consequential, general and
27 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 28 7. Upon the Fourth Cause of Action, penalties pursuant to Labor Code § 226(a), and

1 reasonable costs and attorneys' fees;

2 8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to
3 Labor Code §§ 201-203.

4 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the
5 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
6 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

7 10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other non-
8 exempt aggrieved employees, and the State of California according to proof pursuant to Labor Code
9 § 2699 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
10 subsequent violation per employee per pay period for those violations of the Labor Code for which
11 no civil penalty is specifically provided under the Labor Code;

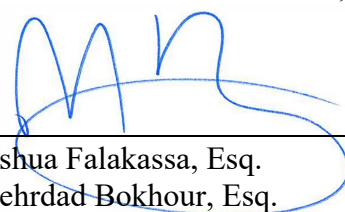
12 11. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
13 § 218.6 and Civil Code §§ 3287 and 3289;

14 12. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
15 218.5, 226, and Code of Civil Procedure § 1021.5; and

16 13. For such other relief that the Court may deem just and proper.

17
18 Dated: November 20, 2023

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

19
20
21 By: 

Joshua Falakassa, Esq.

Mehrdad Bokhour, Esq.

Zachary Cavanagh, Esq.

Attorneys for Plaintiff and the Putative Classes

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to the within action; my business address is 1901 Avenue of the
Stars, Suite 450, Los Angeles, California 90067.

5 On November 30, 2023, I served the following document(s) described as **FIRST**
6 **AMENDED CLASS ACTION AND PAGA COMPLAINT** on the interested parties in this
action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

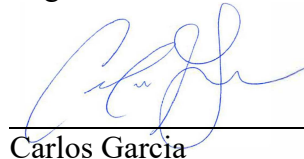
7
8 Charles C. McKenna, Inc.
cmckenna@fkbrlegal.com
9 2 Park Plaza, Suite 850
Irvine, California 92614

10 **Counsel for defendant E-Mortgage Capital, Inc.**

11
12 **BY ELECTRONIC SERVICE:** I transmitted the above-referenced document(s) via
electronic service provider First Legal to the person(s) identified above at the email address(es)
13 indicated and did not, within a reasonable time after transmission, receive any message or
communication indicating that delivery failed or that any other error had occurred which would
14 delay or caused failure in transmission and delivery of the document and/or any attachments
thereto.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct.

17 Executed on November 30, 2023, at Los Angeles, California.

18 
19 _____
Carlos Garcia