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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

MICHAEL WILLIS, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

REVERSE MORTGAGE FUNDING, LLC., a
California Corporation; and DOES 1-50,
inclusive.

Defendants.

CASE NO.: 34-2022-00330912

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

- (1) FAILURE TO PAY OVERTIME WAGES;
- (2) MEAL PERIOD VIOLATIONS;
- (3) REST PERIOD VIOLATIONS;
- (4) WAGE STATEMENT VIOLATIONS;
- (5) FAILURE TO PAY ALL SICK WAGES;
- (6) FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS EXPENSES;
- (7) WAITING TIME PENALTIES;
- (8) VIOLATION OF LABOR CODE §§
1400-1408 ("WARN ACT")
- (9) UNFAIR COMPETITION; and
- (10) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff Michael Willis ("Plaintiff") on behalf of himself, and all other similarly situated non-
2 exempt employees, alleges and complains of Defendant Reverse Mortgage Funding, LLC.
3 ("Defendant"), and DOES 1 to 50 (collectively, "Defendants") and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendants are a mortgage bank that offers a variety of loans solutions, focusing
6 reverse mortgages for elder Americans. Plaintiff brings this class action against Defendants for
7 alleged violations of the California Labor Code and Business and Professions Code.

8 2. As set forth below, Plaintiff alleges that Defendants uniformly violated Labor Code
9 §§ 1400-1408, which requires certain employers to provide workers with at least sixty (60) days
10 advance notice ("warn notice") before a qualifying employer can conduct a mass layoff, a plant
11 closure or a major relocation. Further, Plaintiff alleges that Defendants failed and continue to fail to
12 pay all overtime wages due and fails to properly calculate non-exempt employees' overtime rate by
13 failing to include all forms of remuneration in calculating the "regular rate of pay." Additionally,
14 Plaintiff alleges that Defendants' meal and rest period policies and practices failed to provide him
15 and all other similarly situated employees with compliant meal and rest periods or pay premium pay
16 at the "regular rate of pay" in lieu thereof. Further, Defendants uniformly failed to reimburse Plaintiff
17 and other non-exempt employees for necessary business expenditures. As a result, Plaintiff alleges
18 that Defendants failed to provide non-exempt employees with accurate written itemized wage
19 statements and failed to timely pay all final wages upon separation of employment.

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

23 **JURISDICTION AND VENUE**

24 4. This class action is brought pursuant to California Code of Civil Procedure § 382.

25 5. Plaintiff, on behalf of himself and all others similarly situated employees hereby
26 brings this class action for recovery of unpaid wages and penalties under California Labor Code §§
27 200, 201-203, 204, 210, 226a, 226(e), 226.3, 226.7, 246, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199,
28 and 2802-2804, applicable Industrial Welfare Commission Wage Orders ("Wage Orders"), in

1 addition to seeking declaratory relief and restitution pursuant to California Business and Professions
2 Code § 17200, *et. seq.*

3 6. This Court has jurisdiction over Defendants' violations of the California Labor Code
4 and applicable Wage Orders because the amount in controversy exceeds this Court's jurisdictional
5 minimum.

6 7. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
7 §§ 395(a) and 395.5, as Defendants own, maintain offices, transact business, have an agent or agents
8 within the County of Sacramento, and/or otherwise are found within the County of Sacramento, and
9 Defendants are within the jurisdiction of this Court for purposes of service of process.

10 **PARTIES**

11 8. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is
12 a California resident residing in the State of California. Defendants employed Plaintiff as a non-
13 exempt employee in the County of Sacramento.

14 9. Plaintiff is informed and believes and thereon alleges that Defendant Defendants, LLC
15 is a corporation authorized and doing business in Sacramento, California in Sacramento County,
16 California; and is and/or was the legal employer of Plaintiff and the Class Members during the
17 applicable statutory periods.

18 10. Defendants' policies and/or practices outlined herein have deprived Plaintiff and other
19 similarly situated non-exempt employees of the rights afforded to them by California Labor Code §§
20 201-203, 204, 210, 226, 226a, 226(e), 226.3, 226.7, 246, 510, 512, 1194, 1197.1, 1199, 2802-2804,
21 amongst others, and California Business and Professions Code § 17200 *et seq.*, and applicable Wage
22 Order(s).

23 11. Plaintiff is informed and believes, and based thereon alleges, that during the four years
24 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
25 do) business in the State of California, County of Sacramento. Defendants, each of them, own and/or
26 operate a business in Gold River, California.

27 12. Plaintiff does not know the true names or capacities, whether individual, partner, or
28 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said

1 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
2 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
3 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
4 corporate, were responsible in some manner for the acts and omissions alleged herein, and
5 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
6 alleged herein.

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

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

20 **COMMON FACTUAL ALLEGATIONS**

21 15. Defendants are a mortgage bank that offers a variety of loans solutions, focusing
22 reverse mortgages for elder Americans. Plaintiff was employed as a non-exempt mortgage loan
23 officer from approximately January 2017 until his separation from employment on November 29,
24 2022. Plaintiff and other non-exempt employees were employed as non-exempt employees of
25 Defendants and were responsible for all aspects of Defendants' operations, including but not limited
26 to mortgage loan officer, junior loan officer, loan processor, and all other non-exempt positions.

27 16. First, on or about November 29, 2022, Reverse Mortgage Funding terminated Mr.
28 Willis and all aggrieved employees within the State of California. On the same day of termination,

1 Mr. Willis and other aggrieved employees were notified that they were being terminated effective
2 immediately without 60 days prior notice as required by the California WARN Act.

3 17. The California WARN Act or California Labor Code §§ 1400-1408, requires certain
4 employers, including Reverse Mortgage Funding, to provide workers with at least sixty (60) days
5 advance notice (“warn notice”) before a qualifying employer can conduct a mass layoff, a plant
6 closure or a major relocation. An employer that fails to comply with this regulation by not providing
7 the mandated notice are subject to liability and must provide the terminated employee with back pay
8 and benefits for the period of the violation, or the amount of time by which the advance notice was
9 less than 60 days. The employer is also liable for the cost of any benefits to which the employee
10 would have been entitled had his or her employment not been lost, including the cost of any medical
11 expenses incurred by the employee that would have been covered under an employee benefit plan.
12 The employer is liable for a period of violation up to 60 days or one-half the number of days the
13 employee was employed, whichever period is smaller (See Labor Code §§1402 and 1403).

14 18. Here, as detailed above, Mr. Willis and other aggrieved employees were not provided
15 with a warn notice before being abruptly laid off by Reverse Mortgage Funding in violation of Labor
16 Code Labor Code §§ 1400-1408. Thus, for the violations of Labor Code §§ 1400-1408, as described
17 above, Mr. Hilt and other aggrieved employees are entitled to \$500 a day for each day of violation,
18 in addition to back pay, attorneys’ fees and costs. In addition, Defendants are also liable for cost of
19 any medical expenses incurred by employees that would have been covered under an employee
20 benefit plan for Reverse Mortgage Funding’s violations under Labor Code §§1402 and 1403.

21 19. Next, at all relevant times, Plaintiff and non-exempt employees who were paid on a
22 commission basis were not properly paid at the correct overtime rate for all hours worked in excess
23 of eight (8) hours per workday and/or forty (40) hours per workweek. While non-exempt employees
24 regularly worked overtime hours, they were not compensated at one and one-half times their “regular
25 rate of pay” for all overtime hours worked.

26 20. In addition, because Defendants failed to include all forms of compensation, including
27 but not limited to, commission pay, bonuses, and other forms of non-hourly remuneration when
28 calculating the “regular rate of pay used in overtime calculations. For instance, although Defendants

1 consistently paid its employees commission pay based on certain sales, Defendants omitted these
2 payments when calculating the regular rate of pay used in overtime calculations and when paying
3 overtime to non-exempt employees. Upon information and belief, Defendants paid and continue to
4 pay overtime at the statutory minimum without including all forms of compensation, including
5 commissions.

6 21. In 2010, the U.S. Department of Labor issued new Administrator's Interpretation
7 claiming that it was virtually impossible for mortgage loan officers to meet the duties tests for the
8 administrative exemption because their primary duty was selling loans to individuals and related work
9 incidental to those sales. It said, "The typical job duties of a mortgage loan officer comprise a financial
10 services business' marketplace offerings, the selling of loan products." This statement seemed to
11 apply equally to other loan officers at financial institutions (those who sell consumer and agricultural
12 loans) and not just those selling mortgages.

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

20 23. At all relevant times, Defendants consistently paid Plaintiff and other non-exempt
21 employees commission pay but failed to pay one and a half times the "regular rate of pay" for all
22 overtime hours worked in violation of Labor Code § 510. Additionally, as it pertains to other non-
23 exempt employees, Defendants also failed to pay overtime at the proper "regular rate of pay" due to
24 its uniform failure to include all commissions, bonuses and other remunerations when calculating
25 non-exempt employees' "regular rate of pay".

26 24. Labor Code § 510 requires an employer to compensate an employee who works more
27 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
28 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of

1 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
2 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
3 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
4 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
5 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
6 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

7 25. By their policy of requiring non-exempt employees to work in excess of eight (8)
8 hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of
9 one-half (1 1/2) their "regular rate of pay," Defendants willfully violated the provisions of Labor Code
10 § 510 and the applicable Wage Orders.

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

18 27. Accordingly, to the extent permitted by law, non-exempt employees are entitled to
19 recover unpaid wages and liquidated damages for violations of Labor Code § 1197.1. Based upon
20 these same factual allegations, non-exempt employees are entitled to unpaid wages and penalties
21 under Labor Code § 1199.

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

1 exempt employees were not provided with a second meal period before the tenth hour of work.

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

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

14 31. As a result of Defendants’ unlawful meal period policies/practices, Plaintiff seeks to
15 recover on behalf of himself and all non-exempt employees’ meal period premiums and penalties
16 under Labor Code § 226.7 and § 512.

17 32. Moreover, at all relevant times, Defendants failed and continues to fail to authorize
18 and permit Plaintiff and other non-exempt employees from taking legally compliant rest periods.
19 Plaintiff and other non-exempt employees were often unable to take legally compliant rest periods,
20 or had their rest periods cut short, due to the demands of the job, interruptions, and job responsibilities.
21 As a result, Plaintiff and other non-exempt employees were and are often unable to take (10) minute
22 duty free rest periods for every major fraction of four hours worked. This includes a second rest period
23 for shifts in excess of six hours, and a third rest period for shifts in excess of 10.0 hours in a workday.

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

27 34. Accordingly, for each day that Plaintiff and other non-exempt employees did not
28 receive compliant meal or rest periods, they are entitled to receive meal/rest period premiums

1 pursuant to Labor Code § 226.7 and the applicable Wage Order.

2 35. As a result of Defendants' unlawful rest period policies/practices, Plaintiff seeks to
3 recover on behalf of himself and all non-exempt employees' rest period premiums and penalties under
4 Labor Code § 226.7 and § 516.

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

9 37. Furthermore, at all relevant times, Defendants also failed in its obligation to provide
10 Plaintiff and other non-exempt employees the legally required paid sick days at the legal rate pursuant
11 to Labor Code §§ 246(a),(b), which requires that "[a]n employee who, on or after July 1, 2015, works
12 in California for the same employer for 30 or more days within a year from the commencement of
13 employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
14 worked, beginning at the commencement of employment."

15 38. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must
16 be "calculated in the same manner as the regular rate of pay for the workweek in which the employee
17 uses paid sick time, whether or not the employee actually works overtime in that workweek."
18 Additionally, Labor Code § 246(l)(2) states that the paid sick time must be "calculated by dividing
19 the employee's total wages, not including overtime premium pay, by the employee's total hours
20 worked in the full pay periods of the prior 90 days of employment." Finally, Labor Code §246(i)
21 requires employers to "provide an employee with written notice that sets forth the amount of paid
22 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
23 the employee's itemized wage statement described in Section 226 or in a separate writing provided
24 on the designated pay date with the employee's payment of wages."

25 39. Here, at all relevant times, Defendants failed in its obligation to provide Plaintiff and
26 other non-exempt employees the legally required paid sick days at the legal rate, including all forms
27 of compensation, pursuant to Labor Code §§ 246(a),(b). As such, Defendants paid sick time below
28 his base rate of pay, rather than the "regular rate of pay" as required by Labor Code §§ 246(l)(1-2).

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

6 41. In addition, the wage statements issued by Defendants include the incorrect inclusive
7 dates of the period for which Plaintiff and other non-exempt employees are paid commissions in
8 violation of Labor Code §226(a)(6). Further, the wage statements issued by Defendants include the
9 incorrect address of the legal entity that is the employer in violation of Labor Code §226(a)(8).
10 Further, the wage statements issued by Defendants include the incorrect legal name of the legal entity
11 that is the employer in violation of Labor Code §226(a)(8). The company name as listed on the
12 California Secretary of State Website is "Reverse Mortgage Funding, LLC," rather than "Reverse
13 Mortgage Funding."

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

19 43. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
20 non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants' violations of
21 Labor Code § 226(a). As such, the wage statements Defendants issued to Plaintiff and other non-
22 exempt employees are in violation of Labor Code §§ 226 (a)(1, 2, 5, 6, 9). Consequently, because
23 Defendants failed to comply with Labor Code § 226(a) and applicable Wage Orders, Plaintiff and
24 other non-exempt employees would be entitled to recover penalties under Labor Code §§ 226(e).

25 44. Furthermore, at all relevant times, Defendants required Plaintiff and other non-exempt
26 employees to incur the business expense associated with using their personal cell phones and internet
27 for work related purposes, but Defendants did not reimburse non-exempt employees for these
28 necessary expenditures. See *Cochran v. Schwan's Home Service, Inc.*, (2014) 228 Cal.App.4th 1137,

1 1144 “[i]f an employee is required to make work-related calls on a personal cell phone, then he or
2 she is incurring an expense for the purposes of section 2802. It does not matter whether the phone
3 bill is paid for by a third person, or at all...”].

4 45. Defendants’ uniform failure to reimburse Plaintiff and other non-exempt employees
5 for their on-going business expenses incurred in their discharge of their duties continues through the
6 present day. Indeed, any reimbursement is absent from Plaintiff’ wage statements during his
7 employment. Since Defendants failed to and continue to fail to reimburse Plaintiff and other non-
8 exempt employees for necessary business expenses, they are in violation of Labor Code § 2802.

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

14 **CLASS ACTION ALLEGATIONS**

15 47. Plaintiff brings this action on behalf of himself and the following Classes pursuant to
16 § 382 of the Code of Civil Procedure:

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

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

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

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

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

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

10 1. Whether Defendants failed to provide a warn notice to members of the Classes in
11 violation of Labor Code §§1402 and 1403;

12 2. Whether Defendants failed to pay overtime at the appropriate legal rate to members
13 of the Classes;

14 2. Whether Defendants provided legally compliant meal and rest periods or proper
15 compensation at the "regular rate of pay" in lieu thereof to members of the Classes;

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

18 4. Whether Defendants failed to pay members of the Class all sick pay wages at the
19 proper "regular rate of pay";

20 5. Whether Defendants adequately reimbursed members of the Class for all necessary
21 business expenditures incurred;

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

24 50. **Predominance of Common Questions:** Common questions of law and fact
25 predominate over questions that affect only individual members of the Classes. The common
26 questions of law set forth above are numerous and substantial and stem from Defendants' policies
27 and/or practices applicable to each individual class member, such as Defendants' policy/practice of
28 failing to pay overtime at the appropriate premium rate, Defendants' uniform policy of failing to

1 provide compliant meal and rest periods or adequate compensation in lieu thereof, Defendants failure
2 to reimburse for necessary business expenditures incurred, and Defendants' resulting failure to
3 provide accurate itemized wage statements, and to pay for all wages due upon separation of
4 employment. As such, the common questions predominate over individual questions concerning each
5 individual class member's showing as to his or her eligibility for recovery or as to the amount of his
6 or her damages.

7 51. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
8 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
9 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
10 Plaintiff, like the members of the Classes was terminated with a warn notice, deprived of overtime
11 and sick pay wages, was deprived of meal and rest period premium wages, was subject to Defendants'
12 uniform meal and rest period policies/practices, was not reimbursed for necessary business
13 expenditures, was not provided accurate itemized wage statements, and was not paid all wages owed
14 at the time of his separation of employment.

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

21 53. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
22 important public interest in establishing minimum working conditions and standards in California.
23 These laws and labor standards protect the average working employee from exploitation by
24 employers who have the responsibility to follow the laws and who may seek to take advantage of
25 superior economic and bargaining power in setting onerous terms and conditions of employment. The
26 nature of this action and the format of laws available to Plaintiff and members of the Classes make
27 the class action format a particularly efficient and appropriate procedure to redress the violations
28 alleged herein. If each employee were required to file an individual lawsuit, Defendants would

necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources.

54. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 44 are maintainable as Classes under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

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

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

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

7 59. Defendants failed to conform their pay practices to the requirements of the law. This
8 unlawful conduct includes but is not limited to Defendants’ uniform and unlawful policy/practice of
9 failing to pay overtime wages and failure to properly calculate the “regular rate of pay” for purposes
10 of paying overtime, which resulted in the Class not being paid all overtime wages owed.

11 60. The foregoing policies and practices are unlawful and create entitlement to recovery
12 by Plaintiff and the members of Class in a civil action for the unpaid amount of overtime wages,
13 including interest thereon, statutory penalties, attorney’s fees, and costs of suit according to Labor
14 Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure §
15 1021.5.

16 **SECOND CAUSE OF ACTION**

17 **MEAL PERIOD VIOLATIONS**

18 **(AGAINST ALL DEFENDANTS)**

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

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

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

THIRD CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

65. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

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

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

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(AGAINST ALL DEFENDANTS)

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

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

"(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all

1 deductions made on written orders of the employee may be aggregated and shown
2 as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
3 employee is paid, (7) the name of the employee and only the last four digits of his
4 or her social security number or an employee identification number other than a
5 social security number, (8) the name and address of the legal entity that is the
6 employer, and (9) all applicable hourly rates in effect during the pay period and the
7 corresponding number of hours worked at each hourly rate by the employee.”

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

11 71. As a result of Defendants failure to pay for all overtime wages at the appropriate legal
12 rate, and missed meal and rest period premiums, Defendants failed to include required information
13 on Plaintiff and the Wage Statement Subclass’ wage statements, including, but not limited to, the
14 gross wages earned, the net wages earned in violation of Labor Code section 226(a). In addition,
15 Defendant’s include the incorrect legal name of the entity that is the employer in violation of Labor
16 Code 226(a)(8).

17 72. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing and
18 intentional.

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

25 **FIFTH CAUSE OF ACTION**

26 **FAILURE TO PAY ALL SICK TIME**

27 **(AGAINST ALL DEFENDANTS)**

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

75. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1,
1198, and 1199 which provide that “[a]n employee who, on or after July 1, 2015, works in California

1 for the same employer for 30 or more days within a year from the commencement of employment is
2 entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours worked, beginning
3 at the commencement of employment.”

4 76. At all times relevant herein, Defendants were required to properly pay Plaintiff and
5 members of the Class for all sick time pursuant to California Labor Code § 246 and the applicable
6 Wage Orders.

7 77. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must
8 be “calculated in the same manner as the regular rate of pay for the workweek in which the employee
9 uses paid sick time, whether or not the employee actually works overtime in that workweek.”
10 Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated by dividing
11 the employee’s total wages, not including overtime premium pay, by the employee’s total hours
12 worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code §246(i)
13 requires employers to “provide an employee with written notice that sets forth the amount of paid
14 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
15 the employee’s itemized wage statement described in Section 226 or in a separate writing provided
16 on the designated pay date with the employee’s payment of wages.”

17 78. Defendants failed in their obligation to provide Plaintiff and the Class the legally
18 required paid sick days at the legal rate pursuant to Labor Code §§ 246(a),(b). Plaintiff and the
19 members of the Class were not paid at the correct “regular rate of pay.”

20 The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and
21 the members of the Class in a civil action for the unpaid amount of wages, including interest thereon,
22 statutory penalties, attorney’s fees, and costs of suit according to Labor Code §§ 246 1192, 1194 *et*
23 *seq.*, 1197, 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5

24 **SIXTH CAUSE OF ACTION**

25 **WAITING TIME PENALTIES**

26 **(AGAINST ALL DEFENDANTS)**

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

28 80. The actionable period for this cause of action is three years prior to the filing of this

1 Complaint through the present, and on-going until the violations are corrected, or the class is certified.

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

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

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

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

16 **SEVENTH CAUSE OF ACTION**

17 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

18 **(AGAINST ALL DEFENDANTS)**

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

20 86. Labor Code § 2802(a) states in pertinent part the following:

21 “(a) An employer shall indemnify his or her employee for all necessary
22 expenditures or losses incurred by the employee in direct consequence
23 of the discharge of his or her duties, or of his or her obedience to the
24 directions of the employer, even though unlawful, unless the employee,
at the time of obeying the directions, believed them to be unlawful.”

25 87. As set forth above, Plaintiff and members of the Class must be compensated for all
26 necessary business expenditures, including, but not limited to, costs associated with personal cell
27 phones, internet service for work related purposes, and other business expenses necessarily incurred
28 in their discharge of their duties. (See *Cochran v. Schwan’s Home Service, Inc.* (2014) 228

1 Cal.App.4th 1137 (“We hold that when employees must use their personal cell phones for work-
2 related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
3 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed
4 is a reasonable percentage of their cell phone bills.”); *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17
5 (N.D. Cal. 2014) (granting Plaintiff’s motion for partial summary judgment on Plaintiff’s cell phone
6 reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal.
7 2014) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

8 88. At all relevant times, by failing to reimburse Plaintiff and the Class for all necessary
9 business expenditures, Defendants have failed to comply with Labor Code §2802 and the applicable
10 Wage Orders.

11 89. Plaintiff and the Class seek costs and reasonable attorneys’ fees in accordance with
12 Labor Code § 2802.

13 **EIGHTH CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE §§ 1400-1408 (“WARN ACT”)**

15 **(AGAINST ALL DEFENDANTS)**

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

17 91. Plaintiff, on behalf of herself, and members of the Warn Act Class, seeks recovery
18 of back pay wages, damages, medical expenses incurred, civil penalties, interest, attorneys’ fees and
19 costs of suit and other damages, pursuant to Labor Code §§ 1400-1408, against Defendants in an
20 amount to be proven at trial.

21 92. California Labor Code §§ 1400-1408 protects employees, their families, and
22 communities by requiring employers to give a 60-day notice to the affected employees and both
23 state and local representatives before a plant closing or mass layoff. The employer is liable for period
24 of violation up to 60 days or one-half the number of days the employee was employed whichever
25 period is smaller. (California Labor Code §1403).

26 93. Here, due to Defendants’ violation of the Warn Act as alleged herein, Defendants are
27 liable for \$500 a day for each day of violation, in addition to back pay, attorneys’ fees and costs. In
28 addition, Defendants are also liable for cost of any medical expenses incurred by employees that

1 would have been covered under an employee benefit plan.

2 **NINTH CAUSE OF ACTION**

3 **UNFAIR COMPETITION**

4 **(AGAINST ALL DEFENDANTS)**

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

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

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

18 97. Because Plaintiff is a victim of Defendants’ unfair and/or unlawful conduct alleged
19 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
20 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
21 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

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

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

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TENTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

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

101. Defendants have committed several Labor Code violations against Plaintiff and other similarly aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other similarly aggrieved employees, brings this PAGA representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly aggrieved 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 adequate warn notice to Plaintiff and other aggrieved employees in violation of Labor Code §§ 1401-1408;
- b. Failing to pay Plaintiff and other similarly aggrieved employees for all hours worked, including all minimum and overtime wages in violation of Labor Code §§ 204, 510, 1194, 1197, 1198, and 1182.12 and applicable Wage Orders;
- c. Failure to provide all sick pay wages at the appropriate “regular rate of pay” in violation of Labor Code § 246 and applicable Wage Orders;
- d. Failing to provide Plaintiff and other similarly aggrieved employees with all of their statutorily mandated meal periods in violation of Labor Code §§ 204, 510, 558, 1194 and 1198 and applicable Wage Orders;
- e. Failing to authorize and permit Plaintiff and other similarly aggrieved employees with all of their statutorily mandated rest periods in violation of Labor Code §§ 226.7, and 516 and applicable Wage Orders;
- f. Failing to reimburse for necessary business expenditures in violation of Labor Code §§ 2802-2804 and applicable Wage Orders;
- g. Failing to furnish Plaintiff and other similarly aggrieved employees with complete,

1 accurate, itemized wage statements in violations of Labor Code § 226; and

2 h. Failing to compensate Plaintiff and similarly aggrieved employees with all earnings at
3 their separation of employment in violation of Labor Code §§ 201-203 and applicable Wage Orders.

4 76. On or about December 5, 2022, and on or about February 7, 2023, Plaintiff notified
5 Defendant Reverse Mortgage Funding, LLC., and the California Labor and Workforce Development
6 Agency (“LWDA”) via email of Defendant’s violations of the California Labor Code § 2698 *et seq.*,
7 with respect to violations of the California Labor Code identified in Paragraph 101 (a)-(h). Now that
8 the sixty-five days have passed from Plaintiff notifying Defendant of these violations, Plaintiff has
9 exhausted his administrative requirements for bringing a claim under the Private Attorneys General
10 Act with respect to these violations.

11 77. Plaintiff was compelled to retain the services of counsel to file this court action to
12 protect his interests and the interests of similarly aggrieved employees, and to assess and collect the
13 civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys’ fees and costs, which he
14 is entitled to receive under California Labor Code § 2699.

15 **PRAYER FOR RELIEF**

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

- 18 1. For an order certifying the proposed Classes;
- 19 2. For an order appointing Plaintiff as representative of the Classes;
- 20 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 21 4. Upon the First Cause of Action, for compensatory, consequential, general and special
22 damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 23 5. Upon the Second Cause of Action, for compensatory, consequential, general and
24 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 25 6. Upon the Third Cause of Action, for compensatory, consequential, general and special
26 damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 27 7. Upon the Fourth Cause of Action, all sick pay wages and penalties under Labor Code
28 § 246.

1 8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and
2 reasonable costs and attorneys' fees;

3 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor
4 Code §§ 201-203.

5 10. Upon the Seventh Cause of Action, unreimbursed expenses and attorneys' fees and
6 costs pursuant to Labor Code § 2802-2804, and reasonable costs and attorneys' fees;

7 11. Upon the Eighth Cause of Action, for back pay wages, damages, medical expenses
8 incurred, civil penalties, interest, attorneys' fees and costs of suit and other damages, pursuant to
9 Labor Code §§ 1400-1408;

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

13 13. Upon the Tenth Cause of Action, for civil penalties due to Plaintiff, other similarly
14 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
15 (a) and (f), including, but not limited to (1) \$100.00 for each initial violation and (2) \$200 for each
16 subsequent violation per employee per pay period for those violations

17 14. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
18 § 218.6 and Civil Code §§ 3287 and 3289;

19 15. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
20 218.5, 226, and Code of Civil Procedure § 1021.5; and

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

22 Dated: February 7, 2023

FALAKSSA LAW, P.C.
BOKHOOR LAW GROUP, P.C.

23
24
25 By: _____

26 Joshua Falakassa, Esq.
27 Mehrdad Bokhour, Esq.
28 Attorneys for Plaintiff and the Putative Classes