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Attorneys for Plaintiff Francisco Manzo

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

FRANCISCO MANZO, an individual, in his  
representative capacity on behalf of the State  
of California and fellow Aggrieved  
Employees,

Plaintiff,

v.

BANK OF THE WEST, a California state-  
chartered bank, ; BMO Harris Bank N.A., a  
national banking association; and DOES 1  
through 10, inclusive,

Defendants.

Case No. CGC-23-606104

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

- (1) **COMPLAINT FOR PAGA  
PENALTIES (Labor Code § 2698,  
et seq.)**
- (2) **FAILURE TO REIMBURSE  
BUSINESS EXPENSES;**
- (3) **FAILURE TO PAY MINIMUM  
WAGE;**
- (4) **FAILURE TO PAY OVERTIME  
WAGES;**
- (5) **FAILURE TO PROVIDE OR  
PAY FOR MEAL BREAKS;**
- (6) **FAILURE TO PROVIDE OR  
PAY FOR REST BREAKS;**
- (7) **FAILURE TO PAY ALL WAGES  
OWED EVERY PAY PERIOD;**
- (8) **FAILURE TO FURNISH  
TIMELY AND ACCURATE  
WAGE STATEMENTS;**
- (9) **FAILURE TO PAY ALL WAGES  
DUE AT SEPARATION; and**
- (10) **VIOLATION OF CALIFORNIA'S  
UNFAIR COMPETITION ACT  
(Bus. & Prof. Code, § 17200, et  
seq.)**

**DEMAND FOR JURY TRIAL**

**ELECTRONICALLY  
FILED**

*Superior Court of California,  
County of San Francisco*

**10/12/2023**  
**Clerk of the Court**  
BY: WILLIAM TRUPEK  
Deputy Clerk

1 Plaintiff Francisco Manzo ("Plaintiff"), an individual, on behalf of himself, other  
2 aggrieved employees and others similarly situated against defendants Bank of the West  
3 ("BOTW"), BMO Harris Bank N.A. ("BMO Harris"), and Does 1 through 10 (collectively,  
4 "Defendants") alleges on information and belief, except for his own acts which are based on  
5 personal knowledge, the following:

6 **NATURE OF THE ACTION**

7 1. This is a California statewide class action for wage and hour and labor violations.  
8 This action arises out of, among other things, Defendants' failure to reimburse business expenses  
9 incurred by Plaintiff and class members while working from home. In addition, Defendants paid  
10 their mortgage salespersons on a commission basis which failed to compensate for non-sales  
11 work or rest breaks.

12 2. This action is brought for reimbursement of business expenses, as well as  
13 overtime, minimum wage, meal and rest break compensation, statutory penalties and/or other  
14 authorized relief on behalf of Plaintiff and Defendants' other California employees.

15 3. Plaintiff also brings this representative action pursuant to the Private Attorneys  
16 General Act of 2004, Labor Code §§ 2698, *et seq.* ("PAGA") on behalf of the State of California  
17 and other current and former aggrieved employees of Defendants for engaging in a pattern and  
18 practice of wage and hour violations under the California's Labor Code and applicable wage  
19 orders.

20 4. Defendants' systematic pattern of Labor Code and IWC Wage Order violations  
21 against Plaintiff and other aggrieved employees in California include, the misclassification by  
22 Defendants of their mortgage salespersons as exempt from overtime, minimum wage, and meal  
23 and rest break laws. In violation of California's wage and hour laws, Defendants paid Plaintiff  
24 and other aggrieved employees on a commission basis which failed to compensate for non-sales  
25 work and rest breaks. In addition, Defendants failed to properly reimburse Plaintiff and other  
26 aggrieved employees for business expenses.

27 5. Plaintiff brings this representative action against Defendants on behalf of other  
28 aggrieved employees of Defendants in California seeking all civil penalties and unpaid wages

permitted pursuant to Labor Code §§ 2698, *et seq.*

## **PARTIES**

6. Plaintiff Francisco Manzo was, at relevant times, a resident and citizen of the State of California in the County of Ventura. Plaintiff was employed by Defendants as a mortgage loan officer from approximately June 2022 through January 2023.

7. Defendant Bank of the West (“BOTW”) was a California state-chartered bank, with its main office and headquarters located at 180 Montgomery Street, San Francisco, California. BOTW was the third largest bank headquartered in California, with total assets of approximately \$91.6 billion, total loans of approximately \$58.9 billion, total deposits of approximately \$72.1 billion and total stockholders’ equity of about \$9.2 billion. BOTW conducts a general commercial banking business, providing retail and corporate banking and trust services to individuals, institutions, businesses and governments. BOTW had more than 529 retail branch banking locations and other commercial banking offices as of December 31, 2021, and had more than 564 retail branch banking locations and other commercial banking offices as of December 31, 2020, located in Arizona, California, Colorado, Iowa, Idaho, Kansas, Minnesota, Missouri, North Dakota, Nebraska, New Mexico, Nevada, New York, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming. BOTW was a wholly owned subsidiary of BancWest Holding Inc. (“BWHI”), a bank holding company incorporated in Delaware and headquartered in San Francisco, California. BWHI, in turn, was a wholly owned subsidiary of BNP Paribas SA (“BNPP”), a financial institution based in France.

8. Defendant BMO Harris Bank N.A. (“BMO Harris”) is a national banking association main office and headquarters located at 111 West Monroe Street, Chicago, Illinois. BMO Harris is a wholly owned subsidiary of BMO Financial Corp. Wilmington, Delaware (“BFC”) and BFC is a wholly owned subsidiary of Bank of Montreal (“BMO”), a foreign banking organization and a financial holding company. BFC, has consolidated assets of \$195.1 billion and is the 23rd largest insured depository organization in the United States. BFC controls approximately \$132.4 billion in consolidated deposits. BFC’s subsidiary banks operate in Arizona, Florida, Illinois, Indiana, Kansas, Minnesota, Missouri, Texas, Washington, and

1 Wisconsin.

2 9. On January 18, 2023, the Federal Reserve approved the acquisition of BWHI by  
3 BMO and, thereby, the indirect acquisition of BOTW. This approval resulted in defendant  
4 BOTW being merged with and into defendant BMO Harris. The acquisition was structured as a  
5 cash stock purchase, followed by a merger of holding companies and then a merger of banks.  
6 Specifically, BMO purchased all the shares of BWHI for cash consideration and BWHI  
7 immediately thereafter merged with and into BFC, with BFC as the surviving entity. Defendant  
8 BOTW immediately thereafter merged with and into defendant BMO Harris, with defendant  
9 BMO Harris as the surviving entity. Upon consummation of the acquisition, BFC (which owns  
10 and controls defendant BMO Harris), became the 15th largest insured depository organization in  
11 the United States with consolidated assets of approximately \$286.8 billion and total consolidated  
12 deposits of approximately \$208.2 billion.

13 10. The merger of defendant BMO Harris and defendant BOTW was consummated  
14 pursuant to the July 18, 2022 “Agreement and Plan of Merger of BMO Harris Bank N.A. and  
15 Bank of the West” (the “Merger Agreement”). Section 4 of the Merger Agreement provides:  
16 “All assets of each of BOTW and [BMO Harris], as they exist at the Effective Time, shall pass to  
17 and vest in [BMO Harris] without any conveyance or other transfer. ***[BMO Harris] shall be***  
18 ***responsible for all of the liabilities of every kind and description of each of BOTW and [BMO***  
19 ***Harris] existing as of the Effective Time.***” [Emphasis added.]

20 11. Plaintiff is currently ignorant of the true names and capacities, whether individual,  
21 corporate, associate, or otherwise, of the defendants sued herein under the fictitious names Does  
22 1 through 10, inclusive, and therefore sues such defendants by such fictitious names. Plaintiff  
23 will seek leave to amend this complaint to allege the true names and capacities of said fictitiously  
24 named defendants when their true names and capacities have been ascertained. Plaintiff is  
25 informed and believes and thereon alleges that each of the fictitiously named defendants is  
26 legally responsible in some manner for the events and occurrences alleged herein, and for the  
27 damages suffered by the Plaintiff and other aggrieved employees.

28 12. Plaintiff is informed and believes and thereon alleges that all defendants,

1 including the fictitious Doe defendants, were at all relevant times acting as actual agents,  
2 conspirators, ostensible agents, alter egos, partners and/or joint venturers and/or employees of all  
3 other defendants, and that all acts alleged herein occurred within the course and scope of said  
4 agency, employment, partnership, and joint venture, conspiracy or enterprise, and with the  
5 express and/or implied permission, knowledge, consent authorization and ratification of their co-  
6 defendants; however, each of these allegations are deemed “alternative” theories whenever not  
7 doing so would result in a contradiction with other allegations.

#### 8 **JURISDICTION AND VENUE**

9 13. This Court has jurisdiction over the entire action by virtue of the fact that this is a  
10 civil action wherein the matter in controversy, exclusive of interest and costs, exceeds the  
11 jurisdictional minimum of the Court. The acts and omissions complained of in this action took  
12 place in the State of California. Venue is proper because this is a class action and a representative  
13 PAGA action, the acts and/or omissions complained of took place, in whole or in part within the  
14 venue of this Court, and/or the contract for employment was entered into within the venue of this  
15 Court.

#### 16 **FACTUAL ALLEGATIONS**

17 14. Plaintiff worked as a mortgage salespersons or loan officer for Defendants within  
18 the liability period selling mortgages. Defendants paid Plaintiff and Class members based on a  
19 sales commission, where their income is derived from mortgage sales.

20 15. Plaintiff is an “aggrieved employee” within the meaning of section 2699(c) of the  
21 Labor Code because he was employed by Defendants and suffered one or more of the alleged  
22 Labor Code violations committed by Defendants.

23 16. Plaintiff has provided the required notice of intent to bring this PAGA action.  
24 Plaintiff has complied with all conditions or requirements for bringing suit, save those  
25 Defendants waived, forfeited, and/or are estopped from asserting.

26 17. Defendants’ pay plan failed to compensate for non-sales work. Defendants failed  
27 to pay Plaintiff and Class members for all hours worked, including but not limited to, meetings,  
28 loan processing, training, loan tracking, and/or customer service.

1           18.     Plaintiff and the Class regularly worked overtime, including working days that  
2 were 10 hours or more, and weeks that were 50 hours or more. Plaintiff is informed and  
3 believes, and on that basis alleges, that Plaintiff and Class members regularly worked overtime  
4 that they were not compensated for. In violation of Labor Code §510, Defendants failed to pay  
5 overtime to its mortgage loan officers.

6           19.     Defendants had their employees, including Plaintiff, work from home.  
7 Defendants, however, failed to reimburse Plaintiff and the class for necessary business expenses  
8 incurred while working from home. The business expenses Defendants failed to reimburse  
9 Plaintiff and other class members include, but are not limited to, internet, phone, personal  
10 computer usage, office supplies, utility bills, and/or fair rental value of space used for home  
11 office. Defendant also failed to reimburse for other business expenses during the liability period.  
12 Defendant's failure to reimburse business expenses violated Labor Code § 2802.

13           20.     Defendants did not provide Plaintiff or the Class with adequate meal or rest  
14 breaks. In violation of Labor Code §226.7, Defendants also did not compensate Plaintiff and the  
15 Class for rest breaks because Defendants paid on a commission basis for sales work, and failed  
16 to separately pay Plaintiff and Class members for rest breaks.

17           21.     In violation of Labor Code § 226(a), Defendants have issued false and inaccurate  
18 wage statements which fail to account for all Plaintiff and other non-exempt employees' wages  
19 earned, including minimum wage, overtime and premium pay for missed meal or rest breaks,  
20 and/or failed to accurately reflect reimbursement for business expenses.

21           22.     Defendants' conduct violated, among other statutes, Labor Code §§ 201, 202,  
22 203, 204, 218.5 226, 226.3, 226.7, 510, 512, 1194, as well as IWC Wage Order No. 4-2001.

23           23.     Plaintiff is a member of and seeks to be the representative for the group of  
24 employees who all have been exposed to, have suffered, and/or were permitted to work under,  
25 Defendants' unlawful employment practices as alleged herein.

26                   **CLASS DEFINITION AND CLASS ALLEGATIONS**

27           24.     Plaintiff brings this action on behalf of himself, and on behalf of all others  
28 similarly situated, and as a member of the Classes defined as follows:

1           **CLASS:** All current or former employees of Defendants who worked in  
2           California at any time beginning four years prior to the filing of this  
3           complaint through the date notice is mailed to the Class.

4           **LOAN OFFICER SUBCLASS:** All current or former employees of  
5           Defendants who worked in California as mortgage salespersons or loan  
6           officers or similar position, at any time beginning four years prior to the  
7           filing of this complaint through the date notice is mailed to the Class.

8           25.     Plaintiff reserves the right to amend or otherwise alter the class definitions  
9           presented to the Court at the appropriate time, or to propose or eliminate sub-classes, in response  
10          to facts learned through discovery, legal arguments advanced by Defendant or otherwise.

11          26.     This action has been brought and may be properly maintained as a class action  
12          pursuant to California Code of Civil Procedure § 382 and other applicable law, as follows:

13          27.     **Numerosity of the Class:** Members of the Class are so numerous that their  
14          individual joinder is impracticable. The precise number of Class members and their addresses  
15          are known to Plaintiff or will be known to Plaintiff through discovery. Class members may be  
16          notified of the pendency of this action by mail, electronic mail, the Internet, or published notice.

17          28.     **Existence of Predominance of Common Questions of Fact and Law:**  
18          Common questions of law and fact exist as to all members of the Class. These questions  
19          predominate over any questions affecting only individual Class members. These common legal  
20          and factual questions include:

- 21               a.     Whether Defendants violated Labor Code § 2802 by failing to reimburse
- 22               its employees for business expenses;
- 23               b.     Whether Defendants violated IWC Wage Order No. 4-2001 and Labor
- 24               Code § 1194 by failing provide or pay minimum wage to its mortgage
- 25               loan officers for non-sales time;
- 26               c.     Whether Defendants violated IWC Wage Order No. 4-2001 and Labor
- 27               Code § 510 by failing provide or pay overtime to mortgage loan officer;
- 28               d.     Whether Defendants violated IWC Wage Order No. 4-2001 and Labor

Code § 226.7 by failing provide or pay for meal breaks;

e. Whether Defendants violated IWC Wage Order No. 4-2001 and Labor Code § 226.7 by failing provide or pay for rest breaks;

f. Whether Defendants engaged in unlawful, unfair, or fraudulent practices and violated California Business and Professions Code § 17200 by failing to reimburse for business expenses; and

g. The nature and extent of class-wide injury and measure of damages for the injury.

29. **Typicality:** Plaintiff's claims are typical of the claims of the members of the class and subclass they represent because Plaintiff worked from home, without getting reimbursed for business expenses, and was employed as a mortgage loan officer, was not reimbursed business expenses, and was paid on a commission basis. Thus, Plaintiff was exposed and subjected to the same unlawful business practices as each Class member during the liability period. Plaintiff and the members of the classes he seeks to represent sustained the same types of damages and losses.

30. **Adequacy:** Plaintiff is an adequate representatives of the Class and Subclass that he seeks to represent because his interests do not conflict with the interests of the members of the classes. Plaintiff has retained counsel competent and experienced in complex class action litigation and Plaintiff intends to prosecute this action vigorously. The interests of members of each Class will be fairly and adequately protected by Plaintiff and their counsel.

31. **Superiority and Substantial Benefit:** The class action is superior to other available means for the fair and efficient adjudication of Plaintiff and the Class members' claims. The violations of law were committed by Defendant in a uniform manner and class members were exposed to the same unlawful practices. The damages suffered by each individual Class member may be limited. Damages of such magnitude are small given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. Further, it would be virtually impossible for the Class members to redress the wrongs done to them on an individual basis. Even if members of the Class themselves could afford such individual litigation, the court system could not. Individualized litigation increases the delay and

1 expense to all parties and the court system, due to the complex legal and factual issues of the  
2 case. By contrast, the class action device presents far fewer management difficulties, and  
3 provides the benefits of single adjudication, economy of scale, and comprehensive supervision  
4 by a single court.

5 32. The Class should also be certified because:

- 6 a) The prosecution of separate actions by individual members of the Class  
7 would create a risk of inconsistent or varying adjudications with respect to  
8 individual Class members which would establish incompatible standards  
9 of conduct for Defendants;
- 10 b) The prosecution of separate actions by individual members of the Class  
11 would create a risk of adjudication with respect to them, which would, as a  
12 practical matter, be dispositive of the interests of the other Class members  
13 not parties to the adjudications, or substantially impair or impede their  
14 ability to protect their interests; and
- 15 c) Defendants have acted or refused to act on grounds generally applicable to  
16 the Class, and/or the general public, thereby making appropriate final and  
17 injunctive relief with respect to the Classes as a whole.

18  
19 **FIRST CAUSE OF ACTION**  
20 **REPRESENTATIVE CLAIM UNDER THE CALIFORNIA LABOR CODE**  
21 **PRIVATE ATTORNEY GENERAL ACT**  
22 **(Violation of California's Labor Code §§ 2698 *et seq.*)**  
23 **(Against All Defendants)**

24 33. Plaintiff re-alleges, and incorporates by reference, the preceding paragraphs of  
25 this Complaint, as though fully set forth herein.

26 34. Plaintiff brings this cause of action individually and in his representative capacity  
27 on behalf of the State of California and on behalf of the following employees of Defendants:

28 All current or former employees of Defendants who at any time  
from February 8, 2022 to the present (the "PAGA Period") worked  
for Defendants in California as mortgage salespersons or loan

1 officers or similar position, were classified as exempt, and suffered  
2 on or more Labor Code violations enumerated in sections 2698 et  
3 seq. of the Labor Code (“Aggrieved Employees”).

4 35. The claims alleged herein are appropriately suited for a Labor Code Private  
5 Attorneys General Act of 2004 (“PAGA”) action because:

6 a. Pursuant to California Labor Code § 2699(a), any provision of the *Labor Code* “that  
7 provides for a civil penalty to be assessed and collected by the Labor and Workforce  
8 Development Agency or any of its departments, divisions, commissions, boards, agencies, or  
9 employees, for a violation of this code, may, as an alternative, be recovered through a civil action  
10 brought by an aggrieved employee on behalf of himself or herself and other current or former  
11 employees pursuant to the procedures specified in section 2699.3.”

12 b. This action involves allegations of violations of provisions of the California Labor  
13 Code that provide or do not provide for a civil penalty to be assessed and collected by the  
14 LWDA or any departments, divisions, commissions, boards, agencies, or employees.

15 c. Plaintiff is an “aggrieved employee” because he was employed by the alleged  
16 violators and had one or more of the alleged violations committed against him.

17 d. Plaintiff satisfied the procedural requirements of section 2699.3 by serving, via  
18 certified mail, the LWDA and Defendants with notice for wage and hour violations and  
19 penalties, including the facts and theories to support each violation. More than 65 days have  
20 passed since Plaintiff served via certified mail to LWDA and her former employer. Therefore,  
21 Plaintiff satisfied all the administrative requirements to pursue civil penalties against Defendants  
22 pursuant to Labor Code section 2698, *et seq.*

23 36. Plaintiff filed this cause of action pursuant to Labor Code section 2699(a) and (f),  
24 on behalf of all current and former aggrieved employees of Defendants to recover civil penalties.

25 37. Defendants, including the Doe defendants, were Plaintiff’s employers or persons  
26 acting on behalf of Plaintiff’s employer, within the meaning of California Labor Code § 558,  
27 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code  
28 or any provision regulating hours and days of work in any order of the Industrial Welfare

Commission and, as such, are subject to penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

38. Plaintiff, on behalf of himself and all other non-exempt employees of Defendants, seeks to recover all applicable civil penalties pursuant to PAGA.

**SECOND CAUSE OF ACTION**  
**FAILURE TO REIMBURSE BUSINESS EXPENSES**  
**(Violation of Labor Code § 2802)**  
**(Against All Defendants)**

39. Plaintiff re-alleges, and incorporates by reference, the preceding paragraphs of this Complaint, as though fully set forth herein.

40. Plaintiff brings this cause of action on his own behalf on behalf of the Class and Loan Office Subclass.

41. California Labor Code § 2802 provides “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

42. During the applicable statutory period, Plaintiff and the Class members incurred necessary expenditures and losses in direct consequence of the discharge of their employment duties and their obedience to the directions of Defendants. These business expenses which Plaintiff and class members incurred, which were not reimbursed include, but are not limited to, internet, phone, personal computer usage, office supplies, utility bills, and/or fair rental value of space used for home office. Defendants did not reimburse these expenditures or losses to Plaintiff and the Class.

43. Defendants have failed to fully reimburse Plaintiff and the members of the Class for necessary business-related expenses and losses. Thus, all employees who worked for Defendant from home in California in any position or capacity suffered losses from Defendant’s failure to reimburse business expenses, and are part of the Class.

44. Plaintiff and the Class members are entitled to recover their unreimbursed

1 expenditures and losses pursuant to Labor Code § 2802.

2 **THIRD CAUSE OF ACTION**  
3 **FAILURE TO PAY MINIMUM WAGES**  
4 **(Violation of Labor Code §§ 510, 1194, 1194.2, 1197; Wage Order No. 4-2001, §4)**  
5 **(Against All Defendants)**

6 45. Plaintiff re-alleges, and incorporates by reference, the preceding paragraphs of  
7 this Complaint, as though fully set forth herein.

8 46. Plaintiff brings this cause of action on his own behalf on behalf of the Class and  
9 Loan Office Subclass.

10 47. Labor Code § 510 provides in relevant part: “[e]ight hours of labor constitutes a  
11 day’s work.” Labor Code §1197 provides: “The minimum wage for employees fixed by the  
12 commission is the minimum wage to be paid to employees, and the payment of a less wage than  
13 the minimum so fixed is unlawful.”

14 48. Labor Code § 1194, subdivision (a) provides: “Notwithstanding any agreement to  
15 work for a lesser wage, an employee receiving less than the legal minimum wage or the legal  
16 overtime compensation applicable to the employee is entitled to recover in a civil action the  
17 unpaid balance of the full amount of this minimum wage or overtime compensation, including  
18 interest thereon, reasonable attorney’s fees, and costs of suit.”

19 49. Labor Code § 1194.2 provides in relevant part: “In any action under Section  
20 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the  
21 minimum wage fixed by an order of the commission, an employee shall be entitled to recover  
22 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

23 50. Pursuant to IWC Wage Order No. 4-2001, at all times material hereto, “hours  
24 worked” includes “the time during which an employee is subject to the control of an employer,  
25 and includes all the time the employee is suffered or permitted to work, where or not required to  
26 do so.”

27 51. Plaintiff and Class members were required to work non-selling time, for which  
28 they were not compensated, in violation of California’s minimum wage laws. This includes, but  
is not limited to, including but not limited to, meetings, loan processing, training, loan tracking,

1 and/or customer service. At all times relevant during the liability period, under the provisions of  
2 Wage Order No. 4-2001, Plaintiff and each Loan Officer Subclass member should have received  
3 not less than the minimum wage in a sum according to proof for the time worked, but not  
4 compensated.

5 52. For all hours that Plaintiff and the Loan Officer Subclass members worked, they  
6 are entitled to not less than the California minimum wage and, pursuant to Labor Code §  
7 1194.2(a) liquidated damages in an amount equal to the unpaid minimum wages and interest

8 53. thereon. Pursuant to Labor Code § 1194, Plaintiff and the Class members are also  
9 entitled to their attorneys' fees, costs and interest according to proof.

10 54. At all times relevant during the liability period, Defendants willfully failed and  
11 refused, and continues to willfully fail and refuse, to pay Plaintiff and the Loan Officer Subclass  
12 members the amounts owed.

13 55. Defendants' unlawful conduct alleged herein occurred in the course of  
14 employment of Plaintiff and all other similarly situated loan officers, and Defendants has done so  
15 continuously throughout the filing of this complaint.

16 56. As a direct and proximate result of Defendants' violation of Labor Code §§ 510  
17 and 1197, Plaintiff and other Loan Officer Subclass members have suffered irreparable harm and  
18 money damages entitling them to damages, injunctive relief or restitution. Plaintiff, on behalf of  
19 himself and on behalf of the Loan Officer Subclass, seeks damages and all other relief allowable  
20 including all wages due while working as Defendants' drivers, attorneys' fees, liquidated  
21 damages, prejudgment interest, and as to those employees no longer employed by Defendants,  
22 waiting time penalties pursuant to Labor Code § 200 et seq.

23 57. Plaintiff and the Loan Officer Subclass members are entitled to back pay, pre-  
24 judgment interest, liquidated damages, statutory penalties, attorneys' fees and costs, and for  
25 Plaintiff and the Loan Officer Subclass members no longer employed, waiting time penalties  
26 pursuant to Labor Code § 1194.

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**FOURTH CAUSE OF ACTION**

**FAILURE TO PAY ALL OVERTIME AND DOUBLE TIME WAGES  
(Violation of *Labor Code* §§ 510 and 1194; Wage Order No. 4-2001, § 3(A))**

58. Plaintiff re-alleges, and incorporates by reference, the preceding paragraphs of this Complaint, as though fully set forth herein.

59. Plaintiff brings this cause of action on his own behalf on behalf of the Class and Loan Office Subclass.

60. California Labor Code §510 provides that, “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee....”

61. Labor Code § 1194, subdivision (a) provides: “Notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

62. Section 3(a)(1) of Wage Order No. 4-2001 also mandates that employers pay one and one-half times the employees’ regular rate of pay for employees who work more than eight (8) hours in a day or forty (40) hours in a week, and two times their regular rate of pay for any work in excess of twelve (12) hours in one day.

63. At all times relevant hereto, Plaintiff and members of the Loan Officer Class were non-exempt for purposes of the overtime and double pay requirements set forth in the Labor Code and Wage Order No. 4-2001. In addition, during the Class period, Plaintiffs and other members of the Loan Officer Subclass consistently worked ten (10) hours or more per day, and 50 hours or more per week.

64. Plaintiff and the Loan Officer Subclass seek to recover unpaid overtime and

double-time compensation in an amount to be determined at trial, as well as attorney's fees and costs.

**FIFTH CAUSE OF ACTION**  
**FAILURE TO PROVIDE MEAL PERIODS**  
**(Violation of Labor Code §§ 512 and 226.7; IWC Wage Order No. 4-2001, § 11)**  
**(Against All Defendants)**

65. Plaintiff re-alleges, and incorporates by reference, the preceding paragraphs of this Complaint, as though fully set forth herein.

66. Plaintiff brings this cause of action on his own behalf on behalf of the Class and Loan Office Subclass.

67. California Labor Code § 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

68. IWC Order No. 4-2001(11)(A) provides, in relevant part: "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee."

69. Section 512(a) of the California Labor Code provides, in relevant part, that: "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

70. As alleged herein, Defendants failed to authorize and permit uninterrupted meal breaks. Plaintiff and members of the Loan Officer Subclass were routinely required to work without an uninterrupted meal break at the direction of Defendants and/or with Defendants'

1 knowledge and acquiescence.

2 71. By its actions in requiring its employees to work through meal periods and/or its  
3 failure to relieve drivers of their duties for their off-duty meal periods, Defendant have violated  
4 California Labor Code § 226.7 and § 11 of IWC Wage Order No. 4-2001, and is liable to  
5 Plaintiff and the Loan Officer class.

6 72. As a result of the unlawful acts of Defendants, Plaintiff and the Loan Officer  
7 Subclass have been deprived of timely off-duty meal periods, and are entitled to recovery under  
8 Labor Code § 226.7(b) and § 11 of IWC Wage Order No. 4-2001, in the amount of one  
9 additional hour of pay at the employee's regular rate of compensation for each work period in  
10 which Defendants failed to provide its drivers with timely statutory off-duty meal periods.

#### 11 **SIXTH CAUSE OF ACTION**

#### 12 **FAILURE TO PROVIDE OR PAY FOR REST BREAKS** 13 **(Violation of Labor Code §§ 226.7, 512, and 1194; IWC Wage Order No. 4-2001, §12)**

14 73. Plaintiff re-alleges, and incorporates by reference, the preceding paragraphs of  
15 this Complaint, as though fully set forth herein.

16 74. Plaintiff brings this cause of action on his own behalf on behalf of the Class and  
17 Loan Office Subclass.

18 75. California Labor Code § 226.7(a) provides, "No employer shall require any  
19 employee to work during any meal or rest period mandated by an applicable order of the  
20 Industrial Welfare Commission."

21 76. IWC Order No.4-2001(12)(A) provides, in relevant part: "Every employer shall  
22 authorize and permit all employees to take rest periods, which insofar as practicable shall be in  
23 the middle of each work period. The authorized rest period time shall be based on the total hours  
24 worked daily at the rate of ten (10) minutes net rest time per four hours or major fraction thereof.  
25 However, a rest period need not be authorized for employees whose total daily work times is less  
26 than three and one-half hours. Authorized rest period time shall be counted as hours worked for  
27 which there shall be no deduction from wages."

28 77. IWC Order No. 4-2001 (12)(B) further provides, "If an employer fails to provide  
an employee with a rest period in accordance with the applicable provisions of this order, the

1 employer shall pay the employee one (1) hour of pay at the employee's regular rate of  
2 compensation for each workday that the rest period is not provided."

3 78. As alleged herein, Defendants failed to provide or pay rest breaks during the Class  
4 period. Defendant also paid Plaintiff and class members based on a commission, and did not  
5 separately compensate them for their time.

6 79. By their actions, Defendants violated § 12 of IWC Wage Order No. 4-2001 and  
7 California Labor Code § 226.7, and are liable to Plaintiffs and the Loan Officer Subclass.

8 80. Defendants' unlawful conduct alleged herein occurred in the course of  
9 employment of Plaintiff and all others similarly situated and such conduct has continued through  
10 the filing of this complaint.

11 81. As a direct and proximate result of Defendants' unlawful action, Plaintiffs and the  
12 Loan Officer Subclass have been deprived of timely rest periods and/or were not paid for rest  
13 periods taking during the Loan Officer Class period, and are entitled to recovery under Labor  
14 Code § 226.7(b) in the amount of one additional hour of pay at the employee's regular rate of  
15 compensation for each work period during each day in which Defendant failed to provide  
16 employees with timely and/or paid rest periods.

17 **SEVENTH CAUSE OF ACTION**  
18 **FAILURE TO PAY ALL WAGES OWED EVERY PAY PERIOD**  
19 **(Violation of Labor Code § 204)**  
20 **(Against All Defendants)**

21 82. Plaintiff re-alleges, and incorporates by reference, the preceding paragraphs of  
22 this Complaint, as though fully set forth herein.

23 83. Plaintiff brings this cause of action on his own behalf on behalf of the Class and  
24 Loan Office Subclass.

25 84. California Labor Code § 204 establishes the fundamental right of all employees in  
26 the State of California to be paid wages in a timely fashion for their work.

27 85. At all times relevant during the liability period, Defendants failed to pay Plaintiff  
28 and the Expense Reimbursement Class and Loan Officer Class the full amount of all owed wages  
when due as required by California Labor Code § 204.

1           86. Defendants failed to pay Plaintiff and other similarly situated employees all  
2 wages earned each pay period. Plaintiff are informed, believe, and thereon allege, that at all  
3 times relevant during the liability period, Defendants maintained a policy or practice of not  
4 paying Plaintiff and other similarly situated employees: (i) minimum wages for all hours worked;  
5 (ii) overtime wages for all overtime hours worked; and (iii) premium wages for all missed meal  
6 and rest periods.

7           87. As a result of Defendants' unlawful conduct, Plaintiff and members of the each  
8 Class have suffered damages in an amount, subject to proof, to the extent they were not paid all  
9 wages each pay period. The precise amount of unpaid wages is not presently known to Plaintiff  
10 but can be determined directly from Defendants' records or indirectly based on information from  
11 Defendants' records.

12                                   **EIGHTH CAUSE OF ACTION**  
13           **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS**  
14                                   **(Violation of Labor Code §§ 226 and 226.3)**  
15                                   **(Against All Defendants)**

16           88. Plaintiff re-alleges, and incorporates by reference, the preceding paragraphs of  
17 this Complaint, as though fully set forth herein.

18           89. Plaintiff brings this cause of action on his own behalf on behalf of the Class and  
19 Loan Office Subclass.

20           90. California Labor Code § 226(a) provides: "Every employer shall, semimonthly or  
21 at the time of each payment of wages, furnish each of his or her employees, either as a  
22 detachable part of the check, draft, or voucher paying the employee's wages, or separately when  
23 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)  
24 gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units  
25 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all  
26 deductions, provided that all deductions made on written orders of the employee may be  
27 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for  
28 which the employee is paid, (7) the name of the employee and his or her social security number,  
except that by January 1, 2008, only the last four digits of his or her social security number or an

1 employee identification number other than a social security number may be shown on the  
2 itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all  
3 applicable hourly rates in effect during the pay period and the corresponding number of hours  
4 worked at each hourly rate by the employee.”

5 91. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for the  
6 initial pay period in which a violation of § 226 occurs and \$100 for each subsequent pay period,  
7 as well as an award of costs and reasonable attorneys’ fees, for all pay periods in which the  
8 employer knowingly and intentionally failed to provide accurate itemized statements to the  
9 employee causing the employee to suffer injury.

10 92. Plaintiff is informed, believe and thereon alleges that at all times relevant.  
11 Defendants knowingly and intentionally failed to furnish and continues to knowingly and  
12 intentionally fail to furnish Plaintiff, the Class and Subclass with timely and accurate itemized  
13 statements showing the gross wages earned by each of them, as required by Labor Code § 226  
14 (a), in that the payments owed to Plaintiff and the members of the Class for unreimbursed  
15 business expenses, unpaid wages, and missed meal and rest periods, were not included in gross  
16 wages earned by Plaintiff and the Class.

17 93. Defendants’ failure to provide Plaintiff and members of the Class and the Loan  
18 Officer Subclass with accurate itemized wage statements during the Class period has caused  
19 Plaintiff and members of the Class and Loan Officer Subclass to incur economic damages in that  
20 they were not aware that they were owed and not paid compensation for missed rest periods and  
21 on-duty meal periods, for hours worked without pay, and for overtime worked without pay. In  
22 addition, Defendants provided inaccurate information regarding hours worked, which masked  
23 their underpayment of wages to Plaintiff and the Class and the Loan Officer Subclass.

24 94. As a result of Defendants’ issuance of inaccurate itemized wage statements to  
25 Plaintiff and members of the Class and the Loan Officer Subclass in violation of Labor Code §  
26 226(a), Plaintiff and the members of each Class are each entitled to recover penalties pursuant to  
27 § 226(e) of the Labor Code.

28 ///

**NINTH CAUSE OF ACTION**  
**FAILURE TO PAY ALL WAGES DUE AT SEPARATION**  
**(Violation of Labor Code § 203)**

95. Plaintiff re-alleges, and incorporates by reference, the preceding paragraphs of this Complaint, as though fully set forth herein.

96. Plaintiff brings this cause of action on his own behalf on behalf of the Class and Loan Office Subclass.

97. California Labor Code §§ 201 and 202 requires Defendant to pay all compensation due and owing to former mortgage salespersons at or around the time employment is terminated. Section 203 of the California Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by §§ 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) work days. At all times relevant during the liability period, Plaintiff and the other members of the Class were employees of Defendant covered by Labor Code § 203.

98. Plaintiff and the Expense Reimbursement Class and the Loan Officer Class were not paid for their work performed, as set forth herein, including minimum wage for non-sales time, overtime pay, vacation pay, or their proper commission for certain loans.

99. Defendant willfully failed to pay Plaintiff and other members of the Expense Class and the Loan Officer Subclass who are no longer employed by Defendant for their uncompensated hours, uncompensated overtime, and for other items alleged herein upon their termination or separation from employment with Defendant as required by California Labor Code §§ 201 and 202. As a result, Defendant is liable to Plaintiff and other members of the Class and the Loan Officer Subclass who are no longer employed by Defendant for all wages or compensation owed, as well as waiting time penalties amounting to thirty days wages for Plaintiff and each such Class member pursuant to California Labor Code § 203.

**TENTH CAUSE OF ACTION**  
**VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION ACT**  
**(Violation of California's Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et seq.*)**

100. Plaintiff re-alleges, and incorporates by reference, the preceding paragraphs of this Complaint, as though fully set forth herein.

101. Section 17200 of the California Business and Professions Code (the “UCL”) prohibits any unlawful, unfair, or fraudulent business practices.

102. Through its action alleged herein, Defendants have engaged in unfair competition within the meaning of the UCL. Defendant's conduct, as alleged herein, constitutes unlawful, unfair, and/or fraudulent business practices under the UCL.

103. Defendants' unlawful conduct under the UCL includes, but is not limited to, violating the statutes alleged herein. Defendant's unfair conduct under the UCL includes, but is not limited to, failure to pay wages and compensation for unreimbursed business expenses, minimum wage, overtime, and meal or rest breaks, as alleged herein. Defendants' fraudulent conduct includes, but is not limited to, issuing wage statements containing false and/or misleading information about compensation for Class and Subclass members.

104. Plaintiff has standing to assert this claim because he has suffered injury in fact and has lost money as a result of Defendants' conduct.

105. Plaintiff and the Class and the Loan Officer Subclass seek restitutionary disgorgement from Defendants, and an injunction prohibiting them from engaging in the unlawful, unfair, and/or fraudulent conduct alleged herein.

## PRAYER

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated and also on behalf of the general public, prays for judgment against Defendants as follows:

- A. An order that this action may proceed and be maintained as a representative action;
- B. For penalties and other relief pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
- C. An order that this action may proceed and be maintained as a class action;
- D. For reimbursement of business expenses under Labor Code § 2802 for Plaintiff and all members of the Class;
- E. For all unpaid minimum wages and liquidated damages due to Plaintiff and each Loan Officer Subclass member on their minimum wage claim;

- 1 F. For all unpaid overtime wages and liquidated damages under California law due  
2 to Plaintiff and each Loan Officer Subclass member on their overtime wage  
3 claim;
- 4 G. For one hour of wages due to Plaintiff and each Loan Officer Subclass member at  
5 their regular rate of compensation for each meal break violations;
- 6 H. For one hour of wages due to Plaintiff and each Loan Officer Subclass member at  
7 their regular rate of compensation for each rest break violations;
- 8 I. For statutory penalties under Labor Code § 226(e) for Plaintiff and each Class or  
9 Loan Officer Subclass member;
- 10 J. An order requiring Defendants to comply with Labor Code § 226(a) with respect  
11 to all currently employed members of the Class or Loan Officer Subclass;
- 12 K. For damages and/or penalties under Labor Code Sections 201, 202, and 203 for  
13 the failure to provide all wages due at separation;
- 14 L. For restitutionary disgorgement pursuant to the UCL;
- 15 M. An order enjoining Defendants from further unfair and unlawful business  
16 practices in violation of Business & Professions Code §§ 17200 *et seq.*;
- 17 N. Prejudgment interest at the maximum legal rate;
- 18 O. For reasonable attorneys' fees and costs under Labor Code §§ 218.5, 226(e)(1)  
19 and/or Code of Civil Procedure §1021.5;
- 20 P. Accounting of Defendants' records for the liability period;
- 21 Q. General, special and consequential damages, to the extent allowed by law;
- 22 R. Costs of suit; and
- 23 S. Such other relief as the Court may deem just and proper.

24 DATED: October 12, 2023

**HAFFNER LAW PC**

25 By:   
26 \_\_\_\_\_

Joshua H. Haffner

Alfredo Torrijos

27 Vahan Mikayelyan

28 Attorneys for Plaintiff and others  
similarly situated

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a trial by jury for himself and for each Class member on all  
3 claims so triable.  
4

5 DATED: October 12, 2023

**HAFFNER LAW PC**

6  
7 By:   
8 Joshua H. Haffner  
9 Alfredo Torrijos  
10 Vahan Mikayelyan

11 Attorneys for Plaintiff and others  
12 similarly situated  
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**Case No. CGC-23-606104**

On **October 12, 2023**, I served the foregoing document described as:

on the interested parties in the action by:

**X** **ELECTRONIC MAIL:** I transmitted a PDF version of this document by electronic mail to the email addresses above. I did not receive, within a reasonable time after the transmission (24 hours), any electronic message or other indication that the transmission was unsuccessful.

**Executed on October 12, 2023, at Sherman Oaks, California.**

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