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SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

CANDICE BROWN, Plaintiff, vs. PRIMARY RESIDENTIAL MORTGAGE, INC., a Nevada Corporation; and DOES 1 to 100, inclusive, Defendants.	**Case No.** **COMPLAINT FOR CIVIL PENALTIES:** **1. Private Attorneys General Act** **BY FAX**

Plaintiff CANDICE BROWN ("Plaintiff"), on behalf of herself, similarly situated employees, and the Labor and Workforce Development Agency ("LWDA"), hereby files this Complaint against Defendants PRIMARY RESIDENTIAL MORTGAGE, INC., a Nevada Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff allege the following:

INTRODUCTION

1. This is a Private Attorney's General Act ("PAGA") lawsuit brought by Plaintiff based on the failure to provide overtime wages, the failure to provide minimum wages, meal and rest period violations, the failure to provide accurate wage statements, the failure to pay final wages, the failure to pay reimbursement for expenses, violation of Labor Code section 558, the failure to maintain accurate records, the failure to provide paid sick leave, the failure to pay contract wages, and the untimely payment of wages.

JURISDICTION AND VENUE

2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to California Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code and Wage Order No. 4.

3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), 395.2, and 395.5, in that wrongful acts and violations of law asserted herein against aggrieved employees occurred within Sacramento County pursuant to *Crestwood Behavioral Health, Inc. v. Sup. Ct.*, 60 Cal.App.5th 1069 (2021).

4. Plaintiff has sought permission pursuant to California Labor Code section 2699 *et seq.* to pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of herself and other similarly situated employees. Pursuant to California Labor Code section 2699.3, Plaintiff gave written notice via online submission to the LWDA on approximately October 25, 2023. Plaintiff provided facts and legal bases for her claims within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiff also submitted the $75.00 filing fee. The October 25, 2023, notice was also sent via certified mail to Defendants on the same day. To date, the LWDA has not provided any response to Plaintiff's notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies pursuant to the Private Attorneys General Act ("PAGA") and may bring this action on behalf of herself and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees include, but is not limited

to, the following: all non-exempt employees who worked for, or continue to work for, Defendants in California at any time between October 25, 2022, to the present.

5. Defendants modified Plaintiff's employment agreement and compensation package, including the various bonuses and commissions at issue, many times during Plaintiff's employment. Defendants expressly referred to these changes as addendums and/or modifications to Plaintiff's employment agreement. Defendants' last modification of Plaintiff's employment agreement and compensation package was on or about October 2, 2022. Plaintiff requests that any arbitration agreement(s) related thereto that Plaintiff may have entered into with Defendants requiring that any arbitration of claims be conducted outside of California be deemed void pursuant to California Labor Code § 925. California law prohibits any requirement that employees adjudicate outside of California claims arising in California.

PARTIES

6. CANDICE BROWN is an individual over the age of eighteen (18) and is a resident of the State of California.

7. On information and belief, Plaintiff alleges, PRIMARY RESIDENTIAL MORTGAGE, INC., is now and/or at all times mentioned in this Complaint was a Nevada Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

8. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained.

9. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership and common

enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership and common enterprise.

11. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

12. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

GENERAL ALLEGATIONS

13. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 12 as though fully set forth herein.

14. Plaintiff was employed by Defendants from November 2013 to January 13, 2023, as a non-exempt employee. Defendants provide mortgage loans to their customers. Defendants have offices throughout California, including, but not limited to, Modesto and Oakdale where Plaintiff worked at various points during her employment with Defendants. Defendants' headquarters are located in Salt Lake City, Utah. Defendants paid Plaintiff and Aggrieved Employees an hourly wages as well as various non-discretionary incentive payments, *e.g.* bonuses, etc., for each loan that Plaintiff closed and for reaching a certain total amount of revenue in processed loans. At all times, Plaintiff and Aggrieved Employees were paid a base hourly rate plus various non-discretionary incentives relating to the processing of loans. For example, Plaintiff was paid $140 bonus for each loan that she closed, a percentage commission for each loan that she closed, and an additional commission based on the total branch funded volume for all loans. The percentage of the commission for each loan and for the total branch funded loans varied throughout her employment. However, Plaintiff generally received 15% for each closed loan while she worked under branch manager Daivd Raese. Later, Plaintiff was paid 5% of each loan closed when she worked for branch manager Gina McCarty. Defendants modified Plaintiff's compensation package, including the various bonuses and commissions at issue, many times during Plaintiff's employment. Defendants' last modification of Plaintiff's compensation package was on or about October 2, 2022. Defendants paid Aggrieved Employees in a similar payment structure which was based on hourly pay and incentives/commissions.

15. Plaintiff's job duties as a Loan Officer Assistant/Processor included but were not limited to taking new applications, gather documents for applications, get pre-approval letters, package client files to submit to processing, perform pre-approval phone calls, meetings with builders, call clients, schedule appointments for loan closings, schedule notary appointments, call clients/borrowers regarding questions from processing/underwriting, cover on weekends and attend buyer signing appointments when manager was not available, review loan processing documents to make sure all documents have been provided, take borrower calls/texts/emails after hours and on the weekends, attend marketing events to build relationships, prepare open house flyers for agents and builders.

16. Plaintiff and Aggrieved Employees typically worked over eight (8) hours a day and over forty (40) hours per week. Typically, Plaintiff's schedule was 8:00 a.m. to 4:00 p.m. Plaintiff worked in a fast work environment. Defendants expected and required Plaintiff and Aggrieved Employees to finish a certain number of tasks per day and to always be available to take borrower's calls/texts and emails, as well as Defendants' calls/texts and emails, seven (7) days per week, including weekends. As a result, Plaintiff worked off-the-clock everyday taking and responding to phone calls, texts, and emails, after her scheduled hours. Plaintiff estimates that she worked off-the-clock up to ten (10) to (15) hours per week. Defendants did not pay Plaintiff and Aggrieved Employees for their off-the-cock hours despite being aware they were being worked.

17. Additionally, Defendants did not pay Plaintiff and Aggrieved Employees for all the overtime hours worked. Plaintiff and Aggrieved Employees were required to ask Defendants' for permission to work overtime. At times, Defendants paid Plaintiff and Aggrieved Employees some overtime hours. However, Defendants did not pay Plaintiff and Aggrieved Employees overtime for the off-the-clock work hours described above. Furthermore, on or about July 2022, Defendants required Plaintiff and Aggrieved Employees to wipe out all the overtime hours form their timecards. Plaintiff's manager, Gina McCarty told Plaintiff to delete all the overtime hours from the timecards. Sometimes, Ms. McCarty would delete the overtime hours in Plaintiff's timecards herself prior to finalizing payroll. Defendants communicated to Plaintiff and Aggrieved Employees that they were not supposed to enter any overtime hours in the timecards. As a result, Plaintiff and Aggrieved Employees were not paid overtime for their overtime hours worked. Moreover, although Defendants paid non-discretionary

bonuses and/or commissions to Plaintiff and Aggrieved Employees in addition to their base hourly rates, Defendants failed to include the value of the additional compensations when calculating Plaintiff's and Aggrieved Employees' regular rate of pay for premium wage payments. This included the failure to pay the correct rate for overtime, meal and/or rest period premiums, and sick leave wages. There were also several occasions where Defendants simply refused to pay the incentive commission and bonuses regarding closed loans even though Plaintiff and had performed the required tasks, such as closing the loans. There are two loans that Plaintiff closed while she was employed by Defendants that Defendants did not pay her commission for one loan closed in December, and another one in January, prior to Plaintiff's termination of January 13, 2023. Defendants did not pay Plaintiff the commission for these loans. Plaintiff is informed and believes that Defendants did not pay Aggrieved Employees for all loans that they closed prior to their termination or separation.

18. Defendants failed to authorize and permit all legally required meal and rest periods for Plaintiff and Aggrieved Employees. Defendants did not track when Plaintiff and Aggrieved Employees took meal periods or even if they did for the day. Plaintiff and Aggrieved Employees regularly worked through their meal and rest periods. Most of the time, Plaintiff and Aggrieved Employees did not take a full, 30-minute uninterrupted meal period before the completion of the fifth hour worked. Plaintiff and Aggrieved Employees were not authorized second meal period or third rest period when they worked over ten (10) hours per day. In fact, Defendants' meal and rest period policies were defective. Defendants' rest period policy states that employees are entitled to a fifteen (15) minute break for every four (4) hours instead of advising that Aggrieved Employees can take a rest break for every four (4) hours or major fraction of thereof. Defendants' meal period policy does not advise Aggrieved Employees that they are entitled to a second meal period if they work over ten (10) hours per day. Additionally, Defendants have failed to pay the correct rate of meal and rest premium premiums because they failed to incorporate the value of the additional incentive-based compensation when calculating the regular rate of pay for meal and rest premiums. Defendants did not pay Plaintiff and Aggrieved Employees all meal and rest period premiums they were due as a result of their unlawful practices.

19. Defendants did not provide cell phones to Plaintiff and Aggrieved Employees. Instead, Defendants required Plaintiff and Aggrieved Employees to utilize their personal cell phones to maintain

communication regarding their work and to communicate with clients or borrowers. Defendants required Plaintiff and Aggrieved Employees to use their home internet when they worked from home after office hours and during the COVID pandemic. However, Defendants did not reimburse Plaintiff and Aggrieved Employees for the cost of the home internet. Plaintiff estimates that she used her cell phone 80% of the time for work purposes. Plaintiff's share of the cell phone bill was approximately $44 per month. Plaintiff estimates that 90% of her home internet use was for work purposes. Plaintiff's home internet bill was approximately $85-$90 per month. Defendants did not reimburse Plaintiff and Aggrieved Employees for any portion of their cell phone bills or home internet bills.

20. Furthermore, Defendants did not pay Plaintiff and Aggrieved Employees the correct rate of pay for sick leave hours because Defendants failed to incorporate the value of the additional incentive-based compensation when calculating the regular rate of pay for sick leave pay premiums. Defendants' leave policies specifically state that any pay under those policies do not include or take account of any "bonuses, incentive pay, shift differential, or other special forms of compensation." Additionally, Defendants' sick leave policy is defective because specifically states only employees working 30+ hours a week will be entitled to the benefit. Thus, Plaintiff and Aggrieved Employees did not accrue all the sick leave hours that they were entitled to.

21. As a result of Defendants' policies and practices, Plaintiff and Aggrieved Employees were not paid for all wages due, including minimum wages, overtime wages, meal and rest period premiums, incentive wages, and sick leave wages. These amounts were not paid to Aggrieved Employees at the time of their separation and remain unpaid to date. Additionally, the unlawful practices identified above resulted in Defendants issuing inaccurate paystubs to Plaintiff and Aggrieved Employees. The paystubs did not accurately itemize the gross wages earned, total hours worked, applicable rates of pay, and the net wages earned.

CAUSES OF ACTION
FIRST CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

22. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 21 as though fully set forth herein.

23. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code §§ 223, 225 (Failure to Pay Contract Wages)
- Violation of Labor Code §§ 204, 210 (Untimely Payment of Wages)

24. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

25. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

26. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. As to the First Cause of Action:

   a. For civil penalties as provided for in the Labor Code for each enumerated violation;

   b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars ($100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars ($200) for each aggrieved employee per pay period;

   c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699; and

   d. For any other remedies as allowed by law and/or deemed appropriate by the Court.

Dated: January 8, 2024

Shimoda & Rodriguez Law, PC

By: ______________________________

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