THE GHOL FIRM

July 8, 2026

**VIA ONLINE FILING (PAGA FILING PORTAL)**
Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

**VIA CERTIFIED MAIL — RETURN RECEIPT REQUESTED**
Optimum First, Inc. d/b/a Optimum First Mortgage
Attn: Robert Drenk, Matthew Dohman
7755 Center Avenue, 9th Floor
Huntington Beach, California 92647

**VIA CERTIFIED MAIL — RETURN RECEIPT REQUESTED**
Robert Drenk, Individually
[redacted]

**VIA CERTIFIED MAIL — RETURN RECEIPT REQUESTED**
Matthew Dohman, Individually
[redacted]

**VIA CERTIFIED MAIL — RETURN RECEIPT REQUESTED**
Optimum First, Inc. d/b/a Optimum First Mortgage c/o
PARACORP INCORPORATED
2804 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833

**Re: Notice of Labor Code Violations Pursuant to California Labor Code Section 2699.3 — James Kott, on behalf of himself, the State of California, and all other aggrieved employees v. Optimum First, Inc. d/b/a Optimum First Mortgage; Robert Drenk; and Matthew Dohman**

Dear PAGA Administrator, Mr. Drenk, and Mr. Dohman:

## I. INTRODUCTION

This firm represents James Kott ("Mr. Kott"), a former loan officer of Optimum First, Inc. d/b/a Optimum First Mortgage ("Optimum" or the "Company"). Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 et seq. ("PAGA"), and specifically Labor Code section 2699.3, subdivision (a)(1), this letter constitutes written notice, submitted online to the Labor and Workforce Development Agency ("LWDA") together with the required $75.00 filing fee, and sent by certified mail to the employer, of the specific provisions of the Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage Order alleged to have been violated by Optimum, including the facts and theories supporting each alleged violation.

Mr. Kott submits this notice as an "aggrieved employee" within the meaning of Labor Code section 2699, subdivisions (c) and (f), on behalf of himself, the State of California, and all other current and former aggrieved employees of Optimum. Mr. Kott personally suffered each of the violations alleged in this notice and did so within the one-year period preceding this notice as required by Labor Code section 2699, subdivision (c)(1), as amended effective June 19, 2024. Following the expiration of the applicable statutory notice period, Mr. Kott intends to commence a representative civil action seeking civil penalties pursuant to Labor Code sections 2699 and 2699.3, together with attorneys' fees and costs.

This notice is also directed to Robert Drenk and Matthew Dohman, individually, as owners, officers, directors, and managing agents of Optimum who caused the violations described herein, and who are therefore "other person[s] acting on behalf of an employer" subject to liability under Labor Code sections 558 and 558.1.

## II. THE PARTIES

The employer is Optimum First, Inc. d/b/a Optimum First Mortgage, a California corporation and licensed residential mortgage lender and broker with its principal place of business at 7755 Center Avenue, 9th Floor, Huntington Beach, California 92647. Matthew Dohman is Optimum's Chief Executive Officer and Chief Financial Officer, and Robert Drenk is Optimum's Secretary and Director; on information and belief, they are Optimum's only officers and directors, and each personally participated in, approved, and had ultimate authority over the classification, compensation, and payroll policies and practices described below. Mr. Dohman personally executed Mr. Kott's Independent Contractor Agreement and Loan Originator Compensation Agreements on behalf of the Company, and Mr. Kott was required to report directly to Mr. Dohman. Mr. Drenk executed the Company's "Contractor Disclosure" acknowledgment form described below.

The aggrieved employee submitting this notice is James Kott, a resident of Huntington Beach, California. Mr. Kott worked for Optimum as a Loan Officer / Loan Originator from approximately June 1, 2009 through August 17, 2018, and again from December 11, 2018 through at least June 2026, most recently pursuant to an Independent Contractor Agreement dated December 28, 2023 and Loan Originator Compensation Agreements effective January 1, 2024 and October 1, 2025. Throughout his tenure, Optimum classified Mr. Kott as a "1099" independent contractor and paid him as an accounts-payable "vendor," not through payroll.

The other aggrieved employees on whose behalf this notice is submitted are all current and former loan officers, loan originators, and other individuals engaged by Optimum in California and classified as independent contractors during the applicable limitations period, against whom Optimum committed one or more violations of the same Labor Code provisions alleged in this notice. For each alleged Labor Code provision, Mr. Kott seeks penalties on behalf of himself and those current and former employees against whom a violation of that same provision was committed. On information and belief, Optimum applied the same uniform independent-contractor model to all, or substantially all, of its California loan officers, loan originators, and similarly classified workers during the relevant period.

## III. FACTS COMMON TO ALL VIOLATIONS

Optimum is in the business of originating, brokering, and selling residential mortgage loans. Its loan officers perform the core, revenue-generating function of that business: soliciting borrowers, gathering borrower financial information, quoting rates from Company-controlled pricing engines, matching borrowers to loan products, and working Company-assigned loan files through funding. Notwithstanding this, Optimum classifies its entire loan officer workforce as independent contractors pursuant to a form Independent Contractor Agreement, form Loan Originator Compensation Agreements, a form "Exclusive Agent Agreement," and a form "Contractor Disclosure."

The facts supporting each of the violations alleged below include, without limitation, the following:

> **Pervasive control.** Optimum required Mr. Kott and other loan officers to log into a Company-mandated timekeeping and monitoring program called "Time Doctor" to track their hours; required a

minimum of six clocked-in hours per day, monitored through Time Doctor, as a condition of receiving Company-generated leads; required loan officers to report to a manager (in Mr. Kott's case, directly to Company President Matthew Dohman, per the express terms of the Compensation Agreement); required attendance at mandatory meetings; issued written annual performance evaluations; provided a permanent desk, computer equipment, and a name plate at its Huntington Beach office; and at various times required on-site work.

**Exclusivity.** Pursuant to the Company's form "Exclusive Agent Agreement" and the Independent Contractor Agreement, each loan officer's mortgage loan originator license is sponsored by and placed with Optimum, and while so sponsored the loan officer "is deemed to be an exclusive agent" who "can engage in mortgage loan activities solely on behalf of Optimum First Inc." Loan officers therefore cannot originate loans for any other lender or broker while affiliated with Optimum.

**Company-controlled compensation.** Loan officers are paid commission-only, at Company-dictated basis-point schedules tied to Company-defined "lead sources," with Company-set minimums and maximums per loan. The Company prices all loans through its own pricing engines with a set profit margin. Commissions are stated to be payable "within 30 days of receipt of all funds," are not deemed "fully earned" until the borrower makes six monthly payments and are subject to 100% "recapture" (chargeback) in the event of an early payment default. Advances are "deemed recoverable."

**Fees charged to workers.** Optimum charges each loan officer a $400 per month "Technology & Desk Fee" for access to the Company's own technology and workspace, waived only if the loan officer funds at least one loan in the month, with nonpayment grounds for termination and withdrawal of license sponsorship.

**No wage protections.** Optimum's form "Contractor Disclosure," which loan officers must initial line-by-line, expressly states that they are "not entitled to a base wage, minimum wage or overtime," not entitled to unemployment or disability benefits, not entitled to employee benefits, will not be reimbursed for marketing or other costs, and "must keep [their] licenses up to date and pay for all of [their] own licensing fees and renewals."

**Vendor payments in lieu of payroll.** Optimum's own books and records reflect that Mr. Kott was paid through its accounts-payable system as a vendor, by irregular weekly or less frequent bill payments, without itemized wage statements, without tracking or payment of hours worked, without overtime or premium pay, and without payroll tax withholding, from at least 2023 through June 2026.

No exemption applies. Loan officers are paid no salary at all — let alone a salary satisfying the minimum salary basis test — and their primary duty is sales, not the exercise of discretion and independent judgment as to matters of significance. See *U.S. Dep't of Labor, Wage & Hour Div., Administrator's Interpretation No. 2010-1* (Mar. 24, 2010). Accordingly, Mr. Kott and the other aggrieved employees were at all relevant times non-exempt employees entitled to the full protections of the Labor Code and IWC Wage Order No. 4-2001.

## IV. THE AGGRIEVED EMPLOYEES ARE EMPLOYEES UNDER THE ABC TEST

Under Labor Code section 2775 and *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, a worker is presumed to be an employee, and the hiring entity bears the burden of establishing all three prongs of the "ABC" test to classify the worker as an independent contractor. Optimum cannot satisfy any prong: (A) the control described above — mandated Time Doctor monitoring, minimum daily hours, mandatory meetings, managerial reporting, performance evaluations, and Company-dictated pricing and compensation — defeats Prong A; (B) loan origination is the usual course — indeed, the entirety — of Optimum's mortgage lending and brokerage business, defeating Prong B; and (C) loan officers whose licenses are sponsored exclusively by Optimum, and who are contractually barred from originating loans through any other lender or broker, are not engaged in an independently established business of the same nature, defeating Prong C. See *Garcia v. Border Transportation Group, LLC* (2018) 28 Cal.App.5th 558, 574–75. The contractual "independent contractor" label, and the initialed "Contractor Disclosure" purporting to waive minimum wage and overtime rights, are ineffective. *Dynamex*, 4 Cal.5th at 962; Lab. Code §§ 219, 2804. Because the aggrieved employees are employees, each of the violations below follows.

## V. SPECIFIC PROVISIONS VIOLATED, AND THE FACTS AND THEORIES SUPPORTING EACH VIOLATION

### A. Willful Misclassification of Employees as Independent Contractors — Labor Code § 226.8

Optimum willfully misclassified Mr. Kott and the other aggrieved employees as independent contractors, i.e., it voluntarily and knowingly avoided employee status for them within the meaning of Labor Code section 226.8, subdivisions (a)(1) and (i)(4). The willfulness of the misclassification is evidenced by, among other things, Optimum's use of form agreements and its form "Contractor Disclosure" expressly disclaiming minimum wage, overtime, and other employee protections, its payment of loan officers through accounts payable as "vendors," and its simultaneous exercise of employer-level control (mandatory Time Doctor monitoring, minimum daily hours, mandatory meetings, managerial reporting, exclusive license sponsorship, and annual performance reviews). Because this model is applied uniformly, or substantially uniformly, to Optimum's California loan officers, loan originators, and similarly classified workers, Optimum has engaged in a pattern or practice of willful misclassification, subjecting it to enhanced civil penalties of $10,000 to $25,000 per violation. Lab. Code § 226.8(b)–(c); see *Noe v. Superior Court* (2015) 237 Cal.App.4th 316, 340–42 (section 226.8 penalties are recoverable in a PAGA action). Optimum also unlawfully charged misclassified individuals fees (the $400 monthly "Technology & Desk Fee") and made deductions (commission recaptures) of the kind prohibited by section 226.8, subdivision (a)(2).

### B. Failure to Pay Minimum Wages for All Hours Worked — Labor Code §§ 1182.12, 1194, 1197, 1197.1, 1198; IWC Wage Order 4-2001, § 4

Optimum paid the aggrieved employees on a commission-only basis, with no hourly wage of any kind, and failed to pay at least the applicable minimum wage for each hour worked. Loan officers were required to clock a minimum of six hours per day in Time Doctor and to attend mandatory meetings, trainings, and other non-selling activities, all of which constituted compensable "hours worked" under the Company's control, yet none of which was separately or hourly compensated. In pay periods in which a loan officer funded no loans — or in which chargebacks, "recoverable" advances, and the $400 monthly Technology & Desk Fee consumed commissions — the aggrieved employees received less than minimum wage, and at times nothing at all, for their hours worked. Commission payments attributable to particular transactions cannot be averaged across pay periods or used to satisfy the minimum wage obligation for non-selling hours in other periods. See *Peabody v. Time Warner Cable, Inc*. (2014) 59 Cal.4th 662, 668–69.

### C. Failure to Pay Overtime Compensation — Labor Code §§ 510, 558, 1194, 1198; IWC Wage Order 4-2001, § 3

The aggrieved employees regularly worked more than eight hours in a workday and/or more than forty hours in a workweek — including because Optimum conditioned the receipt of Company leads on a minimum of six monitored hours per day, on top of mandatory meetings and the transaction work required to move Company files to funding — but were paid no overtime premium whatsoever, consistent with the Contractor Disclosure's statement that they are "not entitled to… overtime." Optimum failed to pay one and one-half times the regular rate of pay for overtime hours and double time where required and failed to calculate the regular rate to include all non-discretionary remuneration, including commissions. Lab. Code § 510; see *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.

**D. Failure to Provide Compliant Meal Periods or Premium Pay — Labor Code §§ 226.7, 512; IWC Wage Order 4-2001, § 11**

Optimum maintained no meal period policy for its loan officers, did not schedule, record, or track meal periods, and did not relieve the aggrieved employees of all duty for an uninterrupted thirty-minute meal period beginning before the end of the fifth hour of work, or provide a second meal period on days exceeding ten hours of work. Because Optimum treated the aggrieved employees as non-employees, it never provided compliant meal periods and never paid the one additional hour of premium pay at the employee's regular rate of compensation for each noncompliant day. Lab. Code § 226.7(c); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004; *Ferra*, *supra,* 11 Cal.5th 858 (premium pay must be at the regular rate of compensation, including commissions). Optimum's records reflect no meal period premiums ever paid.

**E. Failure to Authorize and Permit Compliant Rest Periods or Premium Pay; Failure to Separately Compensate Rest Periods — Labor Code §§ 226.7, 1198; IWC Wage Order 4-2001, § 12**

Optimum failed to authorize and permit the aggrieved employees to take a paid, duty-free, ten-minute rest period for every four hours worked or major fraction thereof. Independently, because the aggrieved employees were paid purely by commission at transaction-based rates, they received no separate compensation for rest periods, which by law must be counted as hours worked and paid; commission-only compensation plans that do not separately compensate rest periods violate the Wage Order. *See Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98, 108–11. Optimum never paid the one additional hour of premium pay at the regular rate of compensation for any rest period violation. Lab. Code § 226.7(c).

**F. Unlawful Deductions From and Collection of Wages; Secret Underpayment of Wages — Labor Code §§ 221, 223, 224, 400–410; IWC Wage Order 4-2001, § 8**

Optimum unlawfully collected and received back wages already paid, and made deductions not authorized by law, by: (1) charging loan officers a $400 per month "Technology & Desk Fee" for the Company's own technology and workspace — tools and facilities the employer is obligated to furnish — on pain of termination; (2) "recapturing" 100% of commissions already paid upon a borrower's early payment default, an event outside the loan officer's control, thereby taking back earned wages to shift the Company's ordinary business losses to its employees; and (3) treating advances as unconditionally "recoverable" against future earnings. These practices also effected the payment of wages lower than those required, in violation of section 223, and constituted unlawful demands for cash bonds or security within the meaning of sections 400 through 410 to the extent fees were exacted as a condition of continued engagement.

**G. Failure to Indemnify Necessary Business Expenditures and Unlawful Waiver of Reimbursement Rights — Labor Code §§ 2802, 2804**

Optimum required the aggrieved employees to bear, without reimbursement, expenses incurred in direct consequence of the discharge of their duties, including: mortgage loan originator licensing fees and renewal costs (which the Contractor Disclosure expressly requires loan officers to pay themselves); marketing and lead-generation costs (which the Contractor Disclosure expressly states "will not be reimbursed"); supplies and materials (which the Independent Contractor Agreement makes the worker's responsibility); the $400 monthly Technology & Desk Fee; and, for periods of remote work, home office, personal cell phone, computer, and internet expenses. Optimum reimbursed none of these necessary expenditures.

**H. Failure to Furnish Accurate Itemized Wage Statements — Labor Code §§ 226(a), 226.3; 246(i) Failure to Keep Required Payroll Records — Labor Code §§ 1174(d), 1174.5; IWC Wage Order 4-2001, § 7**

Optimum furnished the aggrieved employees no wage statements at all. It paid them as accounts-payable vendors by check, without any itemized statement showing gross wages earned, total hours worked, net wages, applicable hourly rates and the corresponding hours worked at each rate, all deductions, the pay period, or the other information required by section 226(a), and without the paid sick leave information required by section 246, subdivision (i). Optimum likewise failed to keep accurate records of hours worked, meal periods, and wages paid as required by section 1174(d) and section 7 of the Wage Order — indeed, its own accounting records show only lump-sum "bill payments" to vendors. These violations were knowing, intentional, and injurious, as they concealed from the aggrieved employees their hours, rates, and the unlawful deductions described above.

**I. Failure to Timely Pay Wages During Employment — Labor Code §§ 204, 210**

Optimum failed to pay all wages earned within the periods designated by section 204. By policy, commissions were payable only "within 30 days of receipt of all funds" in connection with a transaction, were not treated as "fully earned" until the borrower made six monthly payments, and in practice were paid on irregular dates through accounts payable, rather than at least twice during each calendar month on regular paydays designated in advance. Minimum wage and overtime owed for hours worked were never paid at all, and therefore necessarily not paid within the time required by section 204. Civil penalties for these violations are recoverable under section 210.

**J. Failure to Timely Pay All Wages Due Upon Separation — Labor Code §§ 201, 202, 203**

As to Mr. Kott and each other aggrieved employee whose engagement with Optimum has ended, Optimum willfully failed to pay, at the time of discharge or within seventy-two hours of resignation, all wages then due — including unpaid minimum wages, unpaid overtime, unpaid meal and rest period premiums (which are wages, see *Naranjo v. Spectrum Security Services, Inc*. (2022) 13 Cal.5th 93, 102), unlawfully deducted or recaptured commissions, and unreimbursed amounts constituting wages — and continues to withhold such wages, giving rise to waiting time penalties of up to thirty days' wages per employee.

**K. Failure to Provide Paid Sick Leave — Labor Code §§ 245–249 (including §§ 245.5, 246, 246.5, 247, 247.5, and 248.5)**

Because Optimum classified the aggrieved employees as non-employees, it provided them no paid sick leave whatsoever: it failed to provide or accrue paid sick days at the statutory rate, failed to allow the use of paid sick leave, failed to provide notice of available sick leave balances on itemized wage statements or separate writings (§ 246(i)), failed to post and provide the required notices (§§ 247, 2810.5), and failed to keep records of sick leave accrual and use (§ 247.5). Civil penalties for violations of the Healthy Workplaces, Healthy Families Act are recoverable in a PAGA action. See *Wood v. Kaiser Foundation Hospitals* (2023) 89 Cal.App.5th 742, 748–64.

**L. Failure to Provide Written Notice of Wage Information — Labor Code § 2810.5**

Optimum failed to provide the aggrieved employees, at the time of hire or at any time thereafter, with the written notice required by the Wage Theft Prevention Act, including the rate and basis of pay, the regular payday, the employer's legal name and address, workers' compensation carrier information, and paid sick leave information.

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### M. Violations Chargeable to Individual Owners and Officers — Labor Code §§ 558, 558.1

Robert Drenk and Matthew Dohman, as Optimum's owners, directors, officers, and managing agents, violated and caused to be violated the provisions identified above regulating minimum wages and hours and days of work, and sections 203, 226, 226.7, 1194, and 2802. Mr. Dohman executed the operative Independent Contractor Agreement and Compensation Agreements and personally supervised loan officers, including Mr. Kott, who reported directly to him; Mr. Drenk is identified on the Contractor Disclosure as the Company representative associated with that disclosure and, on information and belief, participated in or approved the classification, compensation, and lead-allocation policies described herein. As owners, officers, directors, or managing agents who violated or caused violations of the wage-and-hour provisions identified above, they may be held liable as the employer for these violations and are subject to the civil penalties provided by sections 558 and 2699. See Lab. Code § 558.1; *Usher v. White* (2021) 64 Cal.App.5th 883, 895–96; *Espinoza v. Hepta Run, Inc.* (2022) 74 Cal.App.5th 44, 59–60.

## VI. CIVIL PENALTIES SOUGHT

On behalf of the State of California and all aggrieved employees, Mr. Kott will seek all civil penalties recoverable under PAGA for the violations described above for the applicable limitations period, including without limitation: the default civil penalties of Labor Code section 2699, subdivisions (f) and (j), for each aggrieved employee per pay period for each violation for which no civil penalty is specifically provided; the civil penalties specifically provided by Labor Code sections 210, 226.3, 226.8, 558, 1174.5, 1197.1, and 248.5; and attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (k)(1). The aggrieved employees' share of penalties will be distributed as provided by Labor Code section 2699, subdivision (m).

## VII. CONCLUSION

This notice is being filed online with the LWDA, together with the $75.00 filing fee, and served on Optimum, Mr. Drenk, and Mr. Dohman by certified mail, return receipt requested, in accordance with Labor Code section 2699.3, subdivision (a)(1). If the LWDA intends to investigate the alleged violations, we respectfully request notification within the time provided by Labor Code section 2699.3, subdivision (a)(2). If the LWDA does not provide such notice within 65 calendar days of the postmark date of this notice or provides notice that it does not intend to investigate, Mr. Kott will commence a civil action pursuant to Labor Code section 2699 on behalf of himself, the State of California, and all other aggrieved employees.

Nothing in this notice is intended as, nor should it be construed as, an exhaustive statement of all facts, claims, statutory predicates, or legal theories available to Mr. Kott or the aggrieved employees, all of which are expressly reserved, including all individual, class, and non-PAGA claims. If you have any questions regarding this notice, or if Optimum wishes to discuss cure or resolution, please direct all communications to the undersigned.

Sincerely,

Avi Gholian

**Avi Gholian**
The Ghol Firm, APC
Attorneys for James Kott and the Aggrieved Employees