

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

03/05/2024 at 02:42:09 PM

By: Damaree Franklin,
Deputy Clerk

Jason Whooper (SBN 279972)
W LAW
1916 3rd Ave
San Diego, CA 92101
Telephone: (619) 432-2836
Facsimile: (619) 717-2111
E-mail: jason@wlawinc.com

Counsel for Plaintiffs

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

**KELLY TONG BERRY; FRANK CIGLAR;
and SHANNON VILLEGGIANTE**

Plaintiffs

v.

**CROSSCOUNTRY MORTGAGE, LLC; and
DOES 1-100, inclusive**

Defendants

Case No.: **24CV066511**

COMPLAINT

1. Failure to Pay Wages
– LC § 1194
2. Failure to Provide Meal Periods and Paid
Rest Periods
– LC § 226.7
3. Failure to Provide Compliant Wage
Statements and Keep Records – LC § 226
4. Failure to Reimburse for Necessary
Business Expenditures or Losses
– LC § 2802
5. Civil Penalties Under the Labor Code
Private Attorneys General Act of 2004
(PAGA) – LC § 2699
6. Retaliation
7. Constructive Discharge

Complaint Filed:

Dept.:

Judge:

1 Plaintiffs KELLY TONG BERRY (hereinafter “BERRY”), FRANK CIGLAR (hereinafter
2 “CIGLAR”), and SHANNON VILLEGIANTE (hereinafter “VILLEGIANTE”) (hereinafter
3 collectively referred to as “Plaintiffs”), for causes of action against Defendants CROSSCOUNTRY
4 MORTGAGE, LLC (hereinafter “CROSSCOUNTRY”); and DOES 1-100, inclusive (hereinafter
5 collectively referred to as “Defendants”), alleges as follows:

6 JURISDICTION

7 1. This action arises out of acts, representations and events occurring throughout the
8 state of California.

9 2. Venue is appropriate in Alameda County because Plaintiffs are informed and believe
10 that Defendants’ employed Labor Code Private Attorneys General Act of 2004 (“PAGA”) aggrieved
11 employees in Alameda County, as well as in other California counties, who were victims of
12 Defendants’ Labor Code violations; Plaintiffs performed work duties for Defendants in Alameda
13 County; and Defendants have an obligation and liability to pay Plaintiffs unpaid wages earned
14 working in Alameda County.

15 3. Whenever in this Complaint reference is made to any act, deed, or conduct of
16 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through
17 one or more of their officers, directors, agents, employees, or representatives, who were actively
18 engaged in the management, direction, control, or transaction of the ordinary business and affairs of
19 Defendants.

20 4. Plaintiffs are ignorant of the true names and capacities, whether individual,
21 corporate, associate or otherwise, of the Defendants sued herein as DOES 1-100, inclusive and
22 therefore sues said Defendants (the “Doe Defendants”) by such fictitious names. Plaintiffs will
23 amend this Complaint to plead the true names and capacities of the Doe Defendants at such time as
24 the identities of the Doe Defendants have been ascertained.

25 5. Plaintiffs are informed and believe, and thereon allege, that Defendants
26 CROSSCOUNTRY; and DOES 1-100, inclusive, are the partners, agents, or principals and co-
27 conspirators of Defendants, and of each other; that named Defendants and the Doe Defendants
28 performed the acts and conduct herein alleged directly, aided and abetted the performance thereof,

1 or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and
2 therefore each of the named Defendants and Doe Defendants are liable to Plaintiffs to the extent of
3 the liability of the Defendants as alleged herein.

4 6. Plaintiffs are further informed and believe, and thereon allege, that at all times herein
5 material, CROSSCOUNTRY and entity Doe Defendants were completely dominated and controlled
6 by unknown Doe Defendants, and each was the alter ego of the other in a single enterprise. At those
7 times, a unity of interest and ownership between CROSSCOUNTRY and entity Doe Defendants on
8 the one hand, and unknown Doe Defendants on the other hand existed such that the separate
9 personalities of these entities did not in reality exist. Additionally, Plaintiffs would suffer an
10 inequitable harm if the actions of CROSSCOUNTRY and entity Doe Defendants were not treated
11 as the acts of all Defendants. Plaintiffs are further informed and believe, and thereon allege, that at
12 all relevant times to this action CROSSCOUNTRY and entity Doe Defendants, *inter alia*, failed to
13 observe the requisite entity formalities, were inadequately capitalized, and their ownership and
14 control were inappropriately concentrated in Doe Defendants.

15 7. Plaintiffs are further informed and believe, and thereon allege, that at all times herein
16 material, each defendant, was completely dominated and controlled by its co-defendants and each
17 was the alter ego of the other. Whenever and wherever reference is made in this Complaint to any
18 conduct by Defendants, such allegations and references shall also be deemed to mean the conduct
19 of each of the Defendants, acting individually, jointly and severally. Whenever and wherever
20 reference is made to individuals who are not named as defendants in this Complaint, but were
21 employees or agents of, such individuals at all relevant times acted on behalf of Defendants named
22 in this Complaint within the scope of their respective employments.

23 8. Whenever and wherever reference is made in this Complaint to any conduct by a
24 defendant or Defendants, such allegations and references shall also be deemed to mean the conduct
25 of each of the Defendants, acting individually, jointly and severally. Whenever and wherever
26 reference is made to individuals who are not named as defendants in this Complaint, but were
27 employees or agents of, such individuals at all relevant times acted on behalf of Defendants named
28 in this Complaint within the scope of their respective employments.

1 **GENERAL ALLEGATIONS**

2 **A. Wage and Hour Claims, Retaliation, and Constructive Discharge**

3 9. CROSSCOUNTRY is an entity engaged in the mortgage lending sales and servicing
4 business.

5 10. In or around May 2022, Defendants hired Plaintiffs and began employing them as
6 Loan Officers in California including, but not limited to, in Alameda County.

7 11. Plaintiffs are informed and believe that at all relevant times CROSSCOUNTRY
8 employed Mason Buckles (hereinafter “Buckles”), Khalisa Davies (hereinafter “Davies”), Casey
9 Granston (hereinafter “Granston”), Ryan Mallory (hereinafter “Mallory”) as Regional Vice
10 Presidents and managing agents for CROSSCOUNTRY (collectively hereinafter the “Defendants’
11 Vice Presidents”). Plaintiffs are informed and believe that at all relevant times, Defendants’ Vice
12 Presidents exercised authority to hire and manage Plaintiffs; and make decisions about
13 CROSSCOUNTRY’s wage and hour policies and practices including, but not limited to, how to pay
14 Plaintiffs, what to pay Plaintiffs, how much to pay Plaintiffs, when to pay Plaintiffs.

15 12. At all relevant times Defendants were required to comply with Industrial Welfare
16 Commission Wage Orders 1-2001 to 17-2001 and MW-2022 to MW-2024 (the “Wage Orders”).
17 Under Defendants’ pay program, Defendants paid Plaintiffs a purported advanced draw. Then
18 Defendants recovered the draw from Plaintiffs’ future earned incentive-based wages that
19 Defendants called “commission(s)” (hereafter referred to as “commission(s)” only for purposes of
20 identifying these wages at issue). Defendants calculated commission(s) using percentage basis
21 points (“bps”) on Plaintiffs’ funded loan volume.

22 13. Plaintiffs allege Defendants’ purported commission(s) were not legally commissions
23 within the meaning of the Wage Orders and Labor Code section 204.1 because Plaintiffs were
24 involved principally in rendering Defendants’ service, not selling Defendants’ product or service.
25 Plaintiffs estimate they spent more than 80 percent of work hours inside either Defendants’ offices
26 or Plaintiffs’ home offices performing production work for Defendants. The production work
27 included completing paperwork, collecting financial information, giving product advice, customer
28 service for mortgage customers, and answering customers calls to Plaintiffs’ personal cell phones at

1 all hours of the week. Any sales duties were secondary, incidental, and minimal. Defendants sold
2 and brokered their loan products. Defendants also required Plaintiffs to perform a lot of marketing
3 duties, which sometimes occurred outside the office. As a result, Plaintiffs were nonexempt
4 employees at all relevant times.

5 14. Plaintiffs are informed and believe that Defendants initially paid Plaintiffs a
6 purported advanced draw equivalent to approximately California's minimum wage or less for only
7 40 hours per workweek or 80 hours for every two-week pay period, and earned commission(s).
8 However, Plaintiffs estimate that Plaintiffs worked an average 6 or 7 days per week and
9 approximately over 75 hours per workweek and over 150 hours in each two-week pay period, some
10 of which was nonproductive time. As a result, Defendants did not pay Plaintiffs at least minimum
11 wage or anything at all for many hours Plaintiffs worked each workweek in most pay periods,
12 including for pay periods in which Defendants paid Plaintiffs commission(s).

13 15. Plaintiffs are informed and believe that Defendants also recovered more draws from
14 Plaintiffs' earned commission(s) than allowed under California law, which also resulted in paying
15 Plaintiffs less than minimum wage for all hours worked for various pay periods.

16 16. Defendants also failed to pay Plaintiffs overtime rates for overtime hours that
17 Plaintiffs worked by paying nothing for overtime hours in the pay periods where Defendants paid
18 Plaintiffs draws and by only paying the regular rate of pay for commission(s) in pay periods where
19 Defendants paid Plaintiffs earned commission(s).

20 17. Defendants also unlawfully withheld and deducted a part of Plaintiffs' earned
21 commission(s) or failed to indemnify Plaintiffs for Defendants' losses by frequently paying
22 Plaintiffs less than the bps commission(s) authorized in Defendants' commission(s) plan on loans
23 funded that Plaintiffs closed so that Defendants could enrich Defendants' profit margins at
24 Plaintiffs' expense in willful disregard of wage regulations and Defendants' own commission(s)
25 plan. Further, Defendants only provided Plaintiffs a laptop, home office monitor, keyboard, and
26 headset, but did not pay, indemnify, or reimburse Plaintiffs' mileage, cell phone, business cards,
27 and other necessary business expenses to perform Plaintiffs' duties for Defendants.

28 18. Defendants also did not pay Plaintiffs for rest periods and nonproductive time wages

1 separate from and in addition to the draws and commission(s) Defendants paid Plaintiffs. Plaintiff's
2 nonproductive time included, but was not limited to, tasks such as marketing, travelling, and
3 attending staff meetings. Defendants also failed to permit Plaintiffs to take off duty 10-minute rest
4 periods.

5 19. Defendants failed to provide Plaintiffs 30-minute off duty uninterrupted meal periods
6 and failed to pay missed meal period wage premiums to Plaintiffs. Plaintiffs typically ate lunch
7 while working on duty. Defendants also failed to keep time records showing when Plaintiffs began
8 and ended each work period, including meal periods and nonproductive time. Further, Plaintiffs are
9 informed and believe that Defendants failed to keep accurate time records of Plaintiffs' work periods
10 or even advise Plaintiffs that Plaintiffs were required, and allowed, to take 30-minute off duty
11 uninterrupted meal periods because Defendants only paid Plaintiffs the draws and commission(s)
12 regardless of how many hours Plaintiffs worked.

13 20. Plaintiffs are informed and believe that Defendants also failed to provide Plaintiffs
14 paid sick leave and include the amount of accrued paid sick leave available on Plaintiffs' itemized
15 wage statements.

16 21. As a result of the unpaid wages alleged above and other facts to be discovered,
17 Defendants failed to timely pay Plaintiffs all earned wages twice per calendar month because
18 Plaintiffs are informed and believe that Defendants underpaid Plaintiffs every pay period.

19 22. Also, as a result of all the allegations above and other facts to be discovered,
20 Defendants failed to provide Plaintiffs compliant wage statements because the wage statements did
21 not contain all legally required accurate information including, but not limited to, gross wages
22 earned, total hours actually worked, all applicable hourly rates in effect and the corresponding
23 number of hours worked at each hourly rate, the total hours of compensable rest periods, the rest
24 periods rate of compensation, the gross paid rest period wages, the total hours of other nonproductive
25 time, the rate of nonproductive time compensation, the gross nonproductive time wages paid during
26 each pay period, the itemized commission(s) with the corresponding commission(s) rates, paid sick
27 leave available, etc. As a further result, Defendants failed to keep all required personnel, payroll,
28 and time records for Plaintiffs.

1 23. Plaintiffs began complaining to Defendants about unpaid wages and disclosing
2 information to Defendants about what Plaintiffs reasonably believed were Defendants' unlawful
3 wage and hour practices shortly after Defendants hired Plaintiffs. Plaintiffs complained and
4 disclosed Defendants unlawful practices directly to Defendants' managing agents including, but not
5 limited to, Defendants' Vice Presidents, Chief Legal Counsel, and other executives. In or around
6 April 2023, Defendants changed Defendants' purported classification of Plaintiffs into exempt
7 outside salespeople and stopped paying Plaintiffs and other loan officers anything including no
8 hourly minimum wages or advanced draws for the work Plaintiffs performed for Defendants.
9 Plaintiffs' duties did not change, and Plaintiffs still spent more than an estimated 80 percent of their
10 work hours performing work inside their offices. As part of Defendants' retaliatory outside salesman
11 exemption scheme, Defendants only paid Plaintiffs whatever earned commission(s), if any, accrued.
12 After implementing this scheme, Defendants regularly paid Plaintiffs nothing at all for many pay
13 periods that Plaintiffs worked because Plaintiffs had many pay periods without any earned
14 commission(s).

15 24. Plaintiffs are informed and believe that Defendants stopped paying Plaintiffs
16 advanced draws and anything at all in direct retaliation for Plaintiffs complaining to Defendants
17 about Plaintiffs' unpaid wages and Defendants' unlawful pay practices, and because Plaintiffs
18 disclosed or Defendants believed Plaintiffs may disclose information that Plaintiffs reasonably
19 believed disclosed a violation of the law to a government or law enforcement agency, to a person
20 with authority over Plaintiffs, or to another one of Defendants' employees who had authority to
21 investigate, discover, or correct the violations.

22 25. Plaintiffs are further informed and believe that Defendants intentionally created these
23 unlawful wage and hour and working conditions that were so intolerable as to compel Plaintiffs to
24 quit and that any reasonable person in Plaintiffs' position would feel compelled to resign. Anyone
25 in this circumstance, including Plaintiffs, would not be able to rely on working for Defendants to
26 pay basic living expenses under these conditions. Especially anyone like Plaintiffs who accepted
27 employment which included draws equivalent to approximately 40 hours of minimum wage pay per
28 week until Defendants took that away to retaliate against Plaintiffs for complaining about

1 Defendants' pay practices. Plaintiffs CIGLAR and VILLEGGIANTE gave Defendants notice of
2 their respective resignations on various dates beginning on or around July 31, 2023, and shortly
3 thereafter.

4 26. As a direct and proximate result of Defendants' unlawful pay practices, retaliation
5 against Plaintiffs, and constructive discharge of Plaintiffs, Plaintiffs have suffered general damages
6 and economic damages including, but not limited to, bonuses, commission(s), and other wages
7 which Plaintiffs fully performed to earn or would have fully performed to earn but for Defendants
8 preventing or making Plaintiffs' performance impossible by engaging in substantial unlawful
9 conduct which compelled Plaintiffs to resign.

10 27. Plaintiffs are informed and believe that Defendants' managing agents were the
11 people who directed Defendants to engage in unlawful wage and hour practices, unlawfully retaliate
12 against Plaintiffs, and constructively discharge Plaintiffs because Plaintiffs complained about the
13 unpaid wages and Defendants' unlawful activity directly to Defendants' executives who are
14 managing agents for Defendants.

15 28. Plaintiffs are further informed and believe that in taking these actions Defendants'
16 managing agents acted with malice, fraud and oppression, and in reckless disregard of Plaintiffs'
17 rights to enjoy California's wage and hour protections, complain to Defendants about Defendants'
18 unlawful wage and hour practices, and disclose information to Defendants which Plaintiffs
19 reasonably believed disclosed Defendants' violations of laws.

20 29. More than 30 days have passed since Plaintiffs' employment terminated and
21 Defendants have willfully failed to pay Plaintiffs all earned unpaid wages. Further, Defendants have
22 also failed to pay Plaintiffs the 30 days of daily wages for waiting time penalties which Plaintiffs
23 are also entitled to.

24 30. Plaintiffs are informed and believe that Defendants engaged in Labor Code and Wage
25 Orders violations against all of Defendants' PAGA aggrieved employees in California which were
26 similar to the violations against Plaintiffs described above and additionally Defendants engaged in
27 different violations of the Labor Code and Wage Orders that Plaintiffs did not suffer.

31. Plaintiffs are informed and believe that Defendants' violations were all knowing and willful in disregard of the Labor Code and Wage Orders. Accordingly, Plaintiffs are entitled to recovery of civil penalties pursuant to various regulations and statutes including, but not limited to, the Wage Orders and Wage Order 4-2001 sections 3, 4, 7, 8, 11, 12, and 20 et al.; and pursuant to Labor Code sections including, but not limited to, sections 7, 98, 98.6, 98.7, 200, 201, 202, 203, 204, 204.1, 206, 206.5, 210, 212, 215, 216, 218.6, 221, 222, 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.6, 226.7, 230.8, 232.5, 233, 246, 246.5, 247, 247.5, 248.5, 256, 351, 500, 510, 512, 516, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1198.5, 1199, 2502, 2698, 2699, 2699.3, 2699.5, 2751, and 2802 et al.

32. On March 5, 2024, Plaintiffs served a Private Attorneys General Act (“PAGA”) claim notice on all named Defendants via certified mail and filed the PAGA claim notice with the Labor and Workforce Development Agency (“LWDA”) by uploading it into the dir.ca.gov PAGA website. The LWDA issued the case number LWDA-CM-1014789-24. Plaintiffs intend to file an amended complaint after the 65-day PAGA claim notice waiting period. See a true and correct copy of the PAGA claim notice attached hereto as Exhibit 1.

FIRST CAUSE OF ACTION

(Failure to Pay Wages – LC § 1194)

(By all Plaintiffs Against all Defendants)

33. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this section as though fully set forth herein.

34. Pursuant to Labor Code section 200(a), “‘Wages’ includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard time, task, piece, commission basis, or other method of calculation.”

35. Pursuant to Labor Code section 1197, “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

36. Pursuant to Labor Code section 1194(a), "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime

1 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
2 of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's
3 fees, and costs of suit."

4 37. Pursuant to Labor Code section 1194.2(a), "In any action under Section 98, 1193.6,
5 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage
6 fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated
7 damages in an amount equal to the wages unlawfully unpaid and interest thereon."

8 38. Pursuant to Labor Code section 1197.1(a), "Any employer or other person acting
9 either individually or as an officer, agent, or employee of another person who pays or causes to be
10 paid to any employee a wage less than the minimum fixed by an order of the commission shall be
11 subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any
12 applicable penalties imposed pursuant to Section 203[.]"

13 39. Pursuant to Labor Code section 510(a) and the Wage Orders, "Eight hours of labor
14 constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess
15 of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in
16 any one workweek shall be compensated at the rate of no less than one and one-half times the regular
17 rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the
18 rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of
19 eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice
20 the regular rate of pay of an employee."

21 40. Pursuant to Labor Code section 226.2(a), "For employees compensated on a piece-
22 rate [or commission] basis during a pay period, the following shall apply for that pay period: (1)
23 Employees shall be compensated for rest and recovery periods and other nonproductive time
24 separate from any piece-rate [or commission] compensation." (*Armenta v. Osmose, Inc.* (2005) 135
25 Cal.App.4th 314, 324 [employer violated minimum wage laws by failing to pay standing wood
26 utility pole maintenance employees for nonproductive time spent driving and processing
27 paperwork]; *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864, 872-873 [employer
28 alleging its system's mileage rates and activity rates for piece-rate drivers were designed to include

1 payment of expected rest periods violated California labor law because the employer “was required
2 to separately compensate for rest periods and was precluded from building compensation into its
3 mileage rates for rest periods”]; *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36,
4 40-41 [auto technicians paid under a piece-rate program with a “minimum wage floor” for repair
5 work “were entitled to separate hourly compensation for time spent waiting for repair work or
6 performing other non-repair tasks directed by the employer during their work shifts”; *Vaquero v.*
7 *Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98, 110-111 [the requirement of separately
8 compensating employees for all time “applies equally to commissioned employees, employees paid
9 by piece rate, or any other compensation system that does not provide compensation for rest breaks
10 and other nonproductive time”].)

11 41. Pursuant to Labor Code section 226.7 “(c) If an employer fails to provide an
12 employee a meal or rest or recovery period in accordance with a state law, including, but not limited
13 to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare
14 Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational
15 Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s
16 regular rate of compensation for each workday that the meal or rest or recovery period is not
17 provided. (d) A rest or recovery period mandated pursuant to a state law, including, but not limited
18 to, an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
19 Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational
20 Safety and Health, shall be counted as hours worked, for which there shall be no deduction from
21 wages. This subdivision is declaratory of existing law.”

22 42. Pursuant to Labor Code 246(b)(1), “An employee shall accrue paid sick days at the
23 rate of not less than one hour per every 30 hours worked, beginning at the commencement of
24 employment or the operative date of this article, whichever is later, subject to the use and accrual
25 limitations set forth in this section.”

26 43. Pursuant to Labor Code section 204(a), “All wages, other than those mentioned in
27 section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and
28 payable twice during each calendar month, on days designated in advance by the employer as the

1 regular paydays.”

2 44. Pursuant to Labor Code section 203(a), “If an employer willfully fails to pay,
3 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9,
4 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the
5 employee shall continue as a penalty from the due date thereof at the same rate until paid or until an
6 action therefor is commenced; but the wages shall not continue for more than 30 days...”

7 45. Pursuant to Labor Code section 204.1, “Commission wages are compensation paid
8 to any person for services rendered in the sale of such employer’s property or services and based
9 proportionately upon the amount or value thereof.”

10 46. Defendants willfully failed to timely pay Plaintiffs all earned wages by failing to
11 pay: 1.) earned wages without unlawful deductions, 2.) earned commission(s), 3.) at least minimum
12 wage for all hours worked, 4.) applicable overtime rate wages, 5.) paid sick leave wages, 6.)
13 nonproductive time wages, 7.) paid rest period wages, 8.) missed rest period wages, 9.) and missed
14 meal period wages. More than 30 days have passed since Defendants willfully failed to pay Plaintiffs
15 all earned wages when Plaintiffs’ employment ended, which entitles Plaintiffs to an additional 30
16 days of daily wages for waiting time penalties.

17 47. Accordingly, Plaintiffs are entitled to recover the unpaid wages including, but not
18 limited to, regular, minimum, overtime, rest and recovery period, nonproductive time, missed rest
19 period, and missed meal period wages; liquidated damages equal to the unpaid wages for hours
20 where Defendants failed to pay minimum wage; interest; late payment penalties; waiting time
21 penalties; other penalties; attorneys’ fees; and costs pursuant to Labor Code sections 201, 202, 203,
22 204, 204.1, 210, 215, 218.5, 218.6, 221, 222, 223, 224, 226.2, 226.7, 246, 510, 512, 558.1, 1182.11,
23 1182.12, 1194, 1194.2, 1194.3, 1197.1, 2751, 2802; Civil Code section 3289; the Wage Orders; and
24 common law.

25 **SECOND CAUSE OF ACTION**

26 **(Failure to Provide Meal Periods and Paid Rest Periods – LC § 226.7)**

27 **(By all Plaintiffs Against all Defendants)**

28 48. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this

1 section as though fully set forth herein.

2 49. Pursuant to Labor Code sections 226.7, 512, and the Wage Orders including Wage
3 Order 4-2001(11), “(A) No employer shall employ any person for a work period of more than five
4 (5) hours without a meal period of not less than 30 minutes, except that when a work period of not
5 more than six (6) hours will complete the day’s work the meal period may be waived by mutual
6 consent of the employer and the employee. Unless the employee is relieved of all duty during a 30
7 minute meal period, the meal period shall be considered an “on duty” meal period and counted as
8 time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents
9 an employee from being relieved of all duty and when by written agreement between the parties an
10 on-the-job paid meal period is agreed to. The written agreement shall state that the employee may,
11 in writing, revoke the agreement at any time. (B) If an employer fails to provide an employee a meal
12 period in accordance with the applicable provisions of this order, the employer shall pay the
13 employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that
14 the meal period is not provided.”

15 50. Pursuant to Labor Code section 226.7 and the Wage Orders including Wage Order
16 4-2001(12), “(A) Every employer shall authorize and permit all employees to take rest periods,
17 which insofar as practicable shall be in the middle of each work period. The authorized rest period
18 time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per
19 four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees
20 whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time
21 shall be counted as hours worked for which there shall be no deduction from wages. (B) If an
22 employer fails to provide an employee a rest period in accordance with the applicable provisions of
23 this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate
24 of compensation for each workday that the rest period is not provided.”

25 51. Pursuant to Labor Code section 226.2(a), “For employees compensated on a piece-
26 rate [or commission] basis during a pay period, the following shall apply for that pay period: (1)
27 Employees shall be compensated for rest and recovery periods and other nonproductive time
28 separate from any piece-rate [or commission] compensation.” (*Armenta v. Osmose, Inc.* (2005) 135

1 Cal.App.4th 314, 324 [employer violated minimum wage laws by failing to pay standing wood
2 utility pole maintenance employees for nonproductive time spent driving and processing
3 paperwork]; *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864, 872-873 [employer
4 alleging its system’s mileage rates and activity rates for piece-rate drivers were designed to include
5 payment of expected rest periods violated California labor law because the employer “was required
6 to separately compensate for rest periods and was precluded from building compensation into its
7 mileage rates for rest periods”]; *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36,
8 40-41 [auto technicians paid under a piece-rate program with a “minimum wage floor” for repair
9 work “were entitled to separate hourly compensation for time spent waiting for repair work or
10 performing other non-repair tasks directed by the employer during their work shifts”; *Vaquero v.*
11 *Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98, 110-111 [the requirement of separately
12 compensating employees for all time “applies equally to commissioned employees, employees paid
13 by piece rate, or any other compensation system that does not provide compensation for rest breaks
14 and other nonproductive time”].)

15 52. Defendants willfully did not provide Plaintiffs compliant off duty uninterrupted
16 meal periods or paid rest periods. Further, Defendants willfully failed to pay Plaintiffs compensation
17 for rest periods and nonproductive time separate from and in addition to draws and commission(s).
18 Defendants also willfully failed to pay Plaintiffs an additional hour of regular rate pay for each
19 workday with a missed meal period and each workday with a missed paid rest period.

20 53. Accordingly, Plaintiffs seek unpaid wages, premium wages from missed breaks,
21 interest, waiting time penalties, attorneys’ fees, and costs available pursuant to the Labor Code,
22 including but not limited to Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 226.7, 512,
23 558.1, 1194, 1194.3; Civil Code section 3289; the Wage Orders; and common law.

24 **THIRD CAUSE OF ACTION**

25 **(Failure to Provide Complaint Wage Statements and Keep Records – LC § 226)**

26 **(By all Plaintiffs Against all Defendants)**

27 54. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
28 section as though fully set forth herein.

1 55. Pursuant to Labor Code section 226(a), “An employer, semimonthly or at the time
2 of each payment of wages, shall furnish to their employee, either as a detachable part of the check,
3 draft or voucher paying the employee’s wages, or separately if wages are paid by personal check or
4 cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
5 worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units
6 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
7 provided that all deductions made on written orders of the employee may be aggregated and shown
8 as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
9 paid, (7) the name of the employee and only the last four digits of their social security number or an
10 employee identification number other than a social security number, (8) the name and address of the
11 legal entity that is the employer and, if the employer is a farm labor contractor, as defined in
12 subdivision (b) of Section 1682, the name and address of the legal entity that secured the services
13 of the employer, and (9) all applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each hourly rate by the employee and, beginning July 1,
15 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay
16 and the total hours worked for each temporary services assignment. The deductions made from
17 payment of wages shall be recorded in ink or other indelible form, properly dated, showing the
18 month, day, and year, and a copy of the statement and the record of the deductions shall be kept on
19 file by the employer for at least three years at the place of employment or at a central location within
20 the State of California...”

21 56. Pursuant to Labor Code section 226.2(a)(2), “The itemized statement required by
22 subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision,
23 separately state the following, to which the provisions of Section 226 shall also be applicable: (A)
24 The total hours of compensable rest and recovery periods, the rate of compensation, and the gross
25 wages paid for those periods during the pay period. (B) Except for employers paying compensation
26 for other nonproductive time in accordance with paragraph (7), the total hours of other
27 nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross
28 wages paid for that time during the pay period.”

1 57. Pursuant to Labor Code section 246(i) “An employer shall provide an employee
2 with written notice that sets forth the amount of paid sick leave available, or paid time off leave an
3 employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement
4 described in Section 226 or in a separate writing provided on the designated pay date with the
5 employee’s payment of wages. If an employer provides unlimited paid sick leave or unlimited paid
6 time off to an employer, the employer may satisfy this section by indicating on the notice or the
7 employee’s itemized wage statement ‘unlimited.’ The penalties described in this article for a
8 violation of this subdivision shall be lieu of the penalties for a violation of Section 226...”

9 58. Pursuant to Labor Code section 226(e), “An employee suffering injury as a result of
10 a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
11 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
12 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
13 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to
14 an award of costs and reasonable attorney's fees.”

15 59. Defendants failed to provide Plaintiffs with compliant wage statements that
16 accurately reflected information including, but not limited to, total hours worked, gross wages
17 earned, overtime hours worked, rate of pay for all the respective regular and overtime hours worked,
18 itemized commission(s) with the corresponding commission(s) rates, total hours of rest periods, the
19 rate of pay for rest periods, gross wages for rest periods, total hours of missed meal and rest period
20 premium wages, rate of pay for missed meal and rest period premium wages, gross wages for missed
21 meal and rest period premium wages, paid sick leave available, total hours of other nonproductive
22 time, rate of pay for nonproductive time, gross wages for nonproductive time. Plaintiffs are informed
23 and believe that Defendants also failed to keep accurate payroll and time records for the required
24 time.

25 60. Defendants knowingly and intentionally failed to comply with Labor Code sections
26 226(a), 226.2(a), 246, as described above. As a result, Defendants are liable for damages and
27 penalties owed to Plaintiffs as specified in Labor Code section 226(e).

28 61. Accordingly, Plaintiffs seek damages, interest, penalties, attorneys’ fees, and costs

1 available pursuant to Labor Code section 226, 226.2, 246, 558.1, 1174; and the Wage Orders.

2 **FOURTH CAUSE OF ACTION**

3 **(Failure to Reimburse for Necessary Business Expenditures or Losses – LC § 2802)**

4 **(By all Plaintiffs Against all Defendants)**

5 62. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
6 section as though fully set forth herein.

7 63. Labor Code section 2802 provides that, “(a) An employer shall indemnify his or her
8 employee for all necessary expenditures or losses incurred by the employee in direct consequence
9 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
10 even though unlawful, unless the employee, at the time of obeying the directions, believed them to
11 be unlawful. (b) All awards made by a court or by the Division of Labor Standards Enforcement for
12 reimbursement of necessary expenditures under this section shall carry interest at the same rate as
13 judgments in civil actions. Interest shall accrue from the date on which the employee incurred the
14 necessary expenditure or loss. (c) For purposes of this section, the term ‘necessary expenditures or
15 losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by
16 the employee enforcing the rights granted by this section.”

17 64. Defendants failed to indemnify or reimburse Plaintiffs for all necessary
18 expenditures or losses Plaintiffs incurred in direct consequence of Plaintiffs performing their job
19 duties for Defendants. Further, Defendants made unlawful deductions from Plaintiffs pay to cover
20 some of the expenditures or losses. As a result, Plaintiffs suffered financial losses for Defendants’
21 benefit.

22 65. Accordingly, Plaintiffs seeks unpaid reimbursement for business expenses, plus
23 interest, attorneys’ fees, and costs pursuant to Labor Code sections 221, 222, 223, 224, 558.1, and
24 2802; Civil Code section 3289; the Wage Orders; and common law.

25 **FIFTH CAUSE OF ACTION**

26 **(Civil Penalties Under the Labor Code Private Attorneys General Act of 2014**

27 **(PAGA) – LC § 2699)**

28 **(By all Plaintiffs Against all Defendants)**

1 66. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
2 section as though fully set forth herein.

3 67. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
4 section as though fully set forth herein.

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

11 69. Pursuant Labor Code section 2699(f) states that, “For all provisions of this code
12 except those for which a civil penalty is specifically provided, there is established a civil penalty for
13 a violation of these provisions, as follows: (1) If, at the time of the alleged violation, the person does
14 not employ one or more employees, the penalty is five hundred dollars (\$500). (2) If, at the time of
15 the alleged violation, the person employs one or more employees, the civil penalty is one hundred
16 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
17 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

18 70. As a result of the acts alleged throughout this Complaint, Plaintiffs bring this PAGA
19 action on Plaintiffs own behalf, and in Plaintiffs’ representative capacity on behalf of all aggrieved
20 employees who are current or former employees of Defendants, for civil penalties pursuant to
21 various regulations and statutes including, but not limited to, the Wage Orders and Wage Order 4-
22 2001 sections 3, 4, 7, 8, 11, 12, and 20 et al.; and pursuant to Labor Code sections including, but not
23 limited to, sections 7, 98, 98.6, 98.7, 200, 201, 202, 203, 204, 204.1, 206, 206.5, 210, 212, 215, 216,
24 218.6, 221, 222, 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.6, 226.7, 230.8, 232.5, 233, 246, 246.5,
25 247, 247.5, 248.5, 256, 351, 500, 510, 512, 516, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12,
26 1193.6, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1198.5, 1199, 2502, 2698, 2699, 2699.3, 2699.5,
27 2751, and 2802 et al.

28 71. Plaintiffs are informed and believe Defendants engaged in unlawful conduct and

1 practices against Plaintiffs and other PAGA aggrieved employees in California whom Defendants
2 employed during the statute of limitations period in violation of the Wage Orders and Labor Code
3 including, but not limited to, allegations described above such as for failure to pay commission(s),
4 failure to pay wages for all hours worked including minimum wages, failure to pay overtime rates
5 and overtime wages, failure to pay rest period wages, failure to pay other nonproductive time wages,
6 failure to timely pay earned wages timely twice per month, failure to provide meal periods, failure
7 to provide rest periods, failure to pay wage premiums for missed meal and rest periods, failure to
8 provide paid sick leave, failure to provide compliant wage statements and keep records, failure to
9 indemnify or reimburse business expenditures and losses, failure to pay all earned wages at the
10 termination of the employment relationship, unlawful retaliation, other violations which Plaintiffs
11 suffered, and other violations which Plaintiffs did not suffer but the other PAGA aggrieved
12 employees in California did.

13 72. Defendants' unlawful conduct and practices constitute violations of the Wage
14 Orders and Labor Code which subject Defendants to liability for civil penalties for all Defendants'
15 PAGA aggrieved employees throughout California for each pay period where Defendants engaged
16 in Labor Code or Wage Order violations during the statute of limitations period. Defendants'
17 liability for the civil penalties is in the amounts indicated by the specific statutes violated, Labor
18 Code section 2699(f) for provisions of the Labor Code that do not include specific civil penalties
19 amounts, and in the Wage Orders.

20 73. Plaintiffs, as representatives of California, seek to recover all civil penalties for
21 Plaintiffs' non-representative (individual) PAGA claims and representative (non-individual) PAGA
22 claims against Defendants. Plaintiffs will distribute civil penalties recovered from Defendants in
23 accordance with the PAGA, with 75% of the civil penalties recovered going to the LWDA on behalf
24 of the state of California, and 25% of the civil penalties going to the aggrieved employees.

25 74. Accordingly, Plaintiffs seek PAGA civil penalties, attorney's fees, and costs of
26 pursuant to Labor Code section 2699 et al and the Wage Orders.

27 ///

28

1 **SIXTH CAUSE OF ACTION**

2 **(Retaliation)**

3 **(By all Plaintiffs Against all Defendants)**

4 75. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
5 section as though fully set forth herein.

6 76. Pursuant to Labor Code 98.6(a), "A person shall not discharge an employee or in
7 any manner discriminate, retaliate, or take any adverse action against any employee or applicant for
8 employment because the employee or applicant engaged in any conduct delineated in this chapter,
9 including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with
10 Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has
11 filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or
12 relating to their rights that are under the jurisdiction of the Labor Commissioner, made a written or
13 oral complaint that they are owed unpaid wages, or because the employee has initiated any action
14 or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to
15 that section, or because of the exercise by the employee or applicant for employment on behalf of
16 themselves or others of any rights afforded them."

17 77. Pursuant to Labor Code section 1102.5(b), "An employer, or any person acting on
18 behalf of the employer, shall not retaliate against an employee for disclosing information, or because
19 the employer believes that the employee disclosed or may disclose information, to a government or
20 law enforcement agency, to a person with authority over the employee or another employee who
21 has authority to investigate, discover, or correct the violation of noncompliance, or for providing
22 information to, or testifying before, any public body conducting an investigation, hearing, or inquiry,
23 if the employee has reasonable cause to believe that the information discloses a violation of state or
24 federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation,
25 regardless of whether disclosing the information is part of the employee's job duties."

26 78. Plaintiffs disclosed information about what Plaintiffs reasonably believed were
27 Defendants' wage and hour violations of the Labor Code to Defendants who had authority over
28 Plaintiffs and authority to investigate, discover, or correct Defendants' noncompliance with

1 California's wage and hour statutes, rules, and regulations. Defendants responded to Plaintiffs'
2 protected activity by retaliating against Plaintiffs because Plaintiffs' disclosed information to
3 Defendants about Defendants' unlawful wage and hour practices, or because Defendants believed
4 Plaintiffs might disclose Defendants' unlawful conduct to a government agency or person with
5 authority to investigate, discovery, or correct Defendants' noncompliance. The retaliation included,
6 but was not limited to, for example Defendants ceasing payments of advanced draws to Plaintiffs
7 commencing a policy of paying Plaintiffs nothing for all hours worked except for some earned
8 commission(s) starting in April 2023. Each pay period thereafter constituted an additional discreet
9 retaliatory act where Defendants failed to pay Plaintiffs minimum wage or an advanced draw in
10 retaliation for Plaintiffs' protected activity. As a result, Plaintiffs suffered many pay periods without
11 receiving any money at all from Defendants while continuing to work over an estimated 75 hours
12 per workweek for Defendants.

13 79. Plaintiffs are informed and believe that in taking the actions alleged herein,
14 Defendants were managing agents who acted with malice, fraud and oppression, and in reckless
15 disregard of Plaintiffs' rights to receive lawfully compliant wages, complain or make requests to
16 Defendants about Defendants' pay practices, work in a workplace free of unlawful retaliation, and
17 disclose information to Defendants which Plaintiffs reasonably believed disclosed Defendants'
18 violations of laws.

19 80. As a direct and proximate result of Defendants' unlawful retaliation, Plaintiffs
20 suffered foreseeable general and special damages in an amount according to proof including, but
21 not limited to, bonuses, commission(s), and other past and future lost wages which Plaintiffs fully
22 performed to earn or would have fully performed to earn but for Defendants preventing or making
23 Plaintiffs' performance impossible by engaging in substantial unlawful conduct and retaliation
24 which compelled Plaintiffs to resign.

25 81. Accordingly, Plaintiffs seek injunctive relief, declaratory relief, compensatory
26 damages, punitive damages, penalties, interest, attorney's fees and costs in an amount to be proven
27 at trial pursuant to Labor Code sections 98.6, 1102.5 et al., and common law.

28

1 **SEVENTH CAUSE OF ACTION**

2 **(Constructive Discharge)**

3 **(By CIGLAR and VILLEGGIANTE Against all Defendants)**

4 82. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this
5 section as though fully set forth herein.

6 83. A constructive discharge occurs when “the employer either intentionally created or
7 knowingly permitted working conditions that were so intolerable or aggravated at the time of the
8 employee’s resignation that a reasonable employer would realize that a reasonable person in the
9 employee’s position would be compelled to resign.” (*Turner v. Anheuser-Busch, Inc.* (1994) 7
10 Cal.4th 1238, 1251.)

11 84. Defendants at least knowingly permitted Defendants’ unlawful wage and hour
12 practices that Plaintiffs alleged above because Defendants refused to fix the violations after
13 Plaintiffs complained. Those working conditions were so intolerable that Plaintiffs were compelled
14 to resign because any reasonable person in Plaintiffs’ position would feel compelled to resign. For
15 example, no reasonable person could continue working for Defendants after Defendants terminated
16 payments of advanced draws to Plaintiffs in April 2023 in retaliation for Plaintiffs’ complaints to
17 Defendants about Defendants’ unlawful practices. Without receiving any more advanced draws,
18 Plaintiffs worked many pay periods for which Defendants paid Plaintiffs no money at all when
19 Plaintiffs did not have earned commissions.

20 85. Plaintiffs gave Defendants notice of Plaintiffs’ respective resignations on various
21 dates beginning on July 31, 2023, and thereafter, which completed the constructive discharges.

22 86. Plaintiffs are informed and believe that in taking the actions alleged herein,
23 Defendants were managing agents who acted with malice, fraud and oppression, and in reckless
24 disregard of Plaintiffs’ rights to receive lawfully compliant wages, complain or make requests to
25 Defendants about Defendants’ pay practices, work in a workplace free of unlawful retaliation, and
26 disclose information to Defendants which Plaintiffs reasonably believed disclosed Defendants’
27 violations of laws.

28 87. As a direct and proximate result of Defendants’ unlawful retaliation, Plaintiffs

1 suffered foreseeable general and special damages in an amount according to proof including, but
2 not limited to, bonuses, commission(s), and other past and future lost wages which Plaintiffs fully
3 performed to earn or would have fully performed to earn but for Defendants preventing or making
4 Plaintiffs' performance impossible by engaging in substantial unlawful conduct and retaliation
5 which compelled Plaintiffs to resign.

6 88. Accordingly, Plaintiffs seek injunctive relief, declaratory relief, compensatory
7 damages, punitive damages, interest, attorney's fees, and costs in an amount to be proven at trial
8 pursuant to common law.

9 **PRAYER**

10 WHEREFORE, Plaintiff demands a jury and prays for judgment against Defendants in an
11 amount exceeding \$25,000 as follows:

- 12 1. For compensatory damages in an amount to be proven at trial;
- 13 2. For punitive damages in an amount to be proven at trial;
- 14 3. For liquidated damages in an amount to be proven at trial;
- 15 4. For penalties in an amount to be proven at trial;
- 16 5. For civil penalties in an amount to be proven at trial;
- 17 6. For attorney's fees in an amount to be proven at trial;
- 18 7. For costs of suit in an amount to be proven at trial;
- 19 8. For interest;
- 20 9. For restitution;
- 21 10. For injunctive relief;
- 22 11. For declaratory relief; and
- 23 12. For such other and further and relief as the court may deem just and proper.

24 Respectfully submitted,

25 Date: 03/05/2024

26 
27 Jason Whooper (SBN 279972)
28 W LAW
Counsel for Plaintiffs

EXHIBIT 1

March 5, 2024

UPLOADED VIA DIR WEBSITE

Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
dir.ca.gov

W LAW
1916 3rd Ave
San Diego, CA 92101
Tel: (619) 432-2836
Fax: (619) 717-2111
Email: jason@wlawinc.com

Re: *Kelly Tong Berry; Frank Ciglar; and Shannon Villeggiante v. Crosscountry Mortgage, LLC; and Does 1-100, inclusive*

To Whom It May Concern:

I, Jason Whooper, of the law firm W Law, represent Plaintiffs KELLY TONG BERRY (hereinafter “BERRY”), FRANK CIGLAR (hereinafter “CIGLAR”), and SHANNON VILLEGGIANTE (hereinafter “VILLEGGIANTE”) (hereinafter collectively referred to as “Plaintiffs”) on behalf of themselves and all other PAGA aggrieved employees (hereinafter collectively referred to as the “PAGA aggrieved employees”), who are either former or current employees of CROSSCOUNTRY MORTGAGE, LLC (hereinafter “CROSSCOUNTRY”) and DOES 1-100, inclusive (all of whom are also hereinafter collectively referred to as “Defendants”).

Pursuant to Labor Code section 2699.3, this letter constitutes written notice of Defendants’ violations of the Labor Code and Wage Orders, and of our intent to recover civil penalties under the Labor Code Private Attorney General Act (“PAGA”) of 2004. The \$75 filing fee payment will be made with the filing of this PAGA notice letter.

GENERAL ALLEGATIONS

CROSSCOUNTRY is an entity engaged in the mortgage lending sales and servicing business. In or around May 2022, Defendants hired Plaintiffs, and began employing them as Loan Officers. Plaintiffs are informed and believe that all of Defendants’ PAGA aggrieved employees include Loan Officers and other job titles throughout California.

At all relevant times Defendants were required to comply with Industrial Welfare Commission Wage Orders 1-2001 to 17-2001 and MW-2022 to MW-2024 (the “Wage Orders”). Under Defendants’ pay program, Defendants paid Plaintiffs a purported advanced draw. Then Defendants recovered the draw from their future earned incentive-based wages that Defendants called “commission(s)” (hereafter referred to as “commission(s)” only for purposes of identifying these wages at issue). Defendants calculated commission(s) using percentage basis points (“bps”) on Plaintiffs’ funded loan volume.

Plaintiffs allege Defendants’ purported commission(s) were not legally commissions within the meaning of the Wage Orders and Labor Code section 204.1 because Plaintiffs were involved principally in rendering Defendants’ service, not selling Defendants’ product or service. Plaintiffs estimate they spent more than 80 percent of work hours inside either Defendants’ offices

or Plaintiffs' home offices performing production work for Defendants. The production work included completing paperwork, collecting financial information, giving product advice, customer service for mortgage customers, and answering customers calls to Plaintiffs' personal cell phones at all hours of the week. Any sales duties were secondary, incidental, and minimal. Defendants sold and brokered their loan products. Defendants also required Plaintiffs to perform a lot of marketing duties, which sometimes occurred outside the office. As a result, Plaintiffs were nonexempt employees at all relevant times.

Plaintiffs are informed and believe that Defendants initially paid Plaintiffs a purported advanced draw equivalent to approximately California's minimum wage or less for only 40 hours per workweek or 80 hours for every two-week pay period, and earned commission(s). However, Plaintiffs estimate that Plaintiffs worked an average 6 or 7 days per week and approximately over 75 hours per workweek and over 150 hours in each two-week pay period, some of which was nonproductive time. As a result, Defendants did not pay Plaintiffs at least minimum wage or anything at all for many hours Plaintiffs worked each workweek in most pay periods, including for pay periods in which Defendants paid Plaintiffs commission(s).

Plaintiffs are informed and believe that Defendants also recovered more draws from Plaintiffs' earned commission(s) than allowed under California law, which also resulted in paying Plaintiffs less than minimum wage for all hours worked for various pay periods.

Defendants also failed to pay Plaintiffs overtime rates for overtime hours that Plaintiffs worked by paying nothing for overtime hours in the pay periods where Defendants paid Plaintiffs draws and by only paying the regular rate of pay for commission(s) in pay periods where Defendants paid Plaintiffs earned commission(s).

Defendants also unlawfully withheld and deducted a part of Plaintiffs' earned commission(s) or failed to indemnify Plaintiffs for Defendants' losses by frequently paying Plaintiffs less than the bps commission(s) authorized in Defendants' commission(s) plan on loans funded that Plaintiffs closed so that Defendants could enrich Defendants' profit margins at Plaintiffs' expense in willful disregard of wage regulations and Defendants' own commission(s) plan. Further, Defendants only provided Plaintiffs a laptop, home office monitor, keyboard, and headset, but did not pay, indemnify, or reimburse Plaintiffs' mileage, cell phone, business cards, and other necessary business expenses to perform Plaintiffs' duties for Defendants.

Defendants also did not pay Plaintiffs for rest periods and nonproductive time wages separate from and in addition to the draws and commission(s) Defendants paid Plaintiffs. Plaintiff's nonproductive time included, but was not limited to, tasks such as marketing, travelling, and attending staff meetings. Defendants also failed to permit Plaintiffs to take off duty 10-minute rest periods.

Defendants failed to provide Plaintiffs 30-minute off duty uninterrupted meal periods and failed to pay missed meal period wage premiums to Plaintiffs. Plaintiffs typically ate lunch while working on duty. Defendants also failed to keep time records showing when Plaintiffs began and

ended each work period, including meal periods and nonproductive time. Further, Plaintiffs are informed and believe that Defendants failed to keep accurate time records of Plaintiffs' work periods or even advise Plaintiffs that Plaintiffs were required, and allowed, to take 30-minute off duty uninterrupted meal periods because Defendants only paid Plaintiffs the draws and commission(s) regardless of how many hours Plaintiffs worked.

Plaintiffs are informed and believe that Defendants also failed to provide Plaintiffs paid sick leave and include the amount of accrued paid sick leave available on Plaintiffs' itemized wage statements.

As a result of the unpaid wages alleged above and other facts to be discovered, Defendants failed to timely pay Plaintiffs all earned wages twice per calendar month because Plaintiffs is informed and believes that Defendants underpaid Plaintiffs every pay period.

Also, as a result of all the allegations above and other facts to be discovered, Defendants failed to provide Plaintiffs compliant wage statements because the wage statements did not contain all legally required accurate information including, but not limited to, gross wages earned, total hours actually worked, all applicable hourly rates in effect and the corresponding number of hours worked at each hourly rate, the total hours of compensable rest periods, the rest periods rate of compensation, the gross paid rest period wages, the total hours of other nonproductive time, the rate of nonproductive time compensation, the gross nonproductive time wages paid during each pay period, the itemized commission(s) with the corresponding commission(s) rates, paid sick leave available, etc. As a further result, Defendants failed to keep all required personnel, payroll, and time records for Plaintiffs.

Plaintiffs began complaining to Defendants about unpaid wages and disclosing information to Defendants about what Plaintiffs reasonably believed were Defendants' unlawful wage and hour practices shortly after Defendants hired Plaintiffs. Plaintiffs complained and disclosed Defendants unlawful practices directly to Defendants' managing agents including, but not limited to, Defendants' Vice Presidents, Chief Legal Counsel, and other executives. In or around April 2023, Defendants changed Defendants' purported classification of Plaintiffs into exempt outside salespeople and stopped paying Plaintiffs and other loan officers anything including no hourly minimum wages or advanced draws for the work Plaintiffs performed for Defendants. Plaintiffs' duties did not change, and Plaintiffs still spent more than an estimated 80 percent of their work hours performing work inside their offices. As part of Defendants' retaliatory outside salesman exemption scheme, Defendants only paid Plaintiffs whatever earned commission(s), if any, accrued. After implementing this scheme, Defendants regularly paid Plaintiffs nothing at all for many pay periods that Plaintiffs worked because Plaintiffs had many pay periods without any earned commission(s).

Plaintiffs are informed and believe that Defendants stopped paying Plaintiffs advanced draws and anything at all in direct retaliation for Plaintiffs complaining to Defendants about Plaintiffs' unpaid wages and Defendants' unlawful pay practices, and because Plaintiffs disclosed or Defendants believed Plaintiffs may disclose information that Plaintiffs reasonably believed

disclosed a violation of the law to a government or law enforcement agency, to a person with authority over Plaintiffs, or to another one of Defendants' employees who had authority to investigate, discover, or correct the violations.

Plaintiffs are further informed and believe that Defendants intentionally created these unlawful wage and hour and working conditions that were so intolerable as to compel Plaintiffs to quit and that any reasonable person in Plaintiffs' position would feel compelled to resign. Anyone in this circumstance, including Plaintiffs, would not be able to rely on working for Defendants to pay basic living expenses under these conditions. Especially anyone like Plaintiffs who accepted employment which included draws equivalent to approximately 40 hours of minimum wage pay per week until Defendants took that away to retaliate against Plaintiffs for complaining about Defendants' pay practices. Plaintiffs CIGLAR and VILLEGIANTE gave Defendants notice of their respective resignations on various dates beginning on or around July 31, 2023, and shortly thereafter.

More than 30 days have passed since Plaintiffs' employment terminated and Defendants have willfully failed to pay Plaintiffs all earned unpaid wages. Further, Defendants have also failed to pay Plaintiffs the 30 days of daily wages for waiting time penalties which Plaintiffs are also entitled to.

Plaintiffs are informed and believe that Defendants engaged in Labor Code and Wage Orders violations against all of Defendants' PAGA aggrieved employees in California which were similar to the violations against Plaintiffs described above and additionally Defendants engaged in different violations of the Labor Code and Wage Orders that Plaintiffs did not suffer.

Plaintiffs are informed and believe that Defendants' violations were all knowing and willful in disregard of the Labor Code and Wage Orders. Accordingly, Plaintiffs are entitled to recovery of civil penalties pursuant to various regulations and statutes including, but not limited to, the Wage Orders and Wage Order 4-2001 sections 3, 4, 7, 8, 11, 12, and 20 et al.; and pursuant to Labor Code sections including, but not limited to, sections 7, 98, 98.6, 98.7, 200, 201, 202, 203, 204, 204.1, 206, 206.5, 210, 212, 215, 216, 218.6, 221, 222, 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.6, 226.7, 230.8, 232.5, 233, 246, 246.5, 247, 247.5, 248.5, 256, 351, 500, 510, 512, 516, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1198.5, 1199, 2502, 2698, 2699, 2699.3, 2699.5, 2751, and 2802 et al.

REQUEST TO THE LWDA

Accordingly, Plaintiffs respectfully request that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the violations described or authorize Plaintiffs to do so on behalf of the State of California. If the LWDA declines to pursue enforcement, Plaintiffs intend to litigate the PAGA claim with a Superior Court action on their own behalf for their individual claims and in a representative capacity on behalf of California for all PAGA aggrieved employees' representative claims within the statute of limitations period, for civil penalties pursuant to various regulations and statutes including, but not limited to, the Wage Orders and Wage Order 4-2001 sections 3, 4, 7, 8, 11, 12, and 20 et al.; and pursuant to Labor Code sections including, but not limited to, sections 7, 98, 98.6, 98.7, 200, 201, 202, 203, 204, 204.1, 206, 206.5, 210, 212, 215, 216, 218.6, 221, 222, 223, 224, 225, 225.5, 226, 226.2, 226.3,

226.6, 226.7, 230.8, 232.5, 233, 246, 246.5, 247, 247.5, 248.5, 256, 351, 500, 510, 512, 516, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1198.5, 1199, 2502, 2698, 2699, 2699.3, 2699.5, 2751, and 2802 et al.

If you have any questions or concerns regarding the above, please do not hesitate to contact my office. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jason Whooper', with a stylized flourish at the end.

Jason Whooper

cc:

SENT VIA CERTIFIED U.S. MAIL

Crosscountry Mortgage, LLC
2160 Superior Avenue E
Cleveland, OH 44114-2102

1 **Case Name: Kelly Tong Berry; Frank Ciglar; and Shannon Villeggiante v. Crosscountry**
2 **Mortgage, LLC; and Does 1-100, inclusive**

3 **PROOF OF SERVICE**

4 I am employed in the County of San Diego, in the State of California. I am over the age of
5 eighteen (18) years old and not a party to this action; my business address is 1916 3rd Avenue,
6 San Diego, CA 92101.

7 On March 5, 2024, I served a true and correct copy of the following document(s):

8 1. PAGA Claim Notice (on behalf of Kelly Tong Berry et al.)

9 on all interested parties in this action as follows using the method indicated below:

10 Crosscountry Mortgage, LLC
11 2160 Superior Avenue E
12 Cleveland, OH 44114-2102

13 [x] U.S. Certified Mail: I am readily familiar with the firm's practice of collection and
14 processing correspondence for mailing. Accordingly, the above-referenced document(s)
15 were enclosed in a sealed envelope which, in the ordinary course of business, was or will
16 be deposited with the United States Postal Service the same day; and said envelope was
17 addressed as shown above to the interested parties.

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

20 Executed on March 5, 2024, in San Diego, California

21 

22 Jason Whooper

Subject: Thank you for submission of your PAGA Case.

Date: Tuesday, March 5, 2024 at 11:21:10 AM Pacific Standard Time

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

To: Jason Whooper <jason@wlawinc.com>

3/5/2024

LWDA Case No. LWDA-CM-1014789-24

Law Firm : W Law

Plaintiff Name : Kelly Tong Berry, Frank Ciglar, Shannon Villeggiante

Employer: Crosscountry Mortgage, LLC

Filing Fee : \$75.00

IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm